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

% **RESERVED ON -8th May, 2023**
PRONOUNCED ON -30th May, 2023

+ CRL.M.C. 6544/2022, CRL.M.A. 25503/2022

CENTRAL BUREAU OF INVESTIGATION Petitioner

Through: Mr. Anupam S. Sharma, SPP-CBI
and Mr. R. A. Yadav, ASP-CBI with
Mr. Prakarsh Airan, Ms. Harpreet
Kaisi, Mr. Abhishek Batra and Mr.
Ripudaman Sharma, Advocates.

versus

KAPIL WADHAWAN & ANR. Respondents

Through: Ms. Rebecca John, Senior Advocate
with Mr. Rohan Dakshini, Mr.
Prakhar Parekh, Ms. Deepa Mr.
Ashish Hira and Mr. Archit Jain,
Advocates for R-1.

Mr. Amit Desai, Senior Advocate
through V/c with Mr. Rohan
Dakshini, Mr. Prakhar Parekh, Ms.
Deepa Mr. Ashish Hira and Mr.
Archit Jain, Advocates for R-2.



CORAM:
HON'BLE MR. JUSTICE DINESH KUMAR SHARMA

J U D G M E N T

DINESH KUMAR SHARMA,J :

Preface

1. This is a petition under sections 482 r/w 439 (2) Cr.P.C moved on behalf of petitioner CBI seeking quashing and/or cancellation of order dated 03.12.2022 passed by Ld. Spl. Judge, P.C. Act, Rouse Avenue District Courts, New Delhi, whereby the respondents no. 1 & 2 have been granted default bail under Section 167 (2) Cr.P.C.
2. Allegations in brief are that M/s Dewan Housing Finance Corporation Ltd. (hereinafter referred to as DHFL), Kapil Wadhawan, the then Chairman & MD of DHFL, Dheeraj Wadhawan, Director of DHFL, Shri Sudhakar Shetty, M/s Amaryllis Realtors LLP (ARLLP), M/s Gulmarg Realtors LLP (GRLLP), M/s Skylark Buildcon Pvt. Ltd., M/s Darshan Developers Pvt. Ltd., M/s Sigtia Constructions Pvt. Ltd., M/s Creatoz Builders Pvt. Ltd., M/s Township Developers Pvt. Ltd., M/s Shishir Reality Pvt. Ltd., M/s Sunblink Real Estate Pvt. Ltd. and other unknown persons including public servants, entered into a criminal conspiracy thereby cheating and inducing a consortium of 17 banks led by Union Bank of India (UBI) to sanction huge loans aggregating to Rs. 42,000 Crores approx. The respondents accused siphoned off, and misappropriated a significant portion of the said



funds by falsifying the books of account of DHFL and deliberately and dishonestly defaulted on repayment of the legitimate dues, thereby causing a wrongful loss of Rs. 34,000 Crores approx. to the consortium lenders during the periods January, 2010 to December, 2019.

3. Basis the said allegations, the present FIR- RC 2242022A0001 u/s 120B, 409, 420, 477A of IPC, 13(2) r/w 13(1)(d) of PC Act, 1988 (as amended in 2018) was registered by the Petitioner CBI, AC-VI/SIT, New Delhi on 20.06.2022 against fourteen persons/entities including M/s Dewan Housing Finance Corporation Limited (DHFL), its Chairman cum MD namely Kapil Wadhawan who is respondent No.1 herein and its director at the relevant time namely Dheeraj Wadhawan respondent No. 2 herein and certain others. Respondents Kapil Wadhawan and Dheeraj Wadhawan were formally arrested by the Petitioner-CBI in connection with the instant case on 19.07.2022. Thereafter, respondents Kapil and Dheeraj Wadhawan were remanded to JC on 30.07.2022.
4. Subsequently, chargesheet u/s 173 Cr.P.C. was filed before the Ld. Special Judge (CBI), New Delhi on 15.10.2022 against eighteen individuals including Respondents and fifty-seven companies/entities for commission of offences punishable u/s 120B r/w 206, 409, 411, 420, 424, 465, 468 & 477A of IPC and u/s 13(2) r/w 13(1)(d) of PC Act, 1988 and substantive offences thereof. The chargesheet was filed within the expiry of the stipulated time of 90 days.
5. However, as per the chargesheet itself, further investigation u/s 173 (8) Cr.P.C. with regards to ascertaining roles of certain persons and



entities who were mentioned in the FIR and other connected issues were still continuing. Para 66 of the chargesheet reads as under:

“With regard to ascertaining roles of remaining FIR named accused persons namely Sh. Sudhakar Shetty, M/s Amaryllis Realtors & M/s Gulmarg Realtors, remaining CAs (who had audited balance sheets of e-DHFL & Shell companies and who had facilitated the promoters), ultimate beneficiaries/end use of diverted funds through shell companies & other Wadhawan Group Companies, the DHFL officials, insider share trading of DHFL shares, bank officials, NHB officials and other connected issues, further investigation u/s 173 (8) of Cr. PC is continuing. List of additional witnesses and additional documents will be filed as and when required.”

6. Respondents Kapil Wadhawan and Dheeraj Wadhawan filed an application u/s 167 (2) Cr. PC before the Court of Ld. Special Judge, CBI-08, RAC, New Delhi on 29.10.2022.
7. Vide order dated 26.11.2022, the Ld. Special Judge, (PC Act) CBI-08, New Delhi, took cognizance of the offences against all charge-sheeted seventy-five accused persons/entities including Respondents.
8. Vide impugned order dated 03.12.2022, the Ld. Special Judge (PC Act) granted statutory bail under Section 167 (2) Cr.P.C to the Respondent nos. 1 and 2 holding that the chargesheet filed although within stipulated time is incomplete and hence Respondents were entitled to mandatory bail as per law. The relevant excerpt of the impugned order reads as under:

“40) The proposition advanced on behalf of CBI that when chargesheet is already filed and court has taken cognizance upon the same, then no relief of statutory bail can be granted to accused as provisions of Section 167 (2) Cr.P.C. applies to pre cognizance stage and not to post cognizance stage. However,



this rule applies only when the investigation is complete and then chargesheet is filed. Filing of incomplete chargesheet cannot deprive the accused to the statutory bail. No doubt, this application was moved by the accused persons after filing of the chargesheet but when the chargesheet filed is not disclosing complete investigation, then this application is still maintainable. Plea taken by CBI that investigation qua the present accused persons is fully completed is not acceptable due to reasons already given above. Taking of cognizance on the chargesheet is not a ground to reject this application when on the face of it is found incomplete and number of other offences which the present accused persons have also on the face of it are committed is not clear.

41) Had the discussions taken place on merits of the case, then keeping in view the gravity and seriousness of the case perhaps accused persons might not be entitled to any bail but this court is compelled to release them under statutory law from custody by giving mandatory concession of default bail due to incomplete chargesheet. CBI cannot be entirely blamed for filing incomplete chargesheet because it was not humanly possible and was also practically very difficult to complete the very big investigation task within a period of 90 days especially when the accused persons themselves took several years altogether to complete the offences. It could not have been expected from CBI to unearth each and every accused, find out every corner of conspiracy, collect entire evidence and trace out the huge embezzled amount etc. within such short period of 90days when some part of the investigation has to take place out of country also. Legislation wants that if the chargesheet is not filed within the period of 60/90 days from the date of arrest of accused person as the case may be and if it is filed but is not complete, then the accused gets an indefeasible right to be released on bail without any discussion on merits.

42. The court is not blaming investigating agency for any lapse, intentional delay, lethargy, negligence and for not doing its homework before filing chargesheet, if the practical difficulties



of it and fact of shortage of time are taken into consideration. Otherwise also, investigating officers are human being and it will be highly unreasonable to expect from them to work for entire 24 x 7 days and to run from one place to another without any break. There may be some highly remote intention on the part of the investigating agency to deprive the benefit of statutory bail to the accused persons but apparently chargesheet was filed with intention to disclose the labour and hard work done by CBI officials so far in a very short period of 90 days which they could do with their sincere and best efforts. Unfortunately, the chargesheet filed is found incomplete qua various aspects already discussed above even for these two accused though this court is satisfied with the work already done and labour already put on the job by CBI so far. Grant of this statutory bail without discussing any merits of case to accused person may be some setback to CBI but it is informed by Counsel for CBI that despite such default bail, accused persons will not come out of jail as they are still confined in other different cases in different states. Bye-passing of mandatory provisions of Section 167 (2) Cr.P.C. through incomplete chargesheet is not permissible under law but in some situations where offence is highly serious and heinous in nature, investigation spread over to different states and out of country and is of big magnitude as well as when economy of the country is at stake, then this maximum period of 60/90 days needed to be increased by the legislature through necessary amendments in the law as per my view besides giving some additional powers to court to extend the period to complete the investigation in such situations. In view of the above facts and circumstances, both the accused persons are entitled to statutory bail u/s 167 (2) Cr.P.C.....”

9. Aggrieved thus, the petitioner CBI, has impugned the said order as the Ld. Spl. Judge granted default bail to respondents herein without appreciating the correct standpoint of law. CBI has primarily challenged the said order on the ground that the right to claim default



bail u/s 167(2) Cr.P.C. can be invoked only if the chargesheet is not filed within the stipulated time. However once chargesheet is filed, the accused is no longer entitled to default bail under Section 167 Cr.P.C. It is also the contention of Petitioner CBI that moreover, a chargesheet is a final report within the meaning of Section 173(2) Cr.P.C. if the same is filed so as to enable the Court to apply its judicial mind as to whether cognizance of the offence thereupon should be taken or not. The petitioner thus contends that the chargesheet in the present case was complete and the respondents were not entitled to default bail. Hence the present petition.

Background Facts:

10. The present FIR No. RC2242022A0001 was lodged pursuant to a written complaint by the DGM of Union Bank of India on behalf of a consortium of 17 banks against Diwan Housing Finance Corporation Ltd. (DHFL), the respondents and certain other officials. However, since DHFL enjoys immunity granted by the NCLT under specific provisions of the Insolvency and Bankruptcy Code, it has not been charge sheeted.
11. The primary culprits, namely the Chairman and Managing Director of DHFL, along with a Director, who are the respondents herein, are alleged to be the main orchestrators of the various offenses. They exercised complete financial control over DHFL, including the management of bank loans and public deposits.
12. Allegedly, in a coordinated conspiracy, the accused persons deceitfully diverted approximately Rs. 34,926.77 crores from DHFL



by engaging in forgery, cheating, criminal breach of trust, and falsification of accounts. They established 87 Shell Companies to siphon off funds, executing fictitious transactions while disregarding standard lending norms and security requirements.

13. Allegedly the disbursed loan amounts, obtained from various banks, were ostensibly intended for construction of buildings, but instead, they were funnelled towards fictitious individuals and Shell Companies. Additionally, the funds were used for investments in shares, debentures, and securities linked to DHFL's promoters. Guidelines set forth by RBI and the National Housing Board were wilfully ignored. Detailed audit reports demonstrate the misuse and misappropriation of the borrowed funds.
14. Allegedly the main accused individuals formed 87 Shell Companies under the names of their employees, associates, and friends, through which they funnelled DHFL's funds. Most of these companies are now defunct and deregistered at the Registrar of Companies. The fraudulent disbursements were facilitated through a fictitious branch known as 'Bandra branch-001,' which was non-existent and created only virtually with the code name. The software Fox Pro used in the system of DHFL was manipulated to generate fictitious small retail home loan customers, to falsify accounts, to forge documents, and to produce dummy data.
15. Allegedly the embezzled funds were also extensively misused for personal expenses, including the purchase of jewellery and watches amounting to Rs. 174 crores, expensive paintings valued at Rs. 63 crores, credit card payments, foreign trips, chartered plane expenses,



as well as repayment of personal and marketing borrowings. Moreover, a substantial investment of Rs. 9 crores was made to acquire shares in a helicopter. Enormous amounts were transferred to overseas companies from the accounts of the fictitious Bandra Books entities. The chargesheet provides details about the specific Shell Companies, their directors, associates, and employees involved in the illegal retention bonus scheme, wherein they received illicit payments in collaboration with the main accused. Additionally, the chargesheet identifies officials who hindered internal audits, suppressed vital account information of DHFL, and facilitated the deletion of negative audit observations.

16. The chargesheet further alleges that certain Chartered Accountant (CA) firms engaged by the accused individuals provided false certificates and fabricated audit reports to deceive the lending banks. Data, monthly returns and audit reports submitted to NHB were also found to contain inaccurate data. The chargesheet includes numerous facts and circumstances outlining the modus operandi employed by the accused, encompassing offenses such as cheating, forgery, criminal misappropriation of funds, falsification of accounts, destruction of evidence, and criminal misconduct under the Prevention of Corruption Act.
17. Admittedly, further investigation by the CBI is ongoing and encompasses the remaining accused individuals, officials associated with Shell companies who facilitated the DHFL promoters, insider share trading by the respondents herein, the involvement of NHB and bank officials, as well as other aspects of the extensive and separate



conspiracy. Additionally, overseas investigation also has to be carried out to trace the trail of DHFL's funds. It has been submitted that the chargesheet reveals that the respondents herein were the masterminds acting as the main conspirators and culprits behind all the offences, and were primarily involved in criminal activities between 2010 and 2019.

18. Contentions on behalf of the petitioner CBI

I. On the issue of law regarding grant of mandatory bail u/s 167(2) Cr.P.C.

- a) Ld. SPP for the petitioner CBI submits that the right to claim default bail u/s 167(2) Cr.P.C. can be invoked only if the chargesheet is not filed. Once chargesheet is filed, the custody of an accused is not governed by the provision of Section 167 Cr.P.C. but under different provisions of Cr.P.C. Ld. SPP has relied on the judgements in *Sanjay Dutt v State Through CBI*, (1994) 5 SCC 410; *Uday Mohanlal Acharya v. State of Maharashtra*, 2001 Cri.L.J. 1832.
- b) Ld. SPP submits that it is settled law that the investigating agency even subsequent to the filing of chargesheet is empowered to conduct further investigation u/s 173(8) Cr.P.C. Both amendments to section 167 Cr.P.C. regarding statutory bail, as well as to section 173 (8) Cr.P.C. regarding further investigation were brought into the Cr.P.C. 1973 which did not exist in the earlier Cr.P.C. 1898. Ld. SPP has referred to the judgement dated 27.03.2023 in CrI.A Nos. 701-702 of 2020 titled *Enforcement Directorate v Kapil Wadhawan and Ors.* relied upon by Respondents to buttress this contention.



- c) Ld. SPP submits that the chargesheet is a final report within the meaning of Section 173 (2) Cr.P.C. if it is filed so as to enable the Court to apply its mind as to whether cognizance of the offence should be taken or not. Ld. SPP has referred to the judgement in *Dinesh Dalmia v CBI*, 2008 Cri. L.J.337.
- d) It has been submitted that a similar view has been adopted in *Abdul Azeez P.V. v National Investigation Agency*, 2014 AIR SCW 6537; *Y.S. Jagan Mohan Reddy v CBI*, 2013 AIR SCW 2800; *Akash & Ors. v State of Maharashtra & Ors.*, CrI. A No. 429 of 2021 decided on 21.02.2022.
- e) Ld. SPP further submits that the meaning of an incomplete chargesheet was explained by a Full Bench of the Hon'ble Supreme Court in *State of Maharashtra v Sharad Vinayak Dogre & Ors.*, AIR 1995 SC 231, whereby it was held that the purpose of submission of the police report with the details mentioned in sub-section (2) of Section 173 is to enable the Magistrate to satisfy himself, whether on the basis of the report and the material filed along with the police report, a case for taking cognizance has been made out or not. After applying his mind to the police report and the material submitted therewith, if the Magistrate is satisfied that cognizance of the offence is required to be taken, he shall proceed further in accordance with the provisions of the Code of Criminal Procedure. The court held that section 190(1)(b) CrPC provides that a Magistrate has the power to take cognizance upon a police report of such facts as are provided therein, on being satisfied that the case is a fit one for taking cognizance of the offence. Therefore, if the police report and the



material filed therewith is sufficient to satisfy the Magistrate that he should take cognizance, his power is not fettered by the label which the investigating agency chooses to give to the report submitted by it under Section 173(2) CrPC. It was held that merely, because the prosecution had filed an application, after submission of the charge-sheet, seeking permission to file "supplementary charge-sheet", it could not affect the jurisdiction of the Magistrate to take cognizance, if he was otherwise satisfied from the material placed before him along with the charge-sheet that cognizance of the offence was required to be taken. It is the jurisdiction of the Magistrate and Magistrate alone to decide whether the material placed by the prosecution with the report (charge-sheet) was sufficient to take cognizance or not. The Apex court held that the power of the Magistrate to take cognizance cannot be controlled by the investigating agency, whose duty is only to investigate and place the facts and the evidence before the Magistrate. In the said case the High Court quashed the order only because it was influenced by the application filed by the prosecution seeking permission to record additional evidence and file a "supplementary charge-sheet" and from that it inferred that the report filed by the prosecution was 'incomplete'. It was held that it cannot be said if the investigating officer terms a police report as 'incomplete', it takes away the jurisdiction of the Magistrate to take cognizance of the offence, even if in the opinion of the Magistrate, the material is sufficient for him to be satisfied that it was a fit case for him to take cognizance of the offence. The Magistrate is not bound by the label given to the report



or the charge-sheet by the investigating officer and it is for him to decide whether the report and the material on which it is based, is sufficient for him to take cognizance or not.

- f) Ld. SPP thus contends that once chargesheet has been filed within the stipulated time, right of accused to statutory bail would come to an end. It has been submitted that filing of chargesheet would be sufficient compliance of provisions of Section 167(2) Cr.P.C. Ld. SPP has relied upon the judgements in *SFIO v Rahul Modi*, AIR 2022 SC 902; *Narendra K. Amin v CBI*, 2015 Cri.L.J. 1334; *Suresh Kumar Bikamchand Jain v State of Maharashtra*, 2013 Cri.L.J. 1625, to support this contention.
- g) Ld. SPP has further drawn the attention of this Court to a judgement of this Court in *Chitra Ramakrishna v CBI*, 2022 SCC OnLine Del 3124, which has been relied upon by Respondents, to say that even in the said case it has been held that chargesheet can be said to be complete when it enables the Court whether to take or not to take cognizance of the offence and if certain facets call for further investigation it would not render such report other than a final report. In the said case it was observed that even if the police report is termed as incomplete by the investigating officer, the power of a Magistrate to take cognizance would not be lost. The said judgement was upheld by the Hon'ble Apex Court in *CBI vs Chitra Ramakrishna* vide order dated 13.02.2023 in SLP (Crl) Nos. 1550-1552 of 2023.
- h) Ld. SPP submits that thus, it is immaterial whether the Court has taken cognizance or not, what is material is that investigating officer has been able to procure sufficient material for the trial of 'accused'



by the court. Ld. SPP has referred to the judgement in Crl. A Nos. 1011-1012 of 2023 titled *Judgebir Singh @ Jasbir & Ors. v. NIA* relied upon by the Respondents.

- i) It has been submitted that in *Dalmia* (supra), the Hon'ble Apex Court held that a chargesheet is final if it is sufficient for the court to apply its mind whether cognizance should be taken or not. It was further held that one of the requirements for submission of a police report is whether 'any offence' appears to have been committed and if so, by whom. Ld. SPP submits that in the present case, since upon investigation, offences mentioned therein appeared to have been committed, report u/s 173 Cr.P.C. was filed qua Respondents and other accused/entities whereby vide order dated 26.11.2021 the Ld. Special Judge took cognizance. Ld. SPP submits that a reference was also made in *Dalmia* (supra) to *K Veerswami v Union of India & Ors.* (1991) 3 SCC 655, wherein it was observed that a report under section 173 (2) Cr.P.C. is an intimation to the Magistrate that investigating officer has procured sufficient evidence for trial of an accused by the Court and as such, it is not important whether evidence would be added later or not.
- j) Ld. SPP submits that the job of investigating agency is over the moment sufficient evidence is filed before the Court for taking cognizance and for trial of the accused persons so charge-sheeted. Ld. SPP contends that cognizance is one thing whilst filing of a police report is another. The filing of police report may come much earlier whilst cognizance may be taken much later. There is a thin line between the two and the respondents are trying to disrupt and create



confusion on this issue. Ld. SPP has drawn the attention of this Court to the earlier judgements rendered by this Court dated 15.03.2022 in Bail Appl No.120/2022 titled *Suraj v State NCT of Delhi* & judgement dated 04.08.2006 in Bail Appl No. 2542/2006 titled *Deepender Kumar Srivastava v State (CBI)*.

k) Ld. SPP urges that merely since investigation was pending against other accused regarding certain aspects, it would not justify grant of statutory bail to an accused against whom chargesheet has been filed and there is sufficient evidence against him to face trial. Reference has been made to the following judgements to support this contention.

- *Amarjeet Sharma v SFIO*, 2022 SCC OnLine Del 3633;
- *Ujjawal Bajaj V State of Delhi (NCT)* CrI. Rev. P. 201/2021
- *Dinesh Jaiswal v State of Assam*, Bail Appl N. 36/2023;
- *Anantha Satya Udaya Bhaskara Rao Anantha Babu v State of Andhra Pradesh*, CrI. Petition No. 6954/2022;
- *Ranjit Kumar Borah v CBI*, Bail Appl Nos. 229/2022, 173/2022 & 459/2022;
- *Maninder Singh v State (NCT of Delhi)*, CrI. MC. 260/2023;
- and
- *Peerzada Rafiq Moqdoomi v Union Territory of J&K*, CrI A (D) 17/2022.

II. Investigation Qua Respondents was Complete

a) It is submitted that in the instant case, investigation qua Respondents were complete. There was sufficient evidence on which cognizance could be taken. In fact, cognizance has been taken by the Ld. Special



Judge on 26.11.2022, whereby there was no observation made regarding the report being incomplete although, there was specific reference that investigation was ongoing with respect to certain aspects in the said order. Ld. SPP submits that there is sufficient evidence against Respondents to face trial.

- b) Ld. SPP submits that in fact in the present case, the FIR/RC was registered u/s 120-B r/w 409, 420 & 477A of IPC and u/s 13(2) r/w 13(1)(d) of PC Act, 1988 against Respondents and others. Whereas the final report filed by the CBI u/s 173 Cr.P.C. was for commission of additional offences i.e. u/s 120-B r/w 206, 411, 424, 465, 468 IPC, besides the offences mentioned in FIR/RC.
- c) Ld. SPP reiterates that merely because investigation was pending with respect to certain facets of the case or regarding involvement of co-accused, it would not mean that investigation was incomplete against Respondents. Ld. SPP submits that in fact the Respondents never claimed that the evidence led against them was not sufficient for them to face trial. It has been submitted that even their challenge to the cognizance is on the legal aspect regarding them being termed as 'public servants', thus, facing trial for commission of offences under PC Act.
- d) Ld. SPP argues that in any case, separate trial is a rule and joint trial is an exception and pendency of investigation qua others would not make any difference to the present accused. Merely because investigation regarding the role of other accused was pending, does not mean that investigation regarding the role of Respondents with regards to the total embezzled amount of Rs. 34,926.77 crores had not



been investigated. Ld. SPP vehemently argues that the report under section 173 report may not contain all the details of the offences, and just like an FIR/RC, even the report under section 173 Cr.P.C. is not an encyclopaedia. Reliance has been placed on the judgements in *K Veerswami* (supra) and *Dalmia* (supra) whereby it was held that it is not necessary that all the details of the offences must be stated in the chargesheet, and the details of the offence are required to be proved at a later stage i.e. during the course of trial of the case by adducing evidence. In any case, it is the right of the prosecution to decide whom it wants to prosecute. Moreover, investigating agency can also decline to array a person as a co-accused, and instead examine him as a witness. Reference has been made to *A.R. Antulay v R.S. Nayak & Anr.*, AIR 1988 SC 1531.

- e) Therefore, solely because certain accused were not charge-sheeted or not made an accused, as urged by Respondents, would not give them the right to be released on statutory bail.
- f) The investigation is conducted only with regards to commission of offence and not with regards to involvement of an accused. Therefore, to aver that, investigation would only be complete if the same is complete against all accused, would be an erroneous interpretation. Ld. SPP has relied on the judgement in *State of Haryana and Others v. Ch. Bhajan Lal and Others*, 1992 Cri. L.J. 527.
- g) Ld. SPP submits that there is no merit in the argument propounded by the Ld. Counsel for the respondents with respect to the chargesheet being incomplete. The averment that if chargesheet stands complete, there would be no other evidence against the Respondents which



would be filed in the supplementary chargesheet is flawed. Ld. SPP contends that what has to be looked into for grant of statutory bail is whether prosecution has been able to accumulate sufficient evidence for an accused to face trial or for the Court to take cognizance. The judgements relied above, in fact, specifically hold that filing of a chargesheet does not extinguish the statutory right of the investigating agency to conduct further investigation and to submit supplementary report, and this does not give the right of statutory bail to an accused. Ld. SPP argues that in fact the very purpose of Section 173 (8) Cr.P.C. is to accumulate any further or other evidence which may be found against the accused already facing trial. Mere pendency of further investigation mentioned in the report under section 173 Cr.P.C. would not mean that the report filed was incomplete. Reliance has been placed on *Vipul Shital Prasad Agarwal v State of Gujarat* (2013) 1 SCC 197.

- h) It has been submitted that the Hon'ble Supreme Court in its recent judgement in *Anand Thanur Karmuse v State of Maharashtra*, 2023 SCC OnLine SC 180, observed that the Court can order further investigation even after filing of the chargesheet and framing of charges. It is thus submitted that conduct of further investigation cannot be an impediment to the trial of an accused.
- i) Ld. SPP has further drawn the attention of this Court to the judgement in *Vinay Tyagi vs. Irshad Ali*, (2013) 5 SCC 762, relied upon by the Respondents. In the said judgement it has been held that there are three kinds of investigation i.) Initial investigation, ii) Further investigation & iii) Fresh or De novo investigation. Further



investigation was defined as continuation of primary investigation and is called supplementary report which is meant to supplement the primary report which is submitted by the empowered investigating officer. As stated above, it is trite that mere pendency of further investigation which is continuation of primary investigation would not give statutory right to accused for grant of bail. All that is required to be considered is, whether there is sufficient evidence against accused to face trial in the case, if so, the chargesheet so filed shall be deemed to be complete. It was further observed in *Vinay Tyagi* (supra) that even subsequent to taking cognizance, Magistrate can direct further investigation, since conduct of proper and fair investigation is hallmark of any criminal investigation.

- j) It is submitted that in a case wherein Court takes cognizance and then directs further investigation, the same would not imply that the investigation was not complete. Ld. SPP submits that similar is the situation when after filing of the report, Investigating Officer deems it proper to file a supplementary report.
- k) Ld. SPP further contends that the plea of the Respondents that they were arrested without completion of investigation, which the Petitioner CBI could always have done subsequently, is without any legal basis, for the reason that whether to arrest an accused or not and when and where to arrest an accused, is the sole prerogative of the investigating agency. Ld. SPP has invited the attention of this Court to the order of the Hon'ble Supreme Court in SLP (Crl.) No (s). 4123/2021 titled *Vishwanath Biradar v Deepika & Anr.*



- 1) Ld. SPP additionally argued that the Respondents in the current case were apprehended due to their role as the primary accused, and the entire case heavily depends on their involvement. This is due to their influential position, which grants them control over the witnesses and other individuals involved. There exists a possibility of tampering with the evidence and a potential for persuading the witnesses to change their testimony. Moreover, there exists ample evidence to reflect that the respondents, while in custody in other case, were freely meeting with co-accused and other persons and committing offences with impunity as mentioned in the report under section 173 Cr.P.C. They fabricated documents, tampered with, and sold case property. Therefore, there were cogent reasons to apprehend the Respondents.
- m) Ld. SPP submits that the Ld. Special Judge in the impugned order held that the following aspects had not been investigated by the CBI and as such deemed the chargesheet incomplete. The following aspects are:
- (i) **Offences under SEBI Act regarding insider trading.**
Ld. SPP submits that no offence under SEBI Act was mentioned in the FIR. Moreover, further offence regarding insider share trading was revealed during the investigation, and that by itself does not amount to incomplete investigation. Reliance has been placed on the judgement of a Coordinate Bench of this Court dated 11.04.2023 in Bail Appl No. 3195/2022 titled *Riyazuddin v State NCT of Delhi*.
- (ii) **Regarding offences under IT Act.**



It is submitted that no provision of IT Act was invoked in the FIR/RC. Further as per investigation no offence under IT Act was made out. Although, forgery was mentioned, however, since FoxPro system was not integrated with Synergy system, therefore, even otherwise IT Act could not be invoked.

- (iii) **Role of accused specifically named in FIR such as Sudhakar Shetty, M/s Amarylis Reality etc. have not been investigated.**

As reiterated above, it is immaterial that investigation qua other co accused is pending, as the same does not entitle the Respondents for grant of statutory bail.

- (iv) **Trail of entire Rs. 34,926.77 crores is yet to be found out and CBI has only seized a few hundred crores.**

It is submitted that as held in *Dalmia* (supra) pendency of investigation regarding end – use of funds would not be a reason to grant bail. In any case, investigation regarding money trail would be an offence under PMLA which is being investigated by the Directorate of Enforcement. Further since recovery could not be affected despite best efforts of Petitioner CBI, cannot be a ground to render the investigation as incomplete, especially since the offence against Respondents and their role in commission thereof has been fully established.

- (v) **The role of CA, bank officials, NHB officials is yet to be investigated.**

Ld. SPP submits that the investigation regarding involvement of other persons would not be a reason to grant statutory bail to



the respondents. The evidence contained in the chargesheet is sufficient for trial against accused and taking cognizance against them.

(vi) **The role of accused persons in conspiracy is not fully described in the chargesheet.**

It is submitted that involvement of the Respondents in the conspiracy is completely described and is apparent from the report u/s 173 Cr.P.C. and the documents filed therewith. Ld. SPP submits that it is settled that conspiracy is like a moving train where conspirators can get in and get out at any stage, and it is not necessary or essential that all the parties should have been present from start to finish and take part in each and every act of the other conspirators. Thus, the role of co-accused has got nothing to do with the larger conspiracy as hatched by the Respondents.

n) Petitioner thus prays that in the interest of justice and in light of the submissions above made, the impugned order dated 03.12.2022 be quashed and the default bail granted to the Respondents be cancelled.

19. **Non applicability of the judgements cited by the respondents:**

a) It has been vehemently argued by the Ld. SPP for CBI that the judgements relied upon by the respondents above, do not apply to the present case. It has been contended that none of the judgments relied upon by the respondents are of the nature wherein the investigation in the case was complete.



- b) Ld. SPP submits that in *Aslam Babalal Desai* (supra) it has been re-affirmed by the Hon'ble Supreme Court that an accused is not entitled to bail once chargesheet is filed within the mandatory period. In the said case, the statutory bail granted was subsequently cancelled after the chargesheet was filed. It was held that investigation should be completed within the mandatory period. The aspect of completion of investigation or what was complete chargesheet was not discussed in the said judgement. The said judgement does not help the respondents in the instant case in any manner. It is submitted that in the present case chargesheet was filed within the mandatory period, thus as narrated above, the test for grant of bail can only be considered upon merits and not under the provision of section 167(2) Cr.P.C.
- c) Ld. SPP for CBI further submits that in *Vinay Tyagi* (supra) the issue of statutory bail was not involved, on the contrary, the issue was after completion of investigation and filing of chargesheet by the police, the investigation by CBI was ordered.
- d) In *Judgebir Singh @ Jasbir* (supra) it had been reiterated by the Hon'ble Supreme Court that once investigation is concluded within the mandatory period no right would accrue to the accused to be released on bail u/s 167(2) Cr.P.C. It was further observed that filing of documents is directory and further investigation was not precluded. It was also held that investigating agency can place documents on the record even later. It was further held that report u/s 173 Cr.P.C. is an intimation to the Magistrate and the said report purports to be an opinion of the investigating officer. The said report is complete if is



accompanied with all the documents and statements and nothing more is required to be mentioned in the said report. Ld. SPP contends that the said judgement in fact goes in favour of the Petitioner CBI. In the said case, the Hon'ble Supreme Court has also referred to **Suresh Bikamchand Jain** (supra) to reiterate that filing of chargesheet is sufficient compliance with the provisions of Section 167 Cr.P.C. and once chargesheet has been filed within the stipulated time the question of grant of statutory bail does not arise.

- e) Ld. SPP for CBI submits that further in **Enforcement Directorate v Kapil Wadhawan** (supra) the issue was with respect to whether the date of remand is to be included or excluded for considering a claim for default bail u/s 167(2) Cr.P.C. when computing the 60/90 days period. It has be submitted that in fact even in the said case it was held that Section 173(2) Cr.P.C. prescribes for filing of final report which empowers the Court to take cognizance and Section 173 (8) Cr.P.C. allows further investigation.
- f) Ld. SPP submits that furthermore in **Tunde Gbaja v CBI** (supra), the FIR was registered for offences under the IPC for which chargesheet had to be filed within 90 days. The accused was arrested for commission of offences under IPC. During the investigation it was found that accused had also committed offences under Foreigners Act. Chargesheet was filed for commission of offences under the Foreigners Act for which the investigation had to be completed within 60 days, however, chargesheet for commission of offences under IPC was not filed, although, the FIR was registered for commission of



offence under IPC. It has been submitted that thus, the said judgement would not be applicable in the facts and circumstances of the present case since the chargesheet was filed in respect of offences both under the IPC as well as PC Act, as mentioned in the FIR/RC.

- g) Ld. SPP submits that in *P Vijayaraghavan & Ors. v CBI* (supra) the issue was that at the time of filing of chargesheet the Investigating Officer was awaiting expert opinion on the question as to whether a chargesheet would lie u/s 201 IPC or not. Thus, it was held that investigation was not complete at the time of filing of the chargesheet. The said decision is not relevant in the facts and circumstances of the present case.
- h) In *Hargovind Bhargava v State of M.P.* (supra) the investigation was kept pending against the arrested accused to defeat the provision of Section 167 (2) Cr.P.C. The said judgement would not be applicable to the facts and circumstances of the present case.
- i) Ld. SPP submits that even *Satender Kumar Antil v CBI* (supra) only reiterates that right u/s 167 (2) Cr.P.C. is an indefeasible right if the chargesheet is not filed within the stipulated time.
- j) It has been submitted that in *Rakesh Kumar Paul v State of Assam* (supra) the legal position settled by *Sanjay Dutt* (supra) was reiterated and it was held that the indefeasible right accruing to an accused is enforceable only prior to filing of the chargesheet and it gets extinguished thereafter. However, in the present case the chargesheet was filed within the mandatory period and it was held that accused has an indefeasible right u/s 167 (2) Cr.P.C.



- k) In *Chitra Ramakrishna v CBI (supra)* the FIR was registered for commission of offences under IPC, PC Act and IT Act. During the pendency of the said investigation a request was received by the Ministry of Finance to investigate other aspects in terms of an order passed by SEBI. Chargesheet was filed by the CBI only in respect of the subsequent aspects as highlighted in the SEBI's order and not with regard to the allegations mentioned in the FIR. This Court termed the chargesheet as incomplete. Further the investigation was not completed with regard to all the offences as mentioned in the FIR and that the Court was not in a position to take cognizance of those offences. It is submitted that the said judgement was passed in peculiar facts of the case. In the said case it was further held that the chargesheet can be said to be complete when it enables the Court whether or not to take cognizance of the offence and if certain facets called for further investigation it would not render such report other than a final report. It was further observed that even if the police report is termed as incomplete by the investigating officer, the power of a Magistrate to take cognizance would not be lost.
- l) Ld. SPP for the CBI submits that thus the impugned order passed by the Ld. Spl. Judge granting default bail to the respondents is bad in law, unjustified, illegal and perverse. It is trite that this Court can interfere with an order if such an order is unreasonable, illegal, perverse or based on irrelevant materials/evidence on record, and in order to secure ends of justice and to prevent the abuse of the courts. Reliance has been placed on *Puran v Rambilas & Anr.*, AIR 2001 SC



2023; *Kanwar Singh Meena v State of Rajasthan & Anr.*, AIR 2013 SC 296.

20. **Contentions on behalf of the respondents namely Kapil Wadhawan & Dheeraj Wadhawan:**

- a) Ms. Rebecca John and Sh. Amit Desai, Ld. Senior Counsels for the respondents submit that the Ld. Spl. Court vide its impugned order dated 03.12.2022 has rightly granted default bail to the respondents herein, after meticulously examining the material on record and going through the various judicial precedents on the subject. It has been submitted that the Ld. Special Court has rightly held that CBI has filed its chargesheet without completing investigation qua accused persons named in the FIR, and with respect to various offences and transactions, thereby, entitling the Respondents to grant of default bail under Section 167(2), Cr.P.C.
- b) Ld. Senior counsels submit that however, prior to rebutting the fallacies as furthered by the petitioner CBI and at the cost of repetition, it is imperative to glance over the admitted facts as set out in the present case.
- c) A consortium of banks led by Union Bank of India filed a complaint with the CBI on 11.02.2022 against the Respondents and other accused persons. The crux of the allegation in the Complaint is set out as under:

“27. In the above manner, the said Shri Kapil Wadhawan, Dheeraj Rajeshkumar Wadhawan, the promoters of DHFL, in conspiracy with others, including public servants, induced the DHFL Consortium Banks to sanction and disburse the loans/ advances/subscriptions in NCDs aggregating to Rs. 42,871.42



crores dishonestly and fraudulently misappropriated such public funds raised by the said DHFL and diverted the same to the DHEL Group entities/Sahana Group Entities/other parties named above....

28. The role of auditors of DHFL and DHFL Promoter Groups companies/Sahana Group companies may be looked into during the course of investigation...”

(Emphasis supplied)

- d) The Complaint relied upon 3 exhaustive Forensic Audit Reports conducted by KPMG and Grant Thornton India LLP prepared on the instructions of the Complainant banks and the Administrator of DHFL appointed by the RBI, which set out the details of the various persons and companies involved, their shareholding patterns, relevant entries of balance sheets and other financial statements were produced and exhaustively analysed.
- e) Thereafter, around 4 months from the date of the Complaint, the CBI registered the present FIR on 20.06.2022 against the Respondents, Sudhakar Shetty, Amaryllis Realtors LLP, Gulmarg Realtors LLP, Skylark Buildcon Pvt. Ltd., others and unknown public servant/s under Sections 120-B r/w 409, 420 & 477A, IPC and Section 13(2) r/w 13(1)(d) of PC Act.
- f) At the time of the registration of present FIR, the Respondents were in judicial custody in 3 different matters i.e., (i) ECIR bearing No. 3 of 2020 registered by Enforcement Directorate, Mumbai, (ii) FIR bearing No. RC 2192020 E004 registered by the CBI, New Delhi and (iii) FIR bearing No. RC 006 2020 A0005 registered by the CBI, Lucknow since around April 2020. It has been submitted that despite



there being no emergent need to arrest the Respondents and take them in custody, the CBI arrested the Respondents on 19.07.2022. The 90-day period from the arrest of the Respondents was due to expire on 17.10.2022. It is pertinent to note that from the several individuals/entities referred to in the Complaint, the CBI deliberately following its pick and choose policy arrested only the Respondents in the matter apart from two other individuals not named in the Complaint.

- g) On the 88th day, i.e. on 15th October, 2022 which was a Saturday, the CBI filed the purported chargesheet against 18 individuals and 57 entities (without naming any of their Directors/ authorized representatives as Accused). The relevant excerpt of the chargesheet at *Para 66* states as under:

“66. With regard to ascertaining roles of remaining FIR named accused persons namely Sh. Sudhakar Shetty, M/s Amaryllis Realtors & Ms Gulmarg Realtors, remaining CAs (who had audited balance sheets of e-DHFL & Shell companies and who had facilitated the promoters), ultimate beneficiaries/end use of diverted funds through shell companies & other Wadhawan Group Companies, the DHFL officials, insider share trading of DHFL shares, bank officials, NHB officials and other connected issues, further investigation us 173 (8) of Cr. P.C. is continuing.”

- h) Ld. Senior Counsel for the respondents submits that the filing of the chargesheet was a subterfuge/ruse to defeat the indefeasible right of the Respondents to default bail under Section 167(2), Cr.P.C. Ld. Senior counsel submits that the same can be determined from a perusal of the allegations set out in the FIR as against the chargesheet and relies on the following table to draw comparison:



COMPARISON OF THE FIR AND THE CHARGESHEET

S.No.	Individual/entity and allegation in FIR	Piecemeal & incomplete chargesheet
1.	66 companies with commonalities to Respondents Entities The Complaint alleges disbursement of loans aggregating to Rs. 29,100.33 crores to 66 entities by DHFL, with an outstanding amount of Rs. 29849.62 crores.	Out of the 66 companies listed out in the Complaint, only 10 companies have been named Accused in the chargesheet. Thus, investigation into the outstanding amounts of the remaining 56 companies i.e., Rs. 16,480.9 crores is admittedly incomplete.
2.	65 companies with irregular loan disbursement The Complaint alleges disbursement of loans aggregating to Rs. 24,595 crores to 65 entities (all of which have been listed in the Complaint along with details on the nature of the investment/loan), with an outstanding of Rs. 11,909 crores.	Out of the 65 companies listed out in the Complaint, none have been named as an accused in the chargesheet. Thus, investigation into Rs. 11,909.05 crores is admittedly incomplete.
3.	Sudhakar Shetty & his entities, Amaryllis Realtors LLP (ARLLP) and Gulmarg Realtors LLP (GRLLP) Sudhakar Shetty and his entities have been shown to have received loans of approximately of Rs. 11,650 crores from DHFL and are alleged to be co-conspirators in the diversion of funds by DHFL. Sudhakar Shetty is the owner of the Sahana Group, which is alleged to have "commonalities with DHFL Promoters" and in which the	Sudhakar Shetty/his entities have not been named as accused despite being named in the FIR as co-conspirators and admittedly not been investigated. Investigation qua ARLLP & GRLLP is admittedly incomplete.



	Respondents are alleged to have "prima facie financial interest".	
4.	Public servants It is alleged in the Complaint that the Respondents, "in conspiracy with others, including public servants" committed the offences of conspiracy, criminal breach of trust, cheating, falsification of accounts, etc. The Complaint, whilst referring to officials of the consortium of banks, states that the role of unknown public servants may be looked into during the course of investigation.	Admittedly, the CBI has not named/investigated any official of the consortium of banks or the National Housing Bank.
5.	12 Directors of DHFL The FIR sets out the details of the 12 Directors of DHFL.	Only 3 Directors of DHFL have been made accused, without furnishing an explanation as to what investigation has been done into the role of the remaining Directors.
6.	Insider Share Trading The Complaint alleges that large amounts were disbursed as loans & advances by DHFL to a number of inter-connected entities and individuals with commonalities to DHFL Promoter Entities, which were diverted/ misappropriated for purchase of shares/ debentures. It is alleged that out of the 66 entities that were disbursed loans by DHFL, 16 entities/ individuals had invested more than Rs. 100 crores in shares or debentures of entities allegedly owned and	Admittedly not investigated as per para 66 of the Chargesheet



	controlled by the Respondents.	
Thus, the aggregate outstanding amounts in respect of Individuals/entities that have admittedly not been investigated.		Rs 30,000 crores (approx.)

- i) Moreover, it is submitted that major aspects of investigation as stated in the Remand Applications filed by the CBI at the time of seeking police custody of the Respondents have also not been investigated. Even though CBI sought police custody of the Respondents, even those aspects of investigation are incomplete. Ld. Senior counsel submits that thus, the investigation is incomplete even qua the Respondents, as is clear from a comparison of the Remand Applications with the chargesheet as tabulated below:

COMPARISON OF THE AVERMENTS IN THE REMAND APPLICATIONS AND THE ALLEGATIONS IN THE CHARGESHEET

S.No.	Averment in Remand Application stating aspect that needs investigation	Status of investigation as per the chargesheet
Averment common to all Remand Applications		
1.	As a matter of fact, the Remand Applications state as under - Allegations in the FIR against inter alia “Sudhakar Shetty (A-4), Amaryllis Realtors LLP (A-5), Gulmarg Realtors LLP (A-6) ... and other unknown persons including public servants...” that entered into a criminal conspiracy to cheat the consortium of 17 banks led by Union Bank of India, thereby causing a wrongful loss of Rs. 34,000 crores to the consortium.	Paragraph no. 66 of the chargesheet inter alia states that investigation into the role of Sudhakar Shetty, Amaryllis Realtors LLP and Gulmarg Realtors LLP and the bank / NHB officials and public servants is pending.
Remand Application dated 19.07.2022 seeking 10 days' police custody		



2.	Investigation into the routing of funds to foreign countries for creation of assets in the name of the Respondents, their family members and shell companies owned and controlled by them.	Admittedly, as per paragraph no. 66 of the chargesheet, the end-use of funds and the ultimate beneficiaries thereof have not been investigated. Further, the recoveries in the matter are to the tune of 0.02% of the amounts alleged to have been siphoned off.
3.	Ascertaining the investments abroad that have not come to light and for seizure/ forfeiture of the same.	
Remand Application dated 27.07.2022 seeking 7 days' police custody		
4.	Examination with regard to loans extended to 65 entities to the tune of 14,000 crores.	None of the 65 entities have been made an Accused, which were claimed to be under investigation in the Remand Application. The list of 65 entities to whom loans were advanced was a part of the Complaint.
5.	Interrogation with regards to voluminous documents/ digital data related to 95 entities belonging to various suspects/ accused with which both accused are to be confronted.	Admittedly only 43 companies out of the alleged 95 entities belonging to the Respondent Nos. 1 and 2 have been made an Accused in the present Chargesheet.
6.	Ascertaining the roles of bankers/ public servants who had sanctioned loans to DHFL and to find out whether any public servant was paid any illegal admittedly gratification/ bribe for favouring the Wadhawan brothers in the matter of sanction and disbursement of loans.	Investigation into the officials of the Complainant banks as well as the National Housing Bank is pending, including the aspect of illegal



		gratification/ bribery.
7.	Recovery of the defrauded loan amount of Rs. 34,000 crores of which the Complainant banks have suffered a wrongful loss.	The CBI has managed to recover only 0.02% of the allegedly misappropriated amount. Even the impugned Order dated 03.12.2022 records that the investigation is incomplete <i>inter alia</i> because the CBI has recovered only a few crore rupees out of the total amount of Rs. 34,926.77 crores.
Remand Application dated 30.07.2022 seeking 3 days' police custody		
8.	Acquisition of shares of Dhanalakshmi Bank, Vallash Polyplast and Wadhawan Global valued at Rs. 17.98. crores through the broker Anique Stock Broking Ltd., Mumbai, apprehended to be acquired from proceeds of the defrauded amount.	The chargesheet is silent with regard to this allegation.
9.	Confronting the Accused with the Directors of the shell companies in which the funds were diverted.	Only 2 Directors (Accused Nos. 6 and 7) have been named accused in the chargesheet. 57 companies have been made Accused, without disclosing the role of the concerned Director or official.
10.	Ascertaining the role of bankers/ public servants who had sanctioned loans to DHFL.	Investigation into the officials of the Complainant banks as well as the NHB is admittedly pending.



- j) Ld. Senior counsels submit that the above tables clearly demonstrate that the investigation in the matter with regard to the individuals, entities and the alleged fraud of Rs. 34,000 crores is still incomplete and at an initial stage. Ld. Senior counsel submits that as held by the Ld. Spl. Court in its impugned Order and uncontroverted by the CBI, the investigation in the instant matter will take a few years to complete and the Respondents will continue to languish in the jail, deprived of their personal liberties. Ld. Senior counsel urges that this will make it even more alarming for the respondents given that CBI has failed to file even a single supplementary chargesheet in the matter.
- k) Ld. Senior counsels argue that it is the duty of Courts to protect the liberty of accused from the practice of investigating agencies of filing preliminary chargesheets without completing investigation as a subterfuge to defeat the right of default bail and misusing remand 309 of Cr. P.C., 1973. Ld. Senior counsel has placed reliance on the following judgements to buttress this contention.
- *Aslam Babalal Desai v. State of Maharashtra*, (1992) 4 SCC 272
 - *Rakesh Kumar Paul v. State of Assam*, (2017) 15 SCC 67
 - *Satender Kumar Antil v. CBI*,(2022) 10 SCC 51
- l) It has been submitted that further investigation (as opposed to initial investigation into the FIR) is only in respect of fresh or new information coming to light, subsequent to filing of the chargesheet.



Reliance has been placed on *Vinay Tyagi v. Irshad Ali* (2013) 5 SCC 762.

- m) It has been further submitted that cognizance is not the relevant basis for determining if investigation is complete for the purpose of default bail under Section 167(2), Cr.P.C. Reliance has been placed on *Suresh Kumar Bhikamchand Jain v. State of Maharashtra*, (2013) 3 SCC 77; Judgment dated 01.05.2023 in CrI. Appeal No. 1011 of 2023 titled *Judgebir Singh v. National Investigating Agency*.
- n) Ld. Senior counsel submits that the investigation has to be complete in respect of a case as a whole, i.e., all facts and circumstances set out in the FIR. Reliance has been placed on *Aslam Babalal Desai v. State of Maharashtra* (supra); *P.V. Vijayaraghavan v. C.B.I*, 1984 SCC OnLine Ker 95; *Tunde Gbaja v. Central Bureau of Investigation*, 2007 (95) DRJ 429, which follows the judgment of the Kerala High Court in *P. V. Vijayaraghavan (supra)*.
- o) Moreover, the investigation has to be completed qua all Accused persons named in the FIR. Reliance has been placed on *Hargovind Bhargava v. State of M.P. & Anr.*, 2016 SCC OnLine MP 12113. Further, investigation is required to be completed qua all the accused persons considering that in cases of conspiracy under Section 120-B, IPC, a joint trial is to be conducted. Reliance has been placed on *State of A. P. v. Cheemalapati Ganeswara Rao*, (1964) 3 SCR 297 & *A.E. Pinto v. C.B.I.*, 2002 (63) DRJ 697, to buttress this contention.
- p) Furthermore, default bail has been granted by this Court on the ground of incomplete investigation/chargesheet in *Chitra*



Ramkrishna (supra). Ld. Senior counsel submits that while the CBI has tried to distinguish the said judgment with the instant case contending that it only pertains to incomplete investigation pertaining to offences and sections and not allegations. However, this contention of the petitioner is misplaced as in the said case it was *inter alia* held that investigation was pending related to interconnected and interlinked offences which cannot be separated. Ld. Senior counsel submits that the same aspect squarely applies to present case, wherein the alleged conspiracy with respect to other accused persons/entities named in the FIR and other interconnected issues have not been conducted and remains pending.

- q) Ld. Senior counsel submits that the Courts must favour the Accused in the interpretation of Section 167(2), Cr.P.C., being a provision to protect personal liberty, a fundamental right guaranteed under Article 21 of the Constitution of India. Reliance has been placed on *Aslam Babalal Desai v. State of Maharashtra* (supra); Judgment dated 27.03.2023 in Crl. A. Nos. 701-702 of 2020 titled *Enforcement Directorate v. Kapil Wadhawan and Ors.*

21. **Non applicability of the judgements cited by petitioner CBI**

- a) Ms. Rebecca John and Sh. Amit Desai, Ld. Senior Counsels for the respondents contended that the judgements advanced by the petitioner CBI are not applicable to the instant case. Ld. Senior counsels for the respondents submit that the judgement in *Dinesh Dalmia v. CBI*, (supra) is inapplicable to the present case for the following reasons:



- All the accused named in the FIR had been named accused in the chargesheet and sent up for trial. Only one accused was not investigated in this case as he was absconding. Whereas in present case admittedly, the chargesheet has not been filed with respect to several accused persons/ entities mentioned in the FIR who have not yet been investigated.;
 - The Supreme Court in the said case observed “*Whether an investigation in fact has remained pending and the investigating officer has submitted the charge-sheet only with a view to curtail the right of the accused would essentially be a question of fact.*”
 - Further, it was held that so long as chargesheet is not filed within the meaning of Subsection (2) of Section 173 of the Code, investigation remains pending. Pertinently, S. 173 (2) Cr.P.C. uses the words ‘as soon as it is completed’.
- b) This Court in ***Chitra Ramkrishna*** (supra) referring to judgement of the Hon’ble Supreme Court in ***Dinesh Dalmia*** held that though further investigation is not precluded after the filing of the chargesheet however if the initial investigation arising out of the FIR itself is incomplete, the accused would be entitled to default bail. In the said case it was further held that investigation was only partly complete while investigation relating to other allegations and offences remained pending.
- c) It has been submitted that the judgment of the Hon’ble Supreme Court in ***Abdul Azeez v. National Investigation Agency***, (2014) AIR SCW



6537, has no relevance to the facts and circumstances of the present matter for the following reasons:

- The only ground for claiming that the chargesheet was incomplete was that certain call records and foreign bank transaction details were not annexed to the chargesheet.
- The said judgment has been distinguished by this Court in **Chitra Ramkrishna** [SLP against which has been dismissed by Hon'ble Supreme Court], whereby it was held that the observations in **Abdul Azeez** was only with regard to some minor details which were pending verification and otherwise the Chargesheet was complete in all aspects. Ld. Counsel submits that whereas in the present case, as detailed by Petitioner itself in the Chargesheet, the investigation is pending on several material aspects.
- This judgment does not lay down any law. It is purely on the facts of that case.

d) Ld. Senior counsels further submit that the judgment of the Hon'ble Supreme Court in **YS Jagan Mohan Reddy v. CBI**, (2013) AIR SCW 2800, is inapplicable to the instant case for the following salient reasons:

- Three supplementary chargesheets had been filed in separate RCs in a span of 9 months against the accused in the said case.
- The Hon'ble Supreme Court did not record any observation on the completeness of the chargesheet because a specific liberty was granted to the accused to approach the Trial Court to consider the prayer for bail, independently.



- The Hon'ble Supreme Court has not expressed any finding on whether or not the chargesheet filed in the said case was complete.
 - The said judgement has been distinguished in ***Chitra Ramkrishna***.
- e) It has been submitted that the judgment of this Court in ***Riyazuddin v. State NCT of Delhi*** (supra) is not applicable to the facts of the present case for the following reasons:
- In the said case, a chargesheet had already been filed, which was complete in all respects. Pursuant thereto, further investigation under Section 173 (8), Cr.P.C. was being carried out, during which certain fake Aadhar cards were found and the offences under Section 419 and 420, IPC were added.
 - Since the addition of the offences were only based on fresh material that came to light after the completion of the initial investigation. This Court held that the accused would not be entitled to default bail in the facts of that case.
- f) It has been further submitted that the judgment rendered in ***State of Maharashtra v. Sharad Vinayak Dongre***, AIR (1995) SC 231 does not support the case of the CBI for the following reasons:
- In the said case, the bulk of the evidence against the accused persons had already been recorded and filed along with the chargesheet and investigation was pending only in respect of some documents. Further, in the said case, the challenge was to an order taking cognizance and not an Order under Section 167(2).Cr.P.C.



- A categorical statement was made on behalf of the investigating agency that it did not intend to file a supplementary chargesheet, which in the view of the Court adequately protected the interests of the accused.
- g) Further, in **Judgebir Singh v. NIA** (supra) the Hon'ble Apex Court has clearly held that taking cognizance is entirely different from completing the investigation. It also held that whether cognizance has been taken or not is not relevant for the purpose of compliance of Section 167 of Cr.P.C.
- h) Ld. Senior counsels submit that the judgment of this Court in **Amarjeet Sharma v. SFIO**, Bail Application No. 2710/2022 decided on 03.11.2022, is distinguishable from the present case on facts. In the said case, default bail was sought on the ground that despite 15 days lapsing after the filing of the chargesheet, there was no judicial order extending their remand as required under Section 167 and thus their custody was illegal. Completeness of the investigation was not in question before the Court.
- i) Ld. Senior counsels further submit that the judgement rendered in **Vipul Shital Prasad Agarwal v. State of Gujarat**, (2013) 1 SCC 197, also does not apply to the facts of the instant case. In the said case, the investigation was transferred from the local police to the CBI pursuant to an Order of the Supreme Court. The local police had filed its chargesheet within the stipulated time period. But in the investigation that had been transferred, where a new FIR (on the same facts and the same cause of action) had been registered, no chargesheet had been filed. Thus, the Supreme Court in the said



matter was not considering a case where the investigation was incomplete.

- j) It has been submitted that reliance of the petitioner CBI in *Narendra Kumar Amin v. CBI*, AIR 2015 SC 1002, is misplaced since the controversy before the Hon'ble Supreme Court in the said case pertained to whether or not the 90-day period under Section 167(2), Cr.P.C had come to an end and further whether the absence of some documents (which were subsequently filed by the investigating agency) would entitle the accused to default bail. The Hon'ble Supreme Court in the said case was not considering a case where the investigation was incomplete.
- k) Ld. Senior counsels submit that similarly, the judgment in *Uday Mohanlal Acharya v. State of Maharashtra*, (2001) 5 SCC 453, is not applicable to the instant case. The question that arose before the Hon'ble Supreme Court in the said case was the time at which the accused is said to have availed of his indefeasible right to default bail. The Hon'ble Supreme Court in the said case was not considering a case where the investigation was incomplete.
- l) Furthermore, it has been submitted that the judgement of the Hon'ble Apex Court in *SFIO v. Rahul Modi*, 2022 SC OnLine 153 does not assist the CBI in any manner. In the said case the legality of the chargesheet or the completeness of the investigation were not in question before the Court. Ld. Senior counsel submits in fact, the said judgment strengthens the case of the Respondents since the Supreme Court held that cognizance is irrelevant for the purpose of Section



167(2), Cr. P.C. The same view has also been reiterated in *Judgebir Singh v. NIA* (supra).

m) Ld. Senior counsels submit that the respondents filed the application for statutory bail on 29.10.2022. However, the same was kept pending, thereby violating the dictum of the Hon'ble Supreme Court which held that all applications for statutory bail must be considered expeditiously. It has been submitted that the cognizance was taken vide order dated 26.11.2022 and the Applicant's application was allowed on 03.12.2022. Thus, the Applicants/Respondents availed of the remedy at the earliest opportunity and was rightly granted statutory bail by the Ld. Spl. Court.

Findings & Analysis

22. The Constitution of India is a fountainhead of the law of the land and procedures and is a shining light to show and guide us in order to secure the ends of the justice. Part-III of the Constitution of India confers fundamental rights. One of the most important fundamental rights enshrined in the Constitution of India is that of personal liberty. The basic underlying idea of Part –III of the Constitution of India is to protect the people against the might of the State. On the one hand, the Constitution confers extensive powers on the Government whereas under Part –III certain rights have been granted to people against the executive and legislation and therefore such rights have been regarded as fundamental. Article 21 is one of the luminary provisions in the Constitution and occupies a great place of pride in the Constitution. Article 21 provides that no person shall be deprived of his life or



personal liberty according to the procedure established by the law. Any law in this country has to be subservient to the Constitution of India and must fulfil the object and intendment of the same.

23. The provisions in the Cr. PC also in a way are meant to safeguard the rights of an individual. Thus, the strict adherence to the provisions of the Cr. P.C. in fact amounts to ensuring the fulfilment of the golden principles laid down in the Constitution of India. Section 57 of the Cr. P.C. provides that a person arrested cannot be detained for more than 24 hours and such person has to be produced within such time before the Court of law. The next important provision in this regard is Section 167 Cr. PC which provides that if a person is arrested and detained in the custody and investigation cannot be completed within 24 hours and there are grounds for believing that the accusation or information is well founded, the investigation agency shall produce such persons before the Court, the Court can authorize the detention of the accused in the custody as such learned Magistrate deems fit, for a term not exceeding 15 days in the whole. It is a settled proposition that in the first 15 days, the Court can remand such accused to judicial or police custody. Section 167 (2) (a) (i) of the Cr. P.C. provides that such a custody cannot exceed 90 days where the investigation relates to an offence punishable with death imprisonment for life or imprisonment for a term not less than ten years. Section 167 (2) (a) (ii) states that the detention cannot exceed 60 days where the investigation relates to any other offence. Section 167 (2) (a) further provides that the accused persons shall be released on bail if he is prepared to and does furnish bail if the investigation is not completed



(*emphasis supplied*) within 60 days or 90 days as the case may be. The perusal of section 167 (2) Cr. P.C. makes it clear that the magistrate can authorise the detention of the accused for the 60/90 days as the case may be, if he is satisfied that adequate grounds exist for doing so. Thus, under Section 167 (2) the magistrate has no power to authorize detention beyond the period of 60 days or 90 days, depending upon the facts of the case, if the investigation is not completed. Thus as per Cr. P.C., it's completion of investigation and not filing of the charge sheet.

24. Section 173 provides filing of the report of the police officer on completion of investigation. Section 173 (2) provides the procedure of forwarding a police report in the form prescribed by the State Government. The opening words of Section 173 provides that every investigation under this chapter shall be completed without unnecessary delay. Section 173 provides that if the report under Section 173 (2) is in respect of the case where there is sufficient evidence or reasonable ground to take cognizance of the offence upon the police report and try the accused or commit him for trial, the police officer shall forward the documents as prescribed under section 173 (5). It is pertinent to mention here that Section 173 (8) Cr. P.C. provides that even after filing of the report under section 173 (2) Cr. P.C., the police shall have the power to conduct further investigation in respect of an offence even after the report under sub Section (2) has been forwarded to the magistrate. It also provides that 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 report which in common parlance is stated to be the supplementary report.

25. Section 309 Cr. PC is another provision for the grant of remand during inquiry or trial. Section 309 (2) Cr. P.C. provides that if the Court after taking cognizance of an offence, or commencement of trial, finds it necessary or advisable to postpone the commencement of or adjourn any inquiry or trial, it may from time to time, for reasons to be recorded, postpone or adjourn the same on such terms as it thinks fit, for such time as it considers reasonable, and may by a warrant remand the accused if in custody. Thus, the conjoint reading of Section 57 Cr. PC, Section 167 Cr. PC and Section 309 Cr.P.C. makes it amply clear that immediately upon arrest of an accused, the police has to produce the accused before the Court within 24 hours and thereafter, during the investigation, the Court can remand the accused for 60 days / 90 days as the case may be depending upon the nature of the case. During the inquiry/trial the accused can be remanded to Judicial custody under section 309 Cr.P.C.

26. The holistic and literal reading of Section 167, also makes it clear that the magistrate/Court cannot remand a person beyond 60 days or 90 days, for whatever reasons, if the investigation is not completed. The completion of the investigation is indicated by filing of a report under Section 173 Cr. P.C. Thus, if all these provisions are read in tandem, the necessary corollary is that what is required is the completion of the investigation and not mere filing of the report. Merely because the report has been filed and investigation is not completed, cannot fulfil



the basic purpose and intention of the legislature as provided under Section 167 Cr. P.C.

27. It is pertinent to mention that for this reason, the period of remand as provided earlier was enhanced by virtue of amendment carried out in the year 1978, pursuant to the 41st Law Commission Report.
28. Before proceeding further, it is also necessary to have a glance at the definition of inquiry or trial as provided under the Code. Section 2 (g) of the Code defined 'inquiry' as every inquiry, other than a trial, conducted under this Code by a Magistrate or Court. The trial begins after framing of the charges and ends with a conviction or acquittal. Chapter XVIII to Chapter XXI of Cr. P.C. lays down the provisions for conducting trial, which is immediately after XVII which relates to the framing of charge.
29. Before proceeding further, it is also pertinent to mention that right to speedy trial also goes to the root of the fundamental rights of an individual. The Apex Court of this land has laid down time and again, that it is a right of every individual to have a fair and speedy trial. The basic purpose behind laying down the time period for completion of investigation without making any exception is to ensure that after a person is arrested the investigation should be completed without any fail and the trial should begin and be completed as expeditiously possible.
30. Sh. Anupam S. Sharma, learned special PP for CBI and Ms. Rebecca M. John, and Mr. Amit Desai, learned senior counsels for the accused persons have cited numerous judgments in support of their contentions. But I consider that the core question is very simple



whether the so called charge sheet filed by the CBI against the accused persons on 15.10.2022 can be termed as a report having been filed upon completion of investigation. If this report is taken as a final report having been filed upon completion of investigation then the order of the learned Special Judge is bound to be set aside and the accused persons are not entitled to bail. But, if this report is merely filed to overcome the provisions of Section 167 and the investigation is not completed then the order of learned Special Judge cannot be interfered with. It is pertinent to mention that the order of the learned Session Judge can be set aside only if it suffers from serious infirmities, illegalities or perversity.

31. The Court is very clear in its mind that merely because in the charge sheet if the investigating agency has stated they want to conduct further investigation, the charge sheet cannot be termed as a preliminary charge sheet. The police has a right to conduct further investigation. However, at the same time, the investigating agency under the garb of further investigation cannot be allowed to file the police report without completion of investigation, only to defeat the right of statutory bail. The basic concept is that to fulfil the provision of Section 167, the charge sheet has to be filed upon completion of investigation. It may be possible that investigation against the persons who are charge sheeted are complete and further investigation qua other accused persons is continuing, then the persons against whom the investigation is complete cannot be extended the benefit of the statutory bail. But in the present case as has been shown by the learned defence counsels during the course of arguments that



substantial investigation even qua the present accused persons is incomplete. The question to be considered is that whether the material evidence having been placed on record by CBI against the present respondents/accused persons is sufficient to conduct the trial in respect of the offences alleged against him. The offence alleged against the accused persons are very serious and very high in magnitude. The material collected by the investigating agency so far, to the mind of this Court falls too short. Rather, if, this report is considered to be a complete investigation qua the accused persons, the investigating agency will suffer a lot. The Court as a guardian of the administration of justice has to ensure that there is strict compliance of the provisions. The investigating agency in its anxiety of keeping the accused persons in custody may take a plea that investigation is complete. However, the best judge in this regard should be the trial Court.

32. This Court considers that the learned Trial has rightly made an observation that now the time has come when the legislature will have to make certain provisions where the period of investigation for such serious offences have to be extended subject to certain limitations and restrictions. It has repeatedly been held that merely because cognizance has been taken, the right to statutory bail cannot be extended or defeated. The basic parameter is that the charge sheet has been filed after the completion of the investigation or not. We have not to go by the label of the charge sheet but to examine whether actually investigation has been completed or not. If the investigation is not completed then merely because the report has been filed, the



right of statutory bail cannot be defeated. Certainly it depends upon the facts of each case and no fixed formula can be laid down in this regard.

33. A perusal of the various judgments cited by the CBI and defence counsel reflects the emphasis on “sufficient evidence”. Thus in the report filed by the investigating agency there should be sufficient evidence to bring home the guilt of the accused. The purpose should not be merely to detain the accused. The purpose is that if an offence has been committed it must reach to its logical end. The detention during investigation or trial cannot be turned into a punitive detention. It is also a settled proposition that further investigation can be conducted only after the investigation is complete.

34. In *M. Ravindran v. Directorate of Revenue Intelligence*, (2021) 2 SCC 485, a three-judge bench of the Apex Court *inter alia* observed as under:

“17.9. Additionally, it is well-settled that in case of any ambiguity in the construction of a penal statute, the courts must favour the interpretation which leans towards protecting the rights of the accused, given the ubiquitous power disparity between the individual accused and the State machinery. This is applicable not only in the case of substantive penal statutes but also in the case of procedures providing for the curtailment of the liberty of the accused.

17.10. With respect to the CrPC particularly, the Statement of Objects and Reasons (supra) is an important aid of construction. Section 167(2) has to be interpreted keeping in mind the threefold objectives expressed by the legislature, namely, ensuring a fair trial, expeditious investigation and trial, and setting down a rationalised procedure that protects the interests of indigent sections of society. These objects are



nothing but subsets of the overarching fundamental right guaranteed under Article 21.

17.11. Hence, it is from the perspective of upholding the fundamental right to life and personal liberty under Article 21 that we shall clarify and reconcile the various judicial interpretations of Section 167(2) for the purpose of resolving the dilemma that has arisen in the present case.”

35. It is pertinent to mention here that neither of the parties have discussed the merits of the case. It is also important to mention that the learned ASJ has passed a detailed and reasoned order *inter alia* holding that the charge sheet so filed was incomplete. I consider that there is no ground to interfere with or alter this opinion. It is a settled proposition that it is the jurisdiction of the Magistrate/learned Special Judge alone to decide that whether the material placed by the prosecution along with the report (charge sheet) was having sufficient evidence or not. Since the learned Special Judge has recorded a reasoned and conscious view that the charge sheet so filed on the face of it was incomplete, therefore this Court finds it difficult to interfere with the same. It is also pertinent to mention that though the cognizance has been taken in this case, which to the mind of this Court will not make any difference, in view of the fact that the charge sheet itself has been held to be incomplete. But it is imperative to mention that despite repeated directions of expeditious disposal of default bail applications by the superior Courts, in the present case, the application for default bail was filed before the learned Special Judge on 29.10.2022 and was decided on 03.12.2022. The cognizance was taken during the interregnum period. This Court is of the



considered opinion that the charge sheet filed by the CBI in the present case is an incomplete/piecemeal charge sheet and terming the same as a final report under section 173 (2) Cr.P.C. merely to ruse the statutory and fundamental right of default bail to the accused shall negate the provision under Section 167 Cr. PC and will also be against the mandate of Article 21 of the Constitution of India.

36. I consider that the order passed by learned Sessions Judge is based on good reasoning and logic. There is no illegality or perversity in the order of the learned Sessions Judge. I do not find any force in the arguments of learned SPP that once the charge sheet had been filed qua the respondents, the right of the statutory bail could not have been granted to them. The Court is the guardian of the rights bestowed upon the accused persons. Strict compliance of the procedure is necessary to protect the fundamental rights of an individual. Merely, filing of the chargesheet, whether incomplete or piecemeal cannot defeat the basic purpose of Section 167 (2) Cr. P.C. The Court at this stage, also cannot be expected to minutely appreciate the evidence, so as to ascertain whether the same is “sufficient evidence or not”. On the face of it, as reflected by the learned senior counsels, a major part of the fraud is yet to be investigated. It is also a settled proposition that in criminal law if two views are possible the Courts should favour an interpretation that safeguards and protects the rights of the accused. The statement of objects and reasons of the Code plays a significant role in guiding its interpretation. Section 167 (2) Cr.P.C. must be interpreted bearing in mind the three-fold objectives expressed by



the legislature namely ensuring a fair trial, expeditious investigation and trial, and establishing a rationalized procedure that protects the interests of the indigent strata of society. These objects essentially serve as components of the overarching fundamental right guaranteed under Article 21 of the Constitution of India.

37. This Court has examined all the judgements cited by both the parties. First and foremost, what needs to be borne in mind is that the instant case has to be decided on the facts and circumstances of the present case. However, as highlighted by the learned Special Judge in its order dated 03.12.2022, it is made clear, that this Court too, has not gone into the merits of the case and no expression made herein shall tantamount to be an expression of the merits of the case.

38. Accordingly, the order dated 03.12.2022 passed by Ld. Special Judge, P.C. Act, Rouse Avenue District Courts, New Delhi, is upheld. The present petition is dismissed.

DINESH KUMAR SHARMA, J

MAY 30, 2023

Pallavi

साक्ष्यमेव जयते