



2024 : DHC : 4606



\$~48

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of decision: 28.05.2024

+ **CRL.M.C. 3814/2022 & CRL.M.A. 14335/2024**

AMARJEET SINGH DHILLON

..... Petitioner

Through: Mr.Abhishek Paruthi,
Mr.Harshit Thareja and
Ms.Vijaya Rathi, Advs.

versus

STATE NCT OF DELHI

..... Respondent

Through: Mr. Shoaib Haider, APP with
SI Ravi Yadav
Ms.Richa Kapoor, Mr.Kunal
Anand, Mr.Deepak Singh,
Mr.Jai Batra, Ms.Atika Singh
and Ms.Kriti Gera, Advs. for
Complainant

CORAM:

HON'BLE MR. JUSTICE NAVIN CHAWLA

NAVIN CHAWLA, J. (ORAL)

1. This petition has been filed under Section 482 of the Code of Criminal Procedure, 1973 (in short, 'Cr.P.C.'), challenging the Order dated 04.07.2022 (hereinafter referred to as the 'Impugned Order') passed by the Court of the learned Principal District and Sessions Judge, South-East District, Saket Courts, New Delhi (hereinafter referred to as the 'PD&SJ') in Criminal Revision No.259/2022, titled *State v. Amarjit Singh Dhillon*, whereby the revision petition filed by the State has been allowed and the Order dated 10.06.2022 passed by the learned Metropolitan Magistrate-09, South-East District, Saket



Courts, New Delhi (hereinafter referred to as the ‘Metropolitan Magistrate’) granting statutory bail under Section 167(2) of the Cr.P.C. to the petitioner has been set aside.

Factual Background:

2. Briefly stated, the facts of the case are that an FIR No.306/2020 was registered at Police Station: Lajpat Nagar, South-East District, Delhi under Sections 420/468/471/120B of the Indian Penal Code, 1860 (in short, ‘IPC’) on the complaint made by the Complainant-Mr.Sanjay Syal. The said complaint has been filed alleging that in the month of September 2018, the complainant had approached one Mr.Anil Seth, who was well known to him being his neighbour and running the business of property dealing in South Delhi, for purchasing a property. It is alleged that in the month of October 2018, Mr.Anil Seth introduced the complainant to Mr.Suresh Kumar Sharma @ Sham Sharma as a leading property dealer/broker. It is stated that Mr.Suresh Kumar Sharma @ Sham Sharma, in turn, mentioned about a property bearing No.50, Hemkunt Colony, New Delhi owned by one Mr.Jagdev Singh Dhillon, aged about 86 years and a resident of Canada, stating that Mr.Jagdev Singh Dhillon was desirous of selling the said property. Mr. Sharma also stated that Mr.Jagdev Singh Dhillon had executed a power of attorney dated 21.11.2018 in favour of his brother-in-law, namely, Mr.Amarjeet Singh Dhillon, the petitioner herein, for the purpose of selling the said property and further assured that Mr.Jagdev Singh Dhillon has also authorized Mr.Amarjeet Singh Dhillon to enter into an Agreement to Sell in



respect of the aforesaid property and also to receive consideration for the sale of said property. The Complainant further stated that he was, thereafter, introduced to Mr.Paramjeet Singh Sandhu, Mr.Mandeep Singh Sandhu, and Mr.Jaswer Garewal, who all stated that they all know Mr.Jagdev Singh Dhillon and have close family relations with him. It is stated that they also assured the complainant that they were close friends of Mr.Amarjeet Singh Dhillon, Attorney of Mr.Jagdev Singh Dhillon. The Complainant states that believing the said representations, he agreed to purchase the abovementioned property for a total sale consideration of Rs.5,25,00,000/- by entering into an Agreement to Sell dated 03.12.2018. The Complainant claims to have paid an amount of Rs.84,50,000/- (Rs.82,50,000/- through RTGS/DD/Cheque and Rs.2,00,000/- in cash) for the purchase of the said property. The Complainant states that thereafter, he requested the petitioner herein to furnish the contact details of the owner Mr.Jagdev Singh Dhillon for confirming the receipt of the part payment as also to expedite the execution of the Sale Deed and for handing over the possession of the property. The petitioner is alleged to have provided him with an Email ID of Mr.Jagdev Singh Dhillon, on which the Complainant sent an email seeking confirmation of the receipt of the first instalment of part payment of the same consideration. It is stated that a reply was also received by the Complainant from the said Email ID. This Email ID was however, later found to be not belonging to Mr.Jagdev Singh Dhillon. The Complainant, thereafter, made requests for the execution of the Sale Deed, however, the accused assured him that this would be done in the near future as soon as Mr. Jagdev Singh



Dhillon visits India. It is stated that on 26.11.2019, however, the Complainant came across a Public Notice in the Nav Bharat Times, Delhi Edition, issued on behalf of Mr. Jagdev Singh Dhillon stating that he had neither sold the said property to anyone nor had entered into an Agreement to Sell with anyone. The said Public Notice further stated that Mr. Jagdev Singh Dhillon had not issued any power attorney in respect of the said property nor has he authorized any person to enter into an agreement of sale in relation to the said property on his behalf.

3. On the basis of the above accusations, the subject complaint was filed by the complainant, claiming that Offence under Sections 419/420/465/467/468/471/474/120B/34 of the IPC were made out against the accused persons. An endorsement was, however, made by the SHO, stating that the case be registered under Sections 420/468/471/120B of the IPC. The above FIR was, therefore, registered for Offence under Sections 420/468/471/120B of the IPC on 19.08.2020.

4. The petitioner was arrested on 30.03.2022 in relation to the abovementioned FIR.

5. On 09.06.2022, the petitioner filed an application under Section 437 read with Section 167(2) of the Cr.P.C. claiming Statutory Bail, by contending that the 60 days' period had expired and the investigation had not been completed.



6. However, the prosecution contended before the learned Metropolitan Magistrate that, in the course of the investigation, Offence under Section 467 of the IPC had also been added against the petitioner in the Case Diary on 15.05.2022 on the statement of the Owner of the property stating that he had not executed the alleged Power of Attorney. The prosecution submitted that, therefore, in terms of Proviso (a)(i) to Section 167(2) of the Cr.P.C., Statutory Bail can be granted only on expiry of 90 days from the date of the arrest of the petitioner.

7. The learned Metropolitan Magistrate, however, on considering the Case Diary observed that, *prima facie*, the offence under Section 467 of the IPC is not made out against the petitioner and, therefore, proceeded to grant Statutory Bail to the petitioner.

8. The State/prosecution challenged the said Order by way of the abovementioned revision petition, which has been allowed by the learned PD&SJ by the Impugned Order, observing therein that at the stage of consideration of an application seeking Statutory Bail, the learned Metropolitan Magistrate should not have come to the conclusion that, *prima facie*, the offence under Section 467 of the IPC is not made out and, thereafter, proceeded to grant Default/Statutory Bail to the petitioner.

9. The petitioner has challenged the Impugned Order in form of the present petition.



10. This Court by its Order dated 12.07.2023, granted *Interim* Bail to the petitioner during the pendency of the present petition.

Submissions of the Learned Counsel for the Petitioner:

11. The learned counsel for the petitioner, placing reliance on the judgments of the Bombay High Court in *Alnesh Akil Somji v. The State of Maharashtra*, 2022 SCC OnLine Bom 11566, and *Irfan Moiuddeen Saiyyed & Ors. v. The State of Maharashtra*, 2023 SCC OnLine Bom 983; and of this Court in *Sanjay More v. State of NCT of Delhi & Anr.*, 2024 SCC OnLine Del 824, and *Avinash Jain v. Central Bureau of Investigation* 2023 SCC OnLine Del 2946, submits that at the stage of considering an application under Section 167(2) of the Cr.P.C., the learned Metropolitan Magistrate was competent to look into whether the charge under Section 467 of the IPC, which would allow the accused to be detained for up to 90 days, was at all made out or not. He also places reliance on the judgment of the Supreme Court in *Achpal @ Ramswaroop & Anr. v. The State of Rajasthan*, (2019) 14 SCC 599, to submit that charges cannot be framed only on mere suspicion and without collecting any material.

12. Placing reliance on the judgment of the Supreme Court in *Amar Nath & Ors. v. State of Haryana & Ors.*, (1977) 4 SCC 137; and the Order dated 03.03.2022 of the Punjab and Haryana High Court in *Lakhwinder Singh v. Lovepreet & Anr.* passed in CRR No. 364 of 2022, the learned counsel for the petitioner submits that, in any case, the revision petition filed before the learned Revisional Court was not



maintainable as the Order granting the petitioner Statutory Bail passed by the learned Metropolitan Magistrate is interlocutory in nature.

13. He further submits that even the first Charge Sheet that was filed before the learned Trial Court on 11.06.2022 was incomplete as it did not accompany the report from the Embassy of India in Canada or the statement of the witnesses pointing out that the alleged Power of Attorney was forged and that no such officers who have been alleged to have notarised the alleged POA, were at all posted in the said Embassy. He submits that, therefore, even the said Charge Sheet could not have been used for denying Statutory Bail to the petitioner. He places reliance on the judgment of this Court in *Avinash Jain* (Supra) in support of his submission.

Submissions of the Learned APP and the Learned Counsel for the Complainant:

14. On the other hand, the learned APP and the learned counsel for the Complainant submit that the learned Metropolitan Magistrate could not have embarked upon an inquiry as to whether a case under Section 467 of the IPC had been made out against the petitioner at the stage of considering an application seeking Statutory Bail. They submit that the investigation was going on and the statement of the owner of the said property, that is, Mr. Jagdev Singh Dhillon had been recorded, who had denied having executed the alleged Power of Attorney. They submit that public notice had also been issued on behalf of the owner of the property, denying any such Power of Attorney having been executed.



20. I have considered the submissions made by the learned counsels for the parties.

21. Section 167 (2) of the Cr.P.C. reads as under:

“167. Procedure when investigation cannot be completed in twenty-four hours.—

xxxxx

(2) The Magistrate to whom an accused person is forwarded under this section may, whether he has or has not jurisdiction to try the case, from time to time, authorise the detention of the accused in such custody as such Magistrate thinks fit, for a term not exceeding fifteen days in the whole; and if he has no jurisdiction to try the case or commit it for trial, and considers further detention unnecessary, he may order the accused to be forwarded to a Magistrate having such jurisdiction:

Provided that—

(a) the Magistrate may authorise the detention of the accused person, otherwise than in custody of the police, beyond the period of fifteen days, if he is satisfied that adequate grounds exist for doing so, but no Magistrate shall authorise the detention of the accused person in custody under this paragraph for a total period exceeding—

(i) ninety days, where the investigation relates to an offence punishable with death, imprisonment for life or imprisonment for a term of not less than ten years;

(ii) sixty days, where the investigation relates to any other offence,



detention shall be authorised to be in the custody of a remand home or recognised social institution.”

22. A reading of the above provision would show that the Magistrate before whom the accused is forwarded, may authorize the detention of such accused in custody for such period not exceeding fifteen days in the whole pending the completion of the investigation, and for such other further period if he is satisfied that adequate grounds exist for doing so, however, no Magistrate shall authorize the detention of the accused person in custody for a total period exceeding ninety days (where the investigation relates to an Offence punishable with death, imprisonment for life or imprisonment for a term of not less than ten years), and for sixty days (where the investigation relates to any other Offence). It further states that on expiry of the said period of ninety days or sixty days, as the case may be, the accused person shall be released on Bail if he is prepared to and does furnish bail. This is commonly called a Statutory or a Default Bail. It has been elevated to the status of a Constitutional Right guaranteed and protected under Article 21 of the Constitution of India.

22. What is, therefore, necessary for considering a case of a Default Bail, is the Offence to which the investigation relates. In the present case, the prosecution had started investigating a case in relation to an Offence under Section 467 of the IPC, on 15.05.2022. The Offence under Section 467 of the IPC is punishable with imprisonment for life or with imprisonment of either description for a term which may



extend up to ten years. Therefore, the period of ninety days becomes applicable for the accused to be eligible for Default Bail in case the investigation is not completed within the said period.

23. In the present case, the petitioner had filed an application seeking default bail, on 09.06.2022, that is, prior to the expiry of the period of 90 days from the date of his arrest. Therefore, the right to seek Default/Statutory Bail had not accrued to the petitioner as on the date of the application and, in fact, not even on the date when the learned Metropolitan Magistrate granted him Statutory Bail, that is, on 10.06.2022, the period of 90 days having not expired.

24. The learned Metropolitan Magistrate, however, embarked upon an exercise to find out if the material so far collected in the investigation could make out an Offence under Section 467 of the IPC against the petitioner. In my view, this was an exercise not permitted at that stage. It is settled law that the Magistrate while considering an application seeking Statutory Bail, is not to consider the merits of the case. It is also to be kept in mind that the petitioner was not seeking Bail under Section 437 of the Cr.P.C. but was seeking a Default Bail under Section 167(2) of the Cr.P.C..

25. There is no doubt that while extending the period of remand/custody, the Magistrate before whom the accused is produced, has to also consider if further custody of the accused is required, however, this would be different from considering whether the accused, due to the investigation having not been completed within the



case against the accused is, therefore, even more liberally to be applied against the accused while considering the claim of the accused to a Statutory or Default Bail. It is to be remembered that the accused always has a right to apply for bail under Section 437 of the Cr.P.C., however, what the accused claims under Proviso (a) to Section 167(2) of the Cr.P.C. is that irrespective of the material and allegation against the accused, the accused be released on bail if the Final Report has not been filed within the period prescribed therein.

33. In the present case, as pointed out by the learned APP and the learned counsel for the complainant, there was a Public Notice by which the owner had denied having executed any Power of Attorney in favour of any person for selling his property. Statement of the Owner in this regard had been recorded.

34. Though not relevant, eventually a Charge under Section 467 of the IPC, in fact, came to be invoked and charges, including under Section 467 of the IPC, have already been framed against the petitioner based on a report from the Indian Embassy in Canada which, according to the learned counsel for the Complainant, showed that the said Power of Attorney was a forged document and bearing forged notarisation from the said Embassy.

35. In *Anlesh Akil Somji* (Supra) and *Irfan Mouiddeen Saiyyed* (Supra), the Courts have held that even though there is no requirement for the investigating officer to obtain permission from the magistrate to any addition of section/offence, the Court is not precluded from



looking into the facts and the material collected. The Courts, therefore, in the peculiar facts of the said cases, and considering the fact that the material on record was not sufficient, held that the accused therein were entitled to be released on Statutory Bail.

36. In *Sanjay More* (Supra), this Court has held that a perusal of the allegations made in the FIR, supplemented by the CCTV Footage and the MLC, does not *prima facie* show that the petitioner had an '*intention of causing death*' of the deceased, and because there has to be a presumption, until proven to the contrary, that the accused therein was being investigated under Section 304 Part I of the IPC and not Section 304 Part II of the IPC, therefore, the chargesheet was needed to be filed within 60 days. It was in those facts that this Court has released the accused therein on Bail.

37. In *Avinash Jain* (Supra), this Court was dealing with a set of facts where the Charge Sheet was filed by the investigating agency therein before the expiry of the stipulated term of sixty days, while keeping the investigation for the Offence under Section 13(2) read with Section 13(1)(d) of the Prevention of Corruption Act, 1988 open. The Court held that the investigating agency had not completed the investigation with respect to the abovementioned Offence for which the accused therein had been arrested and, therefore, granted Default Bail to the accused therein. However, in the present case, the application has been filed by the petitioner before the expiry of the period of ninety days while investigating agency has already started



investigating offence under Section 467 of the IPC against him basis some material that had already come to its possession.

38. In *Achpal @ Ramswaroop* (Supra), the Supreme Court observed that there were no papers or the Charge Sheet in terms of Section 173 of the Cr.P.C. for the Magistrate concerned to assess the situation whether on merits the accused was required to be remanded to further custody; the Charge Sheet was filed but such filing not being in terms of the Order passed by the Rajasthan High Court, the said papers were returned to the investigating officer therein. It was in those circumstances that the Supreme Court held that the accused therein was entitled to be released on Bail and held that further custody of such a person ought not to be guided by mere suspicion that he may have committed an offence or for that matter, to facilitate the pending investigation. However, in the present case, as noted hereinabove, there was some material available with the Investigating Agency to initiate investigation under Section 467 of the IPC against the petitioner.

39. It is also important to note that by its order dated 28.05.2022, the learned Metropolitan Magistrate, on a Bail application filed by the co-accused in the same FIR, had observed that there is a *prima facie* case under Section 467 of the IPC also made out. No reason was supplied by the learned Magistrate to reach a contrary finding in the order passed barely around 13 days thereafter.



40. In fact, as noted hereinabove, though not of much relevance, by an Order dated 29.11.2022, the learned Trial Court has proceeded to frame charges, *inter alia*, under Section 467 of the IPC against the accused persons in the present FIR.

41. I am also not in agreement with the submission of the learned counsel for the petitioner that the first Charge Sheet that was filed before the learned Trial Court on 11.06.2022 was incomplete as it did not accompany the report from the Embassy of India in Canada or the statement of the witnesses pointing out that the alleged Power of Attorney was forged. Merely because some of the documents are not filed with the First/Initial Charge Sheet, as the investigation is still going on, would not vitiate the said Charge Sheet and, therefore, would not entitle the accused to a grant of Statutory Bail. Reference in this regard can be made to the recent judgment of the Supreme Court in *Central Bureau of Investigation v. Kapil Wadhawan & Anr.*, (2024) 3 SCC 734, wherein it was held as under:

“23. The benefit of proviso appended to sub-section (2) of Section 167 of the Code would be available to the offender only when a charge-sheet is not filed and the investigation is kept pending against him. Once however, a charge-sheet is filed, the said right ceases. It may be noted that the right of the investigating officer to pray for further investigation in terms of sub-section (8) of Section 173 is not taken away only because a charge-sheet is filed under sub-section (2) thereof against the accused. Though ordinarily all documents relied upon by the prosecution should accompany the charge-sheet, nonetheless for some reasons, if all the documents are not



filed along with the charge-sheet, that reason by itself would not invalidate or vitiate the charge-sheet. It is also well settled that the court takes cognizance of the offence and not the offender. Once from the material produced along with the charge-sheet, the court is satisfied about the commission of an offence and takes cognizance of the offence allegedly committed by the accused, it is immaterial whether the further investigation in terms of Section 173(8) is pending or not. The pendency of the further investigation qua the other accused or for production of some documents not available at the time of filing of charge-sheet would neither vitiate the charge-sheet, nor would it entitle the accused to claim right to get default bail on the ground that the charge-sheet was an incomplete charge-sheet or that the charge-sheet was not filed in terms of Section 173(2)CrPC.”

(Emphasis Supplied)

Conclusion:

42. For the reasons recorded hereinabove, I find no error in the Impugned Order passed by the learned PD&SJ. The petition is, accordingly, dismissed.

43. There shall be no order as to costs.

44. The petitioner shall surrender before the learned Trial Court or to the Investigating Officer/SHO Concerned within a period of two weeks from today.

45. This order shall, however, not preclude the petitioner from filing an application seeking regular bail from the learned Trial Court. Any such application filed by the petitioner shall be decided by the



2024:DHC:4606



learned Trial Court expeditiously and on its own merits, remaining uninfluenced by any observation made in the present judgment, and in accordance with law.

46. The pending application is also disposed of being rendered infructuous.

NAVIN CHAWLA, J

MAY 28, 2024/ns/AS

[Click here to check corrigendum, if any](#)