

#

IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment Delivered on: 01.05.2023

+ **CRL. A.397/2020**

ALEMLA JAMIR

..... Appellant

versus

NIA

..... Respondent

Advocates who appeared in this case:

For the Appellant	: Mr.Ramesh Gupta Senior Advocate with Mr. R.A.Worsi Zimik, Mr. Shailendra Singh and Mr.Kahorangam Zimik, Advocate.
For the Respondents	: Ms. Shilpa Singh SPP for NIA with Mr. Aquib Ahmed and Mr. Aniruddh Ray, Advocate. Inspector Sanjay Kumar, NIA.

CORAM:

HON'BLE MR. JUSTICE SIDDHARTH MRIDUL

HON'BLE MR. JUSTICE TALWANT SINGH

J U D G M E N T

TALWANT SINGH, J.

1. The appeal under Section 21 of the National Investigation Agency Act, 2008 read with Section 167(2) and Section 482 of the Code of Criminal Procedure, 1973 (Cr.P.C.) has been filed by appellant/Alemla Jamir, who is facing trial in case R.C. No. 26/2019 under Section 10,13,17,18, 20 and 21 of the Unlawful Activities (Prevention) Act, 1967 (UA(P) Act), registered at Police Station NIA (National Investigation Agency), Delhi.

1.1 In brief facts, it is mentioned that the case of the prosecution is that the appellant was travelling by air from Delhi to Dimapur, when she was detained at IGI Domestic Airport, Terminal-I on 17.12.2019 by the CISF for carrying cash of Rs.72.00 lakhs as she could not explain the source of cash available with her. Intimation was sent to Income Tax Department and investigation started.

1.2 The appellant in her statement to the Officials had stated that the cash in question belonged to the National Socialist Council of Nagaland (Isak-Muivah Faction), NSCN(IM) and she had received the cash from an associate of Mr. Muivah, General Secretary of NSCN (IM) at her residence and the same was to be handed over to Mr. Muivah at Dimapur, Nagaland. This information was passed on to the Special Cell and an FIR bearing No. 0228/2019 was registered by Delhi Police under the aforesaid provisions at Police Station: Special Cell for aiding and abetting NSCN(IM), which is a banned organization. The air tickets of the appellant were arranged on the direction of Mr. Muivah. The husband of the appellant is a relative of Mr. Muivah and he is a Steering Committee member of NSCN(IM) and was earlier Commander-in-Chief of the terrorist organization NSCN (IM). This money was to be used for carrying out terrorist operations and other terrorist activities in India.

2. Investigation was further handed over to NIA, which registered the above-mentioned RC under the relevant provisions. Ten days police custody remand was taken and thereafter the appellant was sent to judicial custody on 27.12.2019. The mandatory period of 90 days to complete the investigation had expired on 15.03.2020. On moving

an application by the prosecution seeking extension of detention period, the extension was granted for 45 days. A further extension of 45 days was again granted vide order dated 21.04.2020.

2.1 Three days police custody remand of the appellant/accused vide order dated 20.05.2020 was given. The appellant has extended full cooperation during investigation.

2.2 The 180 days' investigation period was to expire on 14.06.2020; however, on 11.06.2020 the NIA filed charge-sheet in the matter and it was kept for consideration on 18.06.2020. Neither cognizance was taken on the said date nor the prosecution had asked for judicial custody remand of the appellant.

2.3 Neither the appellant nor her counsel was informed regarding the filing of the charge-sheet nor the link for the proceeding was sent to them. In fact, the appellant was sent to judicial custody on 14.06.2020. The prosecution was informed on 18.06.2020 regarding enormous discrepancies in the charge-sheet for which the prosecution sought two weeks' time for rectification and the matter was adjourned to 03.07.2020. On 20.06.2020, counsel for the appellant/accused moved an application for inspection of the case file but the same was not granted due to prevailing Covid-19 pandemic crisis. However, on 23.06.2020, last three pages of the charge-sheet were ordered to be shown to the counsel for the appellant.

2.4 It came to the knowledge of the appellant, while going through the papers so supplied, that investigation under Section 173 Cr.P.C. was still continuing and only an interim/part charge-sheet had been filed in Court. No cognizance of the charge-sheet, so filed, was taken

until 03.07.2020 by the Court; much after the expiry of 180 days' period on 14.06.2020, so the appellant is entitled to statutory bail. The cognizance so taken is also without jurisdiction as the investigation was still continuing. There is no provision of law allowing filing of part charge-sheet. Bail application of the appellant under Section 167 (2) Cr.P.C. was rejected by the learned Trial Court vide order dated 03.07.2020 on the ground that the charge-sheet was filed within the limitation period and no ground for statutory bail is made out. The prosecution continued to raid the premises of the witnesses at Delhi and Dimapur between 22.07.2020 to 25.07.2020; much after the charge-sheet was filed. It shows that charge-sheet in question is a part charge-sheet.

2.5 It is further alleged that the learned Trial Court has dismissed the application for statutory bail moved by the appellant, which amounts to non-application of mind and subverting the due process of law. Certain judgements have been cited in support of this contention. It has been submitted that the charge-sheet already filed is a preliminary charge-sheet, so the appellant/accused is entitled to statutory bail. As per law, when the charge-sheet was filed, the learned Trial Court would have taken cognizance of complete charge-sheet on 11.06.2020 itself. Permission for further investigation could have been sought under Section 173 (8) Cr.P.C. The applicant/accused is languishing in judicial custody since 27.12.2019 without any reprieve and she is being detained illegally.

2.6 One more ground has been agitated that for certain period, the appellant was illegally confined in jail without proper warrant remanding her to judicial custody.

2.7 Under these circumstances, it has been prayed that the impugned order dated 03.07.2020 be set aside.

3. Notice was issued. Reply has been filed by the respondent. It has been submitted that during police custody remand and interrogation, the appellant had disclosed about her involvement in terrorist activities being carried out by the NSCN (IM). Her husband is an Ex. Army Chief of NSCN (IM) and he is still holding a senior position in the organization and he was staying in China. The appellant is working for NSCN (IM) since her marriage in the year 2000. The appellant is the Chairperson of the Women Society of NSCN (IM) and is also a Minister of the terrorist organization NSCN (IM). It has been further submitted that there is sufficient evidence in the form of incriminating documents, statement of witnesses and digital evidence, which establishes that accused persons had entered into a criminal conspiracy and they have directly raised and collected funds for NSCN (IM) through illegal means of extortion and by giving out loans at exorbitant rate of interest. The appellant, as well as her husband were stated to be in touch with unknown foreign activists to garner support of their activities against Indian State. During the course of investigation, statements of people, who had knowledge of these types of acts, were recorded and incriminating documents/pictures of arms/Armed Cadres of NSCN (IM) were collected.

3.1 After completion of the investigation, on the basis of the evidence collected during investigation, charge-sheet was filed on 11.06.2020 against the accused persons under the relevant provisions of law. The statutory bail application filed by the present appellant was dismissed on 27.06.2020, as the same was devoid of merits.

3.2 In para-wise comments, the contents of the corresponding paras of the application have been denied in general except the ones which were specifically accepted, apart from certain paragraphs being matter of record. It is also stated that the accused did not cooperate during her police custody and she tried to mislead the investigation.

3.3 It is submitted on behalf of the NIA that the charge-sheet was filed before the expiry of statutory period i.e., 14.06.2020. However, on 18.06.2020, Ahlmad of the Court reported that there were certain discrepancies in the pagination and documentation filed alongwith charge-sheet and the prosecution had sought 15 days' time to remove all the objections. NIA has filed the charge-sheet within the statutory period as per the legal provisions. The charge-sheet was filed after collecting sufficient prosecutable evidence against the appellant. However, it was mentioned that the further investigation will be continuing under Section 173(8) Cr.P.C. to collect evidence against other known accused persons as well as against unknown accused persons. The present accused is not entitled to statutory bail as it is not an interim/part charge-sheet against accused/appellant. There is no question of obtaining permission for further investigation in this case. Once a charge-sheet is filed within the stipulated time, the question of grant of default bail does not arise.

3.4 It is also submitted on behalf of NJA that the active involvement of the appellant with the terrorist organization NSCN (IM) as a Minister and also her involvement in extortion activities stands established. If the appellant is released on bail, she will abscond and escape from the clutches of law and from territorial jurisdiction of India through illegal migration *via* Myanmar. The husband of the appellant is already living in Myanmar/China and he is operating from there with an intention to wage war against the State.

3.5 For release on bail of an accused for an offence under Chapter IV & VI of UA(P)Act, 1967, the mandatory conditions under Section 43D(5) have to be satisfied, which the present appellant does not fulfill. The appellant is stated to be a very influential person and if she is released on bail, she may influence the witnesses, especially the witness(s) residing in North East States of India. In view of this, it has been prayed that the appeal filed by the accused/appellant may be dismissed.

4. Both the parties have filed written synopsis and have relied upon number of judgements. Record from the office of Superintendent Central Jail No. 6, Tihar was also summoned consisting of the remand papers from 06.06.2020 till 14.06.2020 and 18.06.2020 to 03.07.2020. The remand papers show that on 06.06.2020 the accused was ordered to be produced on 14.06.2020 through video conferencing and the date already fixed on 09.06.2020 was cancelled. The next order sheet shows that accused was produced before Duty Magistrate on 18.06.2020, where she was ordered to be produced on 03.07.2020. On 03.07.2020 the accused was produced

before Duty Magistrate and she was ordered to be produced on 04.08.2020 and so on. The order dated 11.06.2020 passed by the learned ASJ-03 Mr. Praveen Singh shows that charge-sheet was filed before him. On filing of the charge-sheet, it was ordered to be checked and registered. Ahlmad was directed to check the complete list of documents and accused was ordered to be produced through video conferencing on 18.06.2020. This order was sent to the Central Jail, Tihar on 11.06.2020 and it was duly received. This order of the learned ASJ-03, New Delhi District passed on 11.06.2020, directing production of the accused/appellant through video conferencing on 18.06.2020, in a way overrides the order dated 06.06.2020 and instead of ordering production on 14.06.2020, the accused was ordered to be produced on 18.06.2020.

4.1 Another objection raised by the appellant/accused is that no video link was provided on 11.06.2020, when the charge-sheet was filed. There was no occasion to provide a video link on 11.06.2020 because for presentation of the charge-sheet in a case, where the accused is already detained in person, his/her presence is not required. The accused was rightly ordered to be produced through video conferencing on 18.06.2020, the next date fixed in the matter.

4.2 Next objection raised in the petition is that on some occasions, the judicial remand was not extended by the Learned Special Judge. It is to be remembered that this was the peak period of Covid Pandemic and the Courts were functioning remotely through video conferencing and the proper functioning of the Courts was curtailed due to the pandemic. In such a challenging situation, technical objections raised

during these hard times are of no consequence. It is to be appreciated that no part of the detention of the accused was without any effective order from a Court. However, the order dated 11.06.2020 has overlapped the period in order dated 06.06.2020 and instead of ordering the production of the accused on 14.06.2020, it was ordered that she be produced on 18.06.2020. So, in my view during no period, the appellant was detained in illegal custody without any authorization from a competent Court.

4.3 The next contention of the appellant is that the charge-sheet filed in the present case is an incomplete charge-sheet. The charge-sheet can be filed only on completion of investigation and if any new fact comes to the knowledge of the police, they have to seek permission under Section 173 (8) Cr.P.C., and only thereafter the further investigation can be carried out; since the investigation continues against accused No. 3 and other person, so the case of the appellant cannot be split from other known or unknown persons and as such the charge-sheet is incomplete. Moreover, no permission was sought for further investigation under Section 173(8) Cr.P.C.

4.4 On the other hand, it has been argued by the learned counsel appearing on behalf of the respondent/NIA that the charge-sheet filed in the Court of Learned Special Judge is a complete charge-sheet and on the basis of the said charge-sheet, charges have already been framed in Court. The present charge-sheet is a complete charge-sheet and is not a preliminary charge-sheet against the appellant and the same has been filed within the prescribed statutory period. Moreover,

investigation against other known or unknown accused persons is still continuing and at an appropriate stage, they will be charge-sheeted.

5. In view of the power of the police to conduct further investigation in respect of other known or unknown accused persons, the police has a statutory power and the Court cannot interfere with the same as per the provisions of Section 173 (8) Cr.P.C., which is reproduced herein:-

“173(8). Nothing in this section shall be deemed to preclude further investigation in respect of an offence after a report under sub-section (2) has been forwarded to the Magistrate and, where upon such investigation, the officer in charge of the police station obtains further evidence, oral or documentary, he shall forward to the Magistrate a further report or reports regarding such evidence in the form prescribed; and the provisions of sub-sections (2) to (6) shall, as far as may be, apply in relation to such report or reports as they apply in relation to a report forwarded under sub-section (2).”

6. On behalf of the respondent/NIA, it has been rightly submitted that as far as the present appellant is concerned, the investigation is complete and the charge-sheet stands filed. Charges have been framed and the evidence is going on. In our view it is too late in the day for the appellant to raise the issue of filing an incomplete charge-sheet as the case has already progressed much further and has reached to the stage where part evidence has already been recorded and it implies that the charge-sheet filed against the present appellant is complete charge-sheet, so there is no question of grant of default bail.

7. The appellant has also raised an objection regarding there being no valid judicial remand order being available on the court file as on 03.07.2020 after taking cognizance against both the accused persons including the present applicant for offence punishable under Section

120-B, 201,384, 465, 467 & 471 IPC and Section 17, 18, 20 & 21 of UA (P) Act, 1967 and u/s 25(1A) of the Arms Act, 1959. The matter was put up for scrutiny of documents on 04.08.2020. Even on 04.08.2020, it was the Duty Metropolitan Magistrate, who had ordered the appellant/accused to be produced before Court on 01.09.2020. It is pertinent to mention herein that it was peak of Covid period and the Courts were functioning in a very restricted mode and the learned Metropolitan Magistrates were deputed to the Tihar Jail itself to extend the custody remands as it was not possible to bring all the under-trials lodged in the Tihar Jail to Courts because of Covid restrictions and it was also not possible to produce each and every accused before the concerned Court through video conferencing, because the Courts itself were functioning in a very restricted mode and at that time even appropriate video conferencing facilities were not available either at the Court rooms or at the residential offices of the judicial officers.

7.1 After taking cognizance, unless and until a bail order is passed, in our view, the under-trial has to remain in judicial custody and as it was not possible for the accused to be produced before the Special Court because of the Covid restrictions, her remand was rightly extended by the Duty Metropolitan Magistrate as per the directions issued from time to time by the higher judicial authorities keeping in view the prevailing circumstances.

8. Another ground agitated by the learned counsel for the appellant is that an incomplete charge-sheet was filed on 11.06.2020 and even on this charge-sheet the cognizance was taken beyond the period of

limitation on 03.07.2020, so the appellant is entitled to a default bail. In *Serious Fraud Investigation Office v. Rahul Modi & Ors.*, reported as **2022 SCC OnLine SC 153** the Hon'ble Supreme Court has discussed all the prevailing judgments on this issue and has finally come to the conclusion as under:-

“16. A close scrutiny of the judgments in **Sanjay Dutt** (supra), **Madar Sheikh** (supra) and **M. Ravindran** (supra) would show that there is nothing contrary to what has been decided in **Bhikamchand Jain** (supra). In all the above judgments which are relied upon by either side, this Court had categorically laid down that the indefeasible right of an accused to seek statutory bail under Section 167(2), CrPC arises only if the charge-sheet has not been filed before the expiry of the statutory period. Reference to cognizance in **Madar Sheikh** (supra) is in view of the fact situation where the application was filed after the charge-sheet was submitted and cognizance had been taken by the trial court. Such reference cannot be construed as this Court introducing an additional requirement of cognizance having to be taken within the period prescribed under proviso (a) to Section 167(2), CrPC, failing which the accused would be entitled to default bail, even after filing of the charge-sheet within the statutory period. It is not necessary to repeat that in both **Madar Sheikh** (supra) and **M. Ravindran** (supra), this Court expressed its view that non-filing of the charge-sheet within the statutory period is the ground for availing the indefeasible right to claim bail under Section 167(2), CrPC. The conundrum relating to the custody of the accused after the expiry of 60 days has also been dealt with by this Court in **Bhikamchand Jain** (supra). It was made clear that the accused remains in custody of the Magistrate till cognizance is taken by the relevant court. As the issue that arises for consideration in this case is squarely covered by the judgment in **Bhikamchand Jain** (supra), the order passed by the High Court on 31.05.2019 is hereby set aside.”

The Hon'ble Supreme Court in *Suresh Kumar Bhikamchand Jain v. State of Maharashtra & Anr.*, reported as **2013 (3) SCC 77** which is a judgment of full Bench has held as under:-

“18. None of the said cases detract from the position that once charge-sheet is filed within the stipulated time, the question of grant of default bail or statutory bail does not arise. As indicated hereinabove, in our view, the filing of charge-sheet is sufficient

compliance with the provisions of Section 167(2)(a)(ii) in this case. Whether cognizance is taken or not is not material as far as as Section 197 CrPC is concerned. The right which may have accrued to the petitioner, had charge-sheet not been filed, is not attracted to the facts of this case. Merely because sanction had not been obtained to prosecute the accused and to proceed to the stage of Section CrPC, it prosecute the accused and to proceed to the stage of Section 309 CrPC, it prosecute the accused and to proceed to the stage of Section 309 CrPC, it cannot be said that the accused in entitled to grant of statutory bail, as envisaged in Section 167 CrPC. The scheme of CrPC is such that once the investigation stage is completed, the court proceeds to the next stage. Which is the taking of cognizance and trial. An accused has to remain in custody of some court. During the period of investigation, the accused is under the custody of the Magistrate before whom he or she is first produced. During that stage, under Section 167(2) CrPC, the Magistrate is vested with authority to remand the accused to custody, both police custody and/or judicial custody, for 15 days at a time, up to a maximum period of 60 days in cases of offences punishable for less than 10 years and 90 days where the offences are punishable for over 10 years or even death sentence. In the event, an investigating authority fails to file the charge-sheet within the stipulated period. the accused is entitled to be released on statutory bail. In such a situation. the accused continues to remain in the custody of the Magistrate till such time as cognizance is taken by the court trying the offence, when the said court assumes custody of the accused for purposes of remand during the trial in terms of Section 309 CrPC. The two stages are different. but one follows the other so as to maintain a continuity of the custody of the accused with a court,

19. Having regard to the above, we have no hesitation in holding that notwithstanding the fact that the prosecution had not been able to obtain sanction to prosecute the accused. the accused was not entitled to grant of statutory bail since the charge-sheet had been filed well within the period contemplated under Section 167(2)(a)(ii) CrPC. Section is an enabling provision to prosecute, which is totally separate from the concept of investigation which is concluded by the filing of the charge-sheet. The two are on separate footings. In that, view of the matter, the special leave petition deserves to be and is hereby dismissed.”

9. Hence, in our view filing of a complete charge-sheet within the stipulated period is sufficient compliance and no default bail can be granted in a case where cognizance was taken later on and the custody

of the accused/appellant cannot be termed as illegal only on the ground that sufficient amount of time was spent by the court clerk to raise objections regarding page numbering and illegible documents etc., and the respondent/NIA had taken some time to respond to the said objections and after removal of objections, the cognizance was rightly taken on 03.07.2020.

10. In our view, there is no illegality or infirmity in the orders passed from time to time regarding detention of the present appellant. The appeal, is therefore, devoid of merits and accordingly dismissed.

**TALWANT SINGH
(JUDGE)**

**SIDDHARTH MRIDUL
(JUDGE)**

MAY 01, 2023/*mr*