

HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR

CrlA(D) No. 14/2021

CrlM No. 1049/2021

Vakil Ahmad Dar

...Appellant(s)

Through: Mr. Gulzar Ahmad Bhat, Advocate.

Vs.

Union Territory of J&K

...Respondent(s)

Through: Mr. M.Usman Gani, GA

CORAM:

HON'BLE MR. JUSTICE ALI MOHAMMAD MAGREY, JUDGE

HON'BLE MR. JUSTICE MD. AKRAM CHOWDHARY, JUDGE

JUDGMENT

25.07.2022

Per Chowdhary, J.

1. Through the medium of this Appeal filed in terms of Section 21(4) of NIA Act 2008 read with the NIA (Amendment Act) 2019, the appellant herein has challenged the order dated **09.07.2021** (hereinafter called as 'impugned order') passed by the court of learned Additional Sessions Judge Baramula (designated as Special Judge for UA(P) Act cases for Baramulla, Kupwara and Bandipora districts) (hereinafter called as 'trial court'), whereby the application for grant of statutory bail in favour of the appellant, has been rejected.
2. The impugned order has been assailed *inter alia* on the following grounds:-
 - (i) That the trial court while rejecting the bail application of the appellant had not kept into consideration the mandate

of the law and also had not considered the indefeasible right of the appellant.

(ii) That in order to defeat the right of the appellant to seek default bail, the respondent-Investigating agency produced an incomplete shadow challan/charge-sheet as Photostat copies thereof before the trial court.

(iii) That, the appellant waited for 180 days from the date of remand and thereafter filed application for bail under Section 167(2) CrPC, however, the complainant (respondent) had not by that time filed complete final report against the appellant herein.

3. Heard, perused the record and considered the matter.

4. For proper appreciation of the submissions made on both sides, following facts of the case are required to be recorded:-

- (a) The appellant/accused was arrested in a case registered vide **FIR No.85/2020** at Police Station Bandipora for the commission of offences punishable under Sections 13, 18, 23, 39 of Unlawful Activities (Prevention) Act.
- (b) After expiry of the extended statutory period, the accused-appellant made an application for grant of default bail before the trial court.
- (c) The charge-sheet was produced against the accused-appellant herein before the trial court within 180 days but it was found that Xerox copies of the supporting material was annexed with the charge-sheet, by the Investigating agency, instead of that original copies thereof.

5. The arguable point to be decided is as to whether the appellant was entitled to be admitted to default bail / compulsive bail in terms of Section 167(2) of Cr.PC, 1973 on filing of the charge-sheet within the period of 180 days, as was available to the prosecution, without original documents to be relied upon.
6. Learned counsel for the accused-appellant vehemently argued that in view of the incomplete charge-sheet, the appellant was entitled to be admitted to default bail and to buttress this point he has argued that there was no merit in the charge against the appellant, who is a student. He has further urged that the investigating agency has failed to complete the investigation of the case during the period prescribed under law and also after completion of time extended and permitted by the Special court, as such, the appellant was entitled to grant of bail, as a matter of right.
7. Right to default bail, as has been held by the judgments of the Apex Court of India, is not mere statutory right under the first proviso to Section 167(2) of the Criminal Procedure Code, but is part of the procedure established by law under **Article 21 of the Constitution of India**, which is, therefore, a fundamental right granted to an accused person to be released on bail, once the conditions of the first proviso to Section 167(2) of CrPC are fulfilled.
8. Under the Unlawful Activities (Prevention) Act read with National Investigation Agency (NIA) Act, the Special court has jurisdiction to extend time to 180 days under the first proviso of Section 43-D(2)(b) of UA(P) Act, 1967.
9. Right of grant of default bail becomes complete on expiry of the statutory period before a charge sheet is filed. So long as an

application has been made for default bail on expiry of statutory period before time is further extended to the maximum period of 180 days, default bail, being an indefeasible right of the accused under the first proviso to Section 167(2) of CrPC, kicks in and has to be granted.

10. The only question raised by the learned counsel for the appellant is that complete charge-sheet had not been produced within the statutory period, and that the trial court had turned down the plea of statutory / default / compulsive bail wrongly. He has vehemently argued that the charge-sheet stood filed on 04.02.2021 in the shape of photostat copies and in later point of time original documents were also received by the trial court, however, trial court had observed that this submission of accused-appellant that he was given and handed over an incomplete challan, has got no substance.

11. As per the status report received from the trial court, the charge-sheet against the accused-appellant herein had been laid before the trial court on 04.02.2021, however, the documents relied upon were not original and their photostat copies had been placed on record for the reason that the original documents in the case-diary had been submitted to the Competent Authority for grant of sanction required for prosecution; that the sanction had been also accorded by the Government on 03.02.2021 and the original record was in transit. It has also been reported that the accused-appellant had also been charge-sheeted vide order dated 10.09.2021 for the commission of offences punishable under Sections 13/18/23/39 of UA(P) Act and Section 7/25 of Arms Act, and that two prosecution witnesses out of 13 cited witnesses have also been examined.

12. The period of remand is to be reckoned, for the purpose of statutory / default / compulsive bail from the date of first remand of the accused after his arrest till the charge-sheet is laid. In case within the statutory period provided for laying the charge-sheet in terms of Section 167(2) of CrPC or the permissible extended period by the court in case of unlawful activities is not filed, an indefeasible right is accrued to the accused for default bail. It has neither been pleaded by the appellant as to what was the date of his first remand nor the same has been discussed by the trial court in the impugned order, however, it appears that the final report / charge-sheet had been laid before the court, on the last date of permitted period of 180 days.
13. So far as the contention of learned counsel for the appellant that the incomplete challan, which he described as shadow challan, has been presented, is concerned, this point had been considered by the Hon'ble Apex Court in a case titled **Narendra Kumar Amin Vs. Central Bureau of Investigation & Ors.**, reported as (2015) 3 SCC 417. The Court had held that *'if the cognizance is taken on the police report the contention that the charge-sheet was incomplete is wholly untenable and liable to be rejected'*. Hon'ble Apex Court also further referred its earlier judgment titled **Central Bureau of Investigation Vs. R.S.Pai & Anr.**, wherein it had been held that the documents relied upon while laying the charge-sheet can be produced even at the later stage with the permission of the court.
14. In the instant case, the prosecuting agency had clearly established, as is revealed from the status report received from the trial court, that the charge-sheet was laid along-with photostat documents on 04.02.2021, as the original documents had been submitted to the

Government for accord of sanction to prosecute which was granted on 03.02.2021, meaning thereby that the original documents were in transit and without waiting for the receipt of original documents, the prosecution had laid the charge-sheet within the statutory period.

15. We do not find any illegality in the method and manner in which the charge-sheet was laid due to attending circumstances by the prosecution, as the prosecution had completed the investigation before the submission of the case for accord of sanction and the charge-sheet had been produced in the trial court within 180 days from the arrest of the appellant.

16. Hon'ble Apex Court in a case titled **Abdul Azeez P.V. & Ors. Vs. National Investigation Agency**, reported as **(2014) 16 SCC 543**, has held that the charge-sheet filed before the learned Special court would be complete in all respects so as to enable the learned Special court to take cognizance in the matter.

17. This Bench had already dealt with a similar matter in a case titled ***Peerzada Rafiq Maqdoomi Vs. Union Territory of J&K, CrlA(D) No. 17/2022*** decided on **07.07.2022**, wherein it has been held that:-

“...the further investigation in terms of Section 173(8) of Cr.PC cannot be a reason to say that the charge sheet filed against the accused including the appellant, whereon the cognizance was taken and the charges were also framed, can be incomplete so as to entitle the accused/appellant to grant of compulsive / statutory / default bail. The test to be applied while considering a plea for default bail in terms of Section 167(2) CrPC, in a case where charge sheet is laid with a stipulation that further investigation is to be

conducted in terms of Section 173(8) CrPC, is that whether affirmative action of taking cognizance and consideration of charge / discharge can be taken, on the basis of the charge sheet laid. In our considered opinion, if further action of cognizance and consideration of charge / discharge can be taken on the basis of the charge sheet laid, without waiting for further investigation and supplementary charge sheet, when such a charge sheet is laid within prescribed period, plea of statutory /default / compulsive bail is untenable...”

- 18.** In the case in hand, the cognizance was taken and the charge against the accused-appellant had also been framed, therefore, the plea of the appellant that the charge-sheet was not complete, as such, the appellant was entitled to grant of default bail, is misconceived and has rightly been rejected by the trial court.
- 19.** In view of this development that there was sufficient material on record to summon the accused by taking cognizance and further framing of charge for trial against the accused-appellant, it cannot be said that the charge sheet was incomplete.
- 20.** Learned counsel for the appellant has relied on certain judgments, which in the facts of the present case, are not applicable in view of the fact that the charge sheet was filed within the statutory period.
- 21.** Section 173(2) of CrPC enumerates the information that must be detailed in the police report forwarded to the Magistrate by the Investigating officer. This includes:
- a) The names of the parties;
 - b) The nature of the information;

- c) The names of the persons who appear to be acquainted with the circumstances of the case;
- d) Whether any offence appears to have been committed and, if so, by whom;
- e) Whether the accused has been arrested;
- f) Whether he has been released on his bond and if so, whether with or without sureties;
- g) Whether he has been forwarded in custody under Section 170.

22. We are of the opinion that a charge-sheet based on some documents, even if their photostat copies are placed on record, cannot be termed as incomplete charge-sheet for grant of default bail, for the reason that the original documents can be brought on record with the permission of the court and otherwise also their admissibility can be challenged during recording of evidence.

23. In view of the above discussion and the legal position, the appeal on hand for setting aside the impugned order and grant of bail, is found without any merit and substance. Resultantly, the appeal along-with connected application is dismissed and the impugned order is upheld.

24. Copy of this judgment be certified to the trial court for information.

(MD. AKRAM CHOWDHARY)
JUDGE

(ALI MOHAMMAD MAGREY)
JUDGE

Srinagar
25.07.2022
Muzammil. Q

Whether the order is reportable: Yes / No