CBI No. 58/2021 & 59/2021
FIR No. RC AC-1 2021 A 0009-CBI, New Delhi
U/s 120-B IPC and 7, 7A and 8 of PC Act 1988
CBI v. S. J. Singh etc.

18.11.2021

Present : Mr. Raman Kumar, Ld. PP for CBI.
Mr. Kumar Bhaskar, DSP from CBI.
Mr. Meenesh Dubey and Mr. Abdhesh Chaudhary, Ld. Advocates for accused Satwinder Jeet Singh.
Mr. Bharat Chugh, Mr. Yashpreet Singh, Mr. Ekjot Bhasin, Ld. Advocates for accused Randeep Singh.
Mr. Sumit Kumar, Ld. Adv. for T. P. Shastry.
Mr. Naveen Kumar, Ld. Adv. for accused Ajit Kumar Pandey.

By this order I shall dispose of three bail applications u/s 167 (2) of Cr.P.C. filed on behalf of accused S. J. Singh, T. P. Shastry and Randeep Singh primarily on the ground that a right has accrued in favour of accused persons on account of non filing of charge sheet under the provisions of Official Secrets Act. It is pleaded that the fact that offences u/s 3 & 5 of Official Secrets Act, 1923 were being investigated came to the knowledge of accused persons for the first time during the hearing of their first bail applications u/s 167 (2) of Cr.P.C. It was stated in the reply of CBI that these offences are being investigated and a supplementary charge sheet will be filed. It is stated that limitation for filing the charge sheet for the offences u/s 3 & 5 of Official Secrets Act is 60 days and not 90 days as was wrongly mentioned in the reply of the CBI.

The relevant facts of the case are that accused S. J. Singh and Randeep Singh were arrested on 02.9.2021 on the allegations of leaking internal information regarding tender related to certain documents on consideration of illegal gratification. Accused T. P. Shastry was arrested later on the basis of investigation on 08.9.2021. The police custody and judicial custody of the accused persons were taken from time to time and at every occasion a request was made to the court to keep the documents in sealed cover in view of the sensitivity of the matter, since the investigation indicated leakage of sensitive material pertaining to Defence of the country. It is reflected from the applications filed for extension of police custody and judicial custody that at no occasion the extension was sought on the ground that investigation was pending under Official Secrets Act. The statement in this regard came for the first time in reply to the first applications of accused persons seeking grant of bail u/s 167 (2) of Cr.P.C., which applications were dismissed vide order dated 10.11.2021 as there was no clarity regarding the status of the case under Official Secrets Act, the computation of time period for offences discovered later in the investigation etc. It was stated in the reply of the CBI that the investigation was being conducted under Official Secrets Act, the Ministry of Defence has been requested to file a formal complaint as per law and the supplementary charge sheet would follow.

Ld. Counsels for the applicants have submitted in their applications that since the charge sheet under Official Secrets Act has not been filed so far the applicants are entitled for grant of default bail u/s 167 (2) of Cr.P.C. as 60 days from the date of arrest of the accused expired on 02.11.2021. In this regard reliance has been placed on the judgment of Hon'ble Supreme Court in **Rakesh Kumar Paul Vs. State of Asam (2017) 15 SCC 67, Rajeev Sharma Vs. State of (NCT) of Delhi, Crl. Rev. P. 363/2020 & Qing Shi Vs. State, Crl. Rev. P. No. 82/2021**. It has also been argued that the period of limitation shall begin from the date of arrest of the accused persons even if an offence is discovered later during the investigation (reliance has been placed on **State of Maharashtra Vs. Bharati Chandmal Varma (2002) 2 SCC 121**)

It has been submitted by Ld. Counsels that charge sheet filed by the prosecution on 02.11.2021 was incomplete as it did not contain the part of investigation related to Official Secrets Act [reliance placed on Tunde Gbaja (supra)]. It was further argued that the right of investigating agency regarding further investigation is exercisable only if some material is collected after the filing of chargesheet. The investigation in the instant matter cannot be considered as further investigation in terms of section 173 (8) of Cr.P.C. (reliance has been placed on **Vinay Tyagi Vs. Irshad Ali (2013) 5 SCC 762 and Hargobind Bhargav and Another Vs. State of MP & Anr. I.L.R. 2016 (MP).**

Ld. Prosecutor alongwith IO appeared in response to the notice of three applications. Ld. Prosecutor submitted that the order dated 17.11.2021 granting bail to accused Ajit Kumar Pandey is being looked into and these three bails being on the same set of facts be adjourned. What we are dealing with is default bail where time is the essence. As of now it is clear that the accused are entitled for bail u/s 167 (2) of Cr.P.C. Having concluded that in one of the bail application adjourning the matter further would be inappropriate and in fact tantamount to permitting the illegal detention of the accused persons. The request of adjournment as such is declined.

Arguments have been heard.

There is no dispute that attracted provisions of Official Secrets Act prescribing the punishment upto 14 years with no lower limit of the sentence are covered by proviso (a) (ii) of section 167 (2) of Cr.P.C. The chargesheet in the matter as such ought to have been filed within 60 days in the matter. The argument of Ld. Counsels thus is valid. It has so been held in the judgment of Hon'ble Supreme Court in **Rakesh Kumar Paul (supra)** followed by Hon'ble Delhi High Court in **Rajeev Sharma (supra)**.

In so far as arguments regarding the date for computation of 60 days is concerned the relevant judgment would be **Bharti Chandmal Varma**

(supra) by the Hon'ble Supreme Court. The facts of the case were that FIR was initially registered for the offences u/Ss 489 A, 489 B, 489 C, 120B and 420 of Indian Penal Code. The accused was arrested on 01.4.2001. During the investigation the police discovered the commission of offence under MCOC Act. The sanction as required under MCOC Act was granted on 21.4.2001 and the charge sheet was filed on 12.07.2001. The charge sheet ought to have been filed within 90 days from the date of arrest of the accused much before 12.7.2001. It was under such circumstances that the Supreme Court held that the charge sheet was filed beyond the prescribed time frame of 90 days and rejected the plea of the prosecution to consider the date on which sanction for prosecution under MCOC Act was granted as the date to compute the period of 90 days.

In the instant case though there is no denial that two charge sheets have been filed within the prescribed time period of 60 days on 02.11.2021, the argument of Ld. Counsels is that the charge sheets are incomplete. The Hon'ble Supreme Court while considering the bail in **Bharti Chandmal Varma (supra)** did not consider the aspect of incomplete charge sheets. The bail was granted since no charge sheet at all was filed in the said case.

In support of argument on incomplete charge sheets Ld. Counsels have relied upon the judgment in **Tunde Gbaja (supra), S. M. Purtado Vs. Deputy SP CBI, Cochin 1996, Crl.J. 3042 & P. V. Vijay Raghvan Vs. CBI**

1984 SCC OnLine Kerla 1995.

The offences under Official Secrets Act in addition to the offences u/s 489 A, 489 B, 489 C, 489 D, 489 E & 120B of Indian Penal Code were investigated in the case of Tunde Gbaja (supra). Relying upon the judgment of Hon'ble Supreme Court in **Natabar Parida Vs. State of Orissa, AIR 1975 SC 1465 and S. M. Purtado Vs. Deputy SP CBI Cochin, 1996 Crl. LJ 3042**, the Hon'ble Delhi High Court held : *"thus in the light of the report filed by the CBI, a further investigation in respect of the offences under the Official Secrets Act, IPC, Act and the order is necessary, if final report is laid before court and the Magistrate takes cognizance of the offence, a further report under section 173 (8) of the Code regarding commission of offences or involvement of the accused in connection with the other offences can be made. But in the absence of a final report in respect of all the offences, it cannot be said that a final report u/s 173 (2) in respect of the offences alleged to have been committed by the petitioner under the Official Secrets Act could be legally filed by invoking the provisions of section 173 (8) of the Code"*.

It was further held : *"admittedly no final report has been filed by the CBI against the petitioner in respect of the various offences. In its absence, the prosecution is not justified in resorting to section 173 (8) of the Code to submit a further report in respect of the alleged involvement of the petitioners under the Official Secrets Act, IPC, Act and the Order. The*

Hon'ble High Court holding that the charge sheet filed by the CBI was incomplete granted bail to the accused in the cited judgment."

In S. M. Purtado (supra) the Hon'ble court had held : *"the investigation under section 167 of the Code can be one involving one or more offences against the accused persons. The investigation of a case cannot be split in such a way to file piece meal reports before court. Section 173 of the Code does not stipulate a piece meal investigation and filing of incomplete charge sheet before court. It contemplates filing of the charge/refer report after completion of the entire investigation of the Case in respect of all offences and where several offences are involved in a case, a charge report could be laid before a court only after the investigation is over and formation of an opinion regarding all the offences alleged against accused."*

The facts of these two cases, [i.e. S. M. Purtado (supra) and Tunde Gbaja (supra)] are similar to the facts of the present case. The investigation was taken up by the CBI on 02.11.2021 in respect of offence u/s 7 of P. C. Act. Other sections were added as the investigation progressed. At no point did CBI inform the court that an investigation under Official Secrets Act has also been taken up. The IO on inquiry informed that reference was sent to the concerned department of Indian Navy seeking information about the documents recovered to find out whether the documents were of the nature covered by the provisions of Official Secrets Act and that the response of the

Indian Navy stating that the documents recovered were confidential in nature was received on 14.10.2021 & 19.10.2021. Thus the investigation agency knew on the stated dates that a case under Official Secrets Act is made out against the accused persons. It is admitted case of the prosecution that no separate FIR was registered under Official Secrets Act. It is also the case of the prosecution that the investigation for the offences under the provisions of Official Secrets Act was taken up in this case itself. The investigating officer submitted that since the matter was going on in this court and this court was competent for the purposes of case under Official Secrets Act the investigation was carried in this matter itself. It is the official reply of investigating agency that the supplementary charge sheet is intended to be filed in this court. Thus, it is not the case of prosecution that the offences under Official Secrets Act were being investigated in a different case.

Two charge sheets were filed in the instant matter under the provisions of PC Act and IPC. Charge sheet no. 16 dated 02.11.2021 was filed under section 120B IPC and sections 7, 7A, 9 & 10 of P. C. Act. There is no mention in the charge sheet about the provisions of Official Secrets Act. Similarly, in the charge sheet no. 17 dated 02.11.2021 also there is no mention of the investigation taken up under the provisions of Official Secrets Act. It was mentioned in the reply to the application u/s 167 (2) of Cr.P.C. that to attract the provisions of sections 3 & 5 of Official Secrets Act a written complaint is required to be made and the investigating agency has requested by way of proposal to the Ministry of Defence regarding filing of the complaint and that the process is pending. It is further stated that the CBI is also investigating thoroughly the instance of breach of official secrets under the Act and in this regard a supplementary charge sheet will be filed after completion of investigation.

Applying the two judgments, i.e., **Bharti Chandmal Varma (supra) and Tunde Gbaja (supra)** to the facts of the case, the investigation qua Official Secrets Act having been taken up in the same case, the limitation of 60 days would apply for completion of investigation in respect of all the offences including the Official Secrets Act from the date of arrest of the accused persons.

In the judgment in **Ashok Chawla (supra)** it was held that although a complaint is required from the concerned Ministry for the offences under Official Secrets Act, the investigating agency is obliged to file a report u/s 173 alongside putting on record the investigation conducted by it.

It would be relevant to note that the investigation in the cases of Official Secrets Act is conducted by the agency whichever registers the FIR and the Department whoever accords the sanction by way of authorizing a person to file the complaint acts only on the basis of investigation conducted by such agency. It has been clearly held in the judgment in **Ashok Chawla**

(supra) that Official Secrets Act does not provide any mechanism for investigation.

In terms of the judgment in **Ashok Chawla (supra) and Tunde Gbaja (supra)** it was incumbent upon the investigating agency to have filed the charge sheet/charge report within 60 days u/s 173 (2) of Cr.P.C. mentioning that the investigation on their part was complete and that the reference has been made to the ministry concerned for filing complaint under the relevant sections. This might have been substantial compliance of section 173 (2) Cr.P.C. as has also been held in the judgment in **Tunde Gbaja (supra)**.

Thus, even if it is considered for the sake of arguments that CBI had forwarded the application for formal complaint and the ball was in the court of concerned Ministry - though the arguments of Ld. Prosecutor is that the investigation is also going on – the part of CBI was not over in as much as it was expected to file a report alongside the said complaint with all the evidence collected by it.

The charge sheet filed before the court is incomplete in as much as there is no mention regarding the investigation being carried under the Official Secrets Act, though the same was being carried in this case itself. The charge sheet thus is incomplete for the purposes of section 167 (2) of Cr.P.C.

Although a lot of stress was laid on the fact that the offences alleged against the accused are very serious in nature, the fact remains that the provisions of section 167 (2) of Cr.P.C. do not permit the court to consider the gravity of offence or seriousness thereof. Most recently the Hon'ble Supreme Court in **(2021) 2 SCC 485, M. Ravindran Vs. Inteligence Officer, Directorate of Revenue Inteligence** held that : *"In common legal parlance, the right to bail under the proviso to Section 167 (2) is commonly referred to as "default bail" or "compulsive bail" as it is granted on account of the default of the investigating agency in not completing the investigation within the prescribed time, irrespective of the merits of the case."*

The applicants S. J. Singh, Randeep Singh and T. P. Shastry thus are admitted to bail u/s 167 (2) of Cr.P.C. on furnishing personal bond in the sum of Rs.1 lakh with one surety of like amount. The applicants, however, are directed not to contact any person related to this case. They shall not try to influence the witnesses or tamper with the evidence in any manner whatsoever. They shall leave Delhi only after ascertaining from the IO that they are not required for further investigation and that they shall remain available on their phone numbers to be provided to the IO for the requirement of investigation, if any, and shall report to the investigating officer as and when directed. They shall appear in the court without fail.

Ld. Prosecutor submitted that the bail is being granted to the accused persons in two charge sheets and a third charge sheet is intended to be filed. The bail order will be required in third charge sheet also. It needs to be noted that the accused were not arrested thrice in three different charge sheets. The two charge sheets are culmination of investigation in the same FIR. The accused were arrested in one FIR and therefore, are to be granted bail in one FIR only and the release will also be in one FIR only. There being no three instances of arrest the accused will be considered on bail in the FIR in which they were arrested. Separate bail u/s 439 of Cr.P.C. might be required only after the accused are summoned by the court in different charge sheets.

Applications stand disposed of.

(Anuradha Shukla Bhardwaj)
Spl. Judge (PC Act) CBI-21
RACC, New Delhi/18.11.2021