

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 929 OF 2021
(Arising out of SLP(CrI.) No. 5234/2021)

AMAN PREET SINGH

APPELLANT(s)

VERSUS

C.B.I. THROUGH DIRECTOR

RESPONDENT(s)

O R D E R

Leave granted.

This is one more case based on a misconception and misunderstanding of Section 170, Cr.P.C.!

An FIR No. RC16/S/2014, dated 05.06.2014, at PS, CBI/SCB/SPE, Kolkata was registered and during the investigation, the appellant before us had joined the investigation. The appellant approached this Court out of proceedings arising in respect of the plea seeking grant of anticipatory bail in Criminal Appeal No. 468/2021 which was disposed of on 06.05.2021. The said order reads as under:

" xxxxx

It cannot be disputed that the prosecution did not seek the interrogation of the appellant on or before filing of the charge sheet. Charge sheet has been filed. This being the position, learned counsel for the appellant confines the relief only to appear before the Trial Court and apply for regular bail and he be not

arrested in that period of time.

In the given factual situation, we grant protection to the appellant for a period of 8 weeks, within which he may apply for regular bail before the Trial Court and obtain necessary orders.

xxxxxx"

A reading of the aforesaid thus makes it clear that custodial interrogation of the appellant was not required during investigation and charge sheet having been filed, there was really no occasion to arrest the appellant. We thus granted liberty to the appellant to appear before the trial Court and apply for regular bail while protecting him during the interregnum period. The present proceedings have arisen out of the requirement of the appellant to seek regular bail in terms aforesaid. Suffice to say that the special Chief Judicial Magistrate (CBI), Bhubaneswar, vide order dated 22.07.2019 noticed that since the accused persons had been charge sheeted for Economic offences, it was appropriate to issue non-bailable warrants of arrest against the accused, including the appellant before us.

The circumstances under which the impugned order was passed and thereafter the appellant approached this Court was noticed in our order dated 28.07.2021. We may notice that what was

stated before us was that as per the SOP in these difficult times, the appellant was supposed to join virtually and when he sought to enter appearance, his request was declined by order dated 09.06.2021 by the Special Chief Judicial Magistrate (CBI), Bhubaneswar predicated on the reasoning that he had not remained physically present. It is this order which had been upheld by the impugned judgment dated 09.07.2021. We thus protected the appellant against arrest with the direction to continue to attend the trial Court proceedings virtually in the then prevalent scenario and as and when physical Courts start working, the proceedings would be attended physically.

It is not in dispute that the appellant had thereafter joined the proceedings physically as proceedings in the Court commenced accordingly.

Learned counsel for the appellant has brought to our attention to the proceedings recorded on 26.08.2021 before the Magistrate to submit that the highhandedness of the respondent is apparent from the fact that the public prosecutor, despite these orders from this Court, sought to plead that the appellant had not been allowed any bail, nonailable warrants had been issued against him, the direction of this Court

for the appellant not to be arrested did not mean that he could not be sent to judicial custody and since this Court observed that he could attend virtually till physical hearing started, which had by then resumed, he should be sent to judicial custody. We may only note all these submissions are completely inappropriate and indefensible. Neither did the learned Additional Solicitor General seek to contend except stating that those are only submissions. We expect a public prosecutor to be conscious of the legal position and fair while making submissions before the Court. We say no more as at least the Chief Judicial Magistrate understood the order clearly and thus did not agree with the submission of the public prosecutor.

No counter affidavit has been filed by the respondent, CBI despite opportunity granted, but learned Additional Solicitor General on the basis of SOP seeks to submit that the appellant was required to appear physically in Court. She does not seriously oppose the bail application.

In our view, the purport of Section 170, Cr.P.C. should no more be in doubt in view of the recent judgment passed by us in *Siddharth vs. State of Uttar Pradesh & Anr.* (Criminal Appeal No. 838/2021), 2021 SCC onLine SC 615). In fact we put

to learned senior counsel whether he has come across any view taken by this Court qua the said provision. Learned counsel also refers to judgments of the High Court which we have referred to in that judgment while referring to some judicial pronouncements of this Court on the general principles of bail. The only additional submission made by learned counsel is that while the relevant paragraphs of the judgment of the Delhi High Court in *Court on its own Motion vs. Central Bureau of Investigation* (2004) 72 DRJ 629 have received the imprimatur of this Court, the extracted portions from the judgment of the Delhi High Court did not include para 26. The said paragraph deals with directions issued to the criminal Courts and we would like to extract the portion of the same as under:

"26. Arrest of a person for less serious or such kinds of offence or offences those can be investigated without arrest by the police cannot be brooked by any civilized society.

Directions for Criminal Courts :

(i) Whenever officer-in-charge of police station or Investigating Agency like CBI files a charge-sheet without arresting the accused during investigation and does not produce the accused in custody as referred in Section 170, Cr.P.C. the Magistrate or the Court empowered to take cognizance or try the accused shall accept the charge-sheet forthwith and proceed according to the procedure laid down in Section 173, Cr.P.C. and exercise

the options available to it as discussed in this judgment. In such a case the Magistrate or Court shall invariably issue a process of summons and not warrant of arrest.

(ii) In case the Court or Magistrate exercises the discretion of issuing warrant of arrest at any stage including the stage while taking cognizance of the charge-sheet, he or it shall have to record the reasons in writing as contemplated under Section 87, Cr.P.C. that the accused has either been absconding or shall not obey the summons or has refused to appear despite proof of due service of summons upon him.

(iii) Rejection of an application for exemption from personal appearance on any date of hearing or even at first instance does not amount to non-appearance despite service of summons or absconding or failure to obey summons and the Court in such a case shall not issue warrant of arrest and may either give direction to the accused to appear or issue process of summons.

(iv) That the Court shall on appearance of an accused in a bailable offence release him forthwith on his furnishing a personal bond with or without sureties as per the mandatory provisions of Section 436, Cr.P.C.

(v) The Court shall on appearance of an accused in non-bailable offence who has neither been arrested by the police/Investigating Agency during investigation nor produced in custody as envisaged in Section 170, Cr.P.C. call upon the accused to move a bail application if the accused does not move it on his own and release him on bail as the circumstance of his having not been arrested during investigation or not being produced in custody is itself sufficient to entitle him to be released on bail. Reason is simple. If a person has been at large and free for several years and has not been even arrested during investigation, to

send him to jail by refusing bail suddenly, merely because charge-sheet has been filed is against the basic principles governing grant or refusal of bail.

XXXXXXXXXX"

A reading of the aforesaid shows that it is the guiding principle for a Magistrate while exercising powers under Section 170, Cr.P.C. which had been set out. The Magistrate or the Court empowered to take cognizance or try the accused has to accept the charge sheet forthwith and proceed in accordance with the procedure laid down under Section 173, Cr.P.C. It has been rightly observed that in such a case the Magistrate or the Court is required to invariably issue a process of summons and not warrant of arrest. In case he seeks to exercise the discretion of issuing warrants of arrest, he is required to record the reasons as contemplated under Section 87, Cr.P.C. that the accused has either been absconding or shall not obey the summons or has refused to appear despite proof of due service of summons upon him. In fact the observations in Sub-para (iii) above by the High Court are in the nature of caution.

Insofar as the present case is concerned and the general principles under Section 170 Cr.P.C., the most apposite observations are in sub-para (v)

of the High Court judgment in the context of an accused in a non-bailable offence whose custody was not required during the period of investigation. In such a scenario, it is appropriate that the accused is released on bail as the circumstances of his having not been arrested during investigation or not being produced in custody is itself sufficient to entitle him to be released on bail. The rationale has been succinctly set out that if a person has been enlarged and free for many years and has not even been arrested during investigation, to suddenly direct his arrest and to be incarcerated merely because charge sheet has been filed would be contrary to the governing principles for grant of bail. We could not agree more with this.

If we may say, the observation hereinabove would supplement our observations made in *Siddharth vs. State of Uttar Pradesh & Anr.* (supra) and must be read together with that judgment.

The given factual scenario completely fits the aforesaid as the appellant was never taken into custody during investigation. Suffice to say that it would be a fit case for the trial Court to grant bail to the appellant on the next date on terms and conditions to its satisfaction. As a measure of

precaution, largely arising from the manner of submission of public prosecutor before the trial Court, it is made clear that the interim protection granted by this Court would continue till the appropriate order is passed by the trial Court.

In order to prevent situations of the kind which have arisen and repeatedly arise, it may be appropriate for the High Courts to circulate the judgments passed in *Siddharth vs. State of Uttar Pradesh & Anr.* (supra) and passed today to the trial Courts as the problem appears to be endemic.

The appeal is accordingly allowed in the aforesaid terms leaving the parties to bear their own costs.

.....J.
[SANJAY KISHAN KAUL]

.....J.
[M.M. SUNDRESH]

NEW DELHI,
SEPTEMBER 02, 2021.

