

IN THE HIGH COURT OF JHARKHAND, RANCHI

Cr.M.P. No. 2578 of 2023

Chhavi Ranjan

.... Petitioner

-- Versus --

Union of India, through Directorate of Enforcement, Ranchi, Jharkhand

.... Respondents

CORAM: HON'BLE MR. JUSTICE SANJAY KUMAR DWIVEDI

For the Petitioner

:- Mr. Indrajit Sinha, Advocate

Mr. Abhishek Choudhary, Advocate

For Enforcement Directorate[E.D]:-

Mr. Anil Kumar, A.S.G.I.

Ms. Chandana Kumari, A.C to A.S.G.I.

6/04.10.2023

Heard Mr. Indrajit Sinha, the learned counsel appearing

along with Mr. Abhishek Choudhary, the learned assisting counsel on behalf of the petitioner and Mr. Anil Kumar, the learned A.S.G.I appearing on behalf of the respondent Directorate of Enforcement (E.D.).

2. This petition has been filed for quashing of the order dated 10.07.2023 in M.C.A No.2022/2023 whereby the default bail under the first proviso to Section 167(2) Cr.P.C. has been rejected by the learned Court.

3. Mr. Indrajit Sinha, the learned counsel appearing on behalf of the petitioner submits that the petitioner served as Deputy Commissioner, Ranchi between July, 2020 to July, 2022 and was arrested by the Enforcement Directorate on 04.05.2023 based on the allegations of irregularities in the registration and mutation of the landed properties in Ranchi on the allegation that the petitioner has helped by illegally transferring the lands in question. He submits that on the basis of the

allegations, in course of the investigation, ECIR/ RNZO/ 18/ 2022 (ECIR 18/ 2022) was registered. He submits that the remand application was filed on 05.05.2023 in ECIR Case No.01/2023 (arising out of ECIR 18/2022), pursuant to that the petitioner was remanded under section 167 Cr.P.C. He submits that the allegations are there that the petitioner was connected to transactions relating to five separate landed properties, such as, Morabadi property, Cheshire Home property, Pugru property, Bajra property and the property in Khata No.256. He further submits that ECIR Case No.01/2023 (arising out of ECIR Case No.18/2022) was filed by the Opposite party subsequently on 12.06.2023 and by way of referring this he submits that the balance investigation with regard to the property in question was going on. He submits that incomplete prosecution complaint on 12.06.2023 prior to lapse of statutory period of 60 days on 03.07.2023 was filed by the Enforcement Directorate. He draws the attention of the Court to the remand order dated 05.05.2023 contained in Annexure-13 and submits that the paragraph no.7 to 17 of ECIR Case No.18/2022 was considered by the learned Special Judge for remand of the petitioner. By way of referring to paragraph no.11 of the ECIR Case No.01/2023 in ECIR Case No.18/2022. He submits that one Bishnu Kumar Agarwal case was further being investigated and in view of that it is established fact that the investigation was not completed. He draws the attention of the Court to Annexure-19, which is the summon issued to one Bishnu Kumar Agarwal in ECIR Case No.18/2022 and submits that this document suggest that the investigation with regard to the same case, Bishnu Kumar Agarwal was also summoned. He further submits that even after purported ECIR, the petitioner was summoned. He further submits that if the investigation is not complete in 60 days, on 61 days, the right is accrued in favour of the petitioner in light of Sub-section (2) of Section 167 Cr.P.C. and the petitioner is entitled for default

bail. He submits that so far as ECIR Case No.18/2022 is concerned, there is another scheduled offence which is being investigated. He further submits that the law is well settled by 3-Judges Bench judgment of Hon'ble Supreme Court in the case of ***Uday Mohanlal Acharya v. State of Maharashtra***, reported in, ***(2001) 5 SCC 453*** and he refers to the conclusion of paragraph no.13, wherein the Hon'ble Supreme Court has come to the following conclusions, which are quoted below:

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1. *Under sub-section (2) of Section 167, a Magistrate before whom an accused is produced while the police is investigating into the offence can authorise detention of the accused in such custody as the Magistrate thinks fit for a term not exceeding 15 days on the whole.*

2. *Under the proviso to the aforesaid sub-section (2) of Section 167, the Magistrate may authorise detention of the accused otherwise than in the custody of police for a total period not exceeding 90 days where the investigation relates to offence punishable with death, imprisonment for life or imprisonment for a term of not less than 10 years, and 60 days where the investigation relates to any other offence.*

3. *On the expiry of the said period of 90 days or 60 days, as the case may be, an indefeasible right accrues in favour of the accused for being released on bail on account of default by the investigating agency in the completion of the investigation within the period prescribed and the accused is entitled to be released on bail, if he is prepared to and furnishes the bail as directed by the Magistrate.*

4. *When an application for bail is filed by an accused for enforcement of his indefeasible right alleged to have been accrued in his favour on account of default on the part of the investigating agency in completion of the investigation within the specified period, the Magistrate/court must dispose of it forthwith, on being satisfied that in fact the accused has been in custody for the period of 90 days or 60 days, as specified and no charge-sheet has been filed by the investigating agency. Such prompt action on the part of the Magistrate/court will not enable the prosecution to frustrate the object of the Act and the legislative mandate of an accused being released on bail on account of the default on the part of the investigating agency in completing the investigation within the period stipulated.*

5. *If the accused is unable to furnish the bail as directed by the Magistrate, then on a conjoint reading of Explanation I and the proviso to sub-section (2) of Section 167, the continued custody of the accused even beyond the specified period in para (a) will not be unauthorised, and therefore, if during that period the investigation is complete and the charge-sheet is filed then the so-called indefeasible right of the accused would stand extinguished.*

6. *The expression "if not already availed of" used by this Court in Sanjay Dutt case [(1994) 5 SCC 410 : 1994 SCC (Cri) 1433] must be understood to mean when the accused files an application and is prepared to offer bail on being directed. In other words, on expiry of the period specified in para (a) of the proviso to sub-section (2) of Section 167 if the accused files an application for bail and offers also to furnish the bail on being directed, then it has to be held that the accused has availed of his indefeasible right even though the court has not considered the said application and has not indicated the terms and conditions of bail, and the accused has not furnished the same. With the aforesaid interpretation of the expression "availed of" if the charge-sheet is filed subsequent to the availing of the indefeasible right by the accused then that right would not stand frustrated or extinguished, necessarily therefore, if an accused entitled to be released on bail by application of the proviso to sub-section (2) of Section 167, makes the application before the Magistrate, but the Magistrate erroneously refuses the same and rejects the application and then the accused moves the higher forum and while the matter remains pending before the higher forum for consideration a charge-sheet is filed, the so-called indefeasible right of the accused would not stand extinguished thereby, and on the other hand, the accused has to be released on bail. Such an accused, who thus is entitled to be released on bail in enforcement of his indefeasible right will, however, have to be produced before the Magistrate on a charge-sheet being filed in accordance with Section 209 and the Magistrate must deal with him in the matter of remand to custody subject to the provisions of the Code relating to bail and subject to the provisions of cancellation of bail, already granted in accordance with the law laid down by this Court in the case of Mohd. Iqbal v. State of Maharashtra [(1996) 1 SCC 722 : 1996 SCC (Cri) 202]."*

4. By way of referring the conclusion, he particularly refers to conclusion of ***Uday Mohanlal Acharya v. State of Maharashtra (supra)*** case and submits that if the complete charge sheet is not there,

the right is accrued in favour of the petitioner and in view of that, the petitioner is entitled for default bail under Sub-Section (2) of Section 167 of the Cr.P.C. He further relied in the case of ***Chitra Ramkrishna v. Central Bureau of Investigation***, reported in ***2022 SCC OnLine Del.3123*** and he relied in paragraph nos.113, 116, 117 and 120 of the said judgment which are quoted below:

“113. The legal position pertaining to scope of section 167(2) of the Code emanating from above referred decisions can be summarised as under:—

- i) The object of the section 167(2) of the Code is to ensure an expeditious investigation and a fair trial and is another limb of Article 21.*
- ii) The accused has indefeasible right in his favour for being released on bail on account of default by the investigating agency to complete investigation within the prescribed period.*
- iii) It is duty of the courts to ensure that benefit of Section 167(2) of the Code be given to the accused and detention beyond statutory period would be illegal being opposed to the liberty of the accused.*
- iv) Section 173 of the Code does not stipulate a piece-meal investigation and filing of incomplete charge sheet before Court and contemplates filing of a final report after completion of the entire investigation of the case in respect of all offences and where several offences are involved in a case. The practice of filing preliminary charge sheets to seek extension of remand beyond the statutory period should be deprecated.*
- v) The charge report can be filed before the court only after the investigation is over and formation of an opinion regarding all the offences alleged against the accused.*
- vi) There is a distinction between completion of investigation and further investigation. The further investigation can be resorted to only after the completion of investigation and filing of charge sheet.*
- vii) The investigating agency cannot circumvent section 167(2) of the Code by filing incomplete charge sheets. The police report or charge sheet cannot be send within the meaning of Section 173 (2) till the investigation is completed and any report sent before the investigation is*

completed will not be a police report within the meaning of section 173(2) of the Code.

- viii) The incomplete charge sheet filed without completing the investigation cannot be used to defeat the right of statutory bail under Section 167(2) of the Code.*
- ix) The right of the accused to statutory bail came to an end once the charge sheet is filed within the stipulated period. The filing of charge sheet is sufficient compliance with the provisions of Section 167(2) of the Code and taking of cognizance is not material to Section 167.*
- x) There can only be one charge sheet but there is no restriction on filing of number of supplementary charge sheets.*
- xi) The charge-sheet can be said to be complete when it enable the court to take or not to take cognizance of the offence after application of mind and if certain facets called for further investigation does not render such report anything other than a final report.*
- xii) The power of Magistrate to take cognizance is not lost even if the police report is termed as incomplete by the investigating officer.*
- xiii) If the charge-sheet is not filed then right for default bail has ripened into status of indefeasibility which cannot be frustrated by the prosecution and the courts on any pretext.*
- xiii) Economic offences having deep rooted conspiracies and involving huge loss of public funds, constitute a class apart and need to be viewed seriously.*

116. *In view of the legal position pertaining to section 167(2) of the Code as discussed hereinabove, Section 173 of the Code only permits filing of a final report after completion of the entire investigation in respect of all offences and does not permit a piece-meal investigation and filing of incomplete charge sheet before Court. The charge sheet filed by the respondent/CBI is a piece meal charge sheet and is not filed in respect all offences subject matter of present FIR. The respondent/CBI is not legally permitted to pick one portion of investigation and to complete it and thereafter file piece meal charge sheet in respect of few offences subject matter of FIR and to left open investigation in respect of other offences and subsequent filing of charge sheet in respect of left over offences. This would be complete negation of section 167(2) of the Code. The investigating agency cannot be permitted to fragment or break FIR for the purpose of different charge sheets and this will tantamount to negation of section*

167(2) and would against mandate of Article of 21 of the Constitution. The practice of filing such types of charge sheets to seek extension of remand beyond the statutory period was deprecated by the Superior Courts in past. The investigating agency is required to form opinion regarding all offences subject matter of FIR after completion of entire investigation.

117. There is no force in the arguments advanced by the Special Public Prosecutor for the respondent/CBI that the right of the applicant/accused under section 167(2) of the Code has come to an end immediately after filing of charge sheet on 21.04.2022 and said right under section 167(2) cannot be revived due to reason that further investigation is pending within the meaning of sub-section 8 of Section 173 of the Code. As mentioned and discussed hereinabove that there is a distinction between completion of investigation and further investigation. The respondent/CBI has conducted and concluded part investigation pertaining to alleged illegalities committed by the applicant/accused in initial appointment of Anand Subramanian and subsequent re-designation and other related issues but investigation pertaining to allegations made in FIR is still pending which cannot be termed as further investigation within ambit of section 173(8) of the Code. The further investigation can be resorted to only after the completion of investigation and filing of complete charge sheet.

120. There cannot be any dispute to the legal proposition that the purpose of police report under section 173(2) of the Code is to enable the Magistrate to satisfy himself on issue of taking cognizance or not. The concerned Special Court can take cognizance only in respect of some of offences for which charge sheet was filed on 21.04.22 but cannot take cognizance in respect of offence for which investigation is still pending and charge sheet is not filed. It is not permissible within mandate of legal provisions as contained in sections 173(2) and 167(2) to take cognizance in piece meal or in parts. It would amount to negation of indefeasible right given to the accused under section 167(2) of the Code. The constitutional right under section 167(2) of the Code and granted to accused in case of non-completion of investigation within stipulated period cannot be interpreted to convenience of investigating agency. In the present case, the respondent/CBI itself preferred to club investigation of issues arising out of SEBI order dated 11.02.2022 with investigation of offences subject matter of present FIR. The investigating agency cannot circumvent Section 167(2) of the Code by filing incomplete charge sheet and cannot be filed within the meaning of Section 173 (2) till the investigation is completed and any

report sent before the investigation is completed will not be a police report within the meaning of section 173(2) of the Code. The respondent/CBI cannot take shelter of filing charge sheet in respect of offences pertaining to alleged illegal appointment of Anand Subramanian by giving nomenclature of complete charge sheet or final report as per section 173(2) of the Code to defeat the right of statutory bail under Section 167(2) of the Code.”

5. Referring the aforesaid judgment of the Delhi High Court, Mr. Sinha, the learned counsel appearing on behalf of the petitioner submits that once the investigate is not completed, the default bail under Sub-Section (2) of Section 167 Cr.P.C. is the right of the petitioner. He submits that this judgment has been affirmed by the Hon’ble Supreme Court by judgment dated 13.02.2023 in Special Leave to Appeal (Cr.) No.001550-001552/2023. He further relied on another judgment of Delhi High Court in the case of ***Central Bureau of Investigation v. Kapil Wadhawan [Crl. Miscellaneous No.6544 of 2022]*** and he refers to paragraph no.25, 30 and 34 of the said judgment which are quoted below:

“25. 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.

30. 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.

34. *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. P.C. and will also be against the mandate of Article 21 of the Constitution of India.”

6. Relying on this judgment, he submits that the case of the petitioner is identical and in view of this judgment, the petitioner deserves default bail under Sub-Section (2) of Section 167 Cr.P.C.

7. Per contra, Mr. Anil Kumar, the learned A.S.G.I appearing on behalf of the respondent Enforcement Directorate [E.D], submits that the prosecution complaint under section 45 of the Prevention of Money Laundering Act, 2002 [hereinafter referred to as the PMLA Act, 2002] is filed before the learned special court, PMLA, Ranchi, against (i) Jagatbandhu Tea Estates Pvt. Ltd, (ii) Dilip Kumar Ghosh, (iii) Amit Kumar Agarwal, (iv) Chhavi Ranjan [the petitioner], (v) Pradip Bagchi, (vi) Afshar Ali @ Afsu Khan, (vii) Mohammad Saddam Hussain, (viii) Imtiaz Ahmed, (ix) Talha Khan, (x) Faiyaz Ahmed, (xi) Bhanu Pratap Prasad, (xii) M/s Rajesh Auto Merchandise Pvt. Ltd and (xiii) M/s Aurora Studio Pvt. Ltd. on 12.06.2023 and the cognizance of the same has been taken on 19.06.2023. He further submits that the FIR bearing No.141 of 2022 dated 04.06.2022 was registered by Bariatu police, Ranchi under sections 420, 467 and 471 of the IPC against one Pradip Bagchi. He submits that since the offences under section 420, 467 and 471 of the IPC are scheduled offences under Part-A of Schedule of PMLA Act, 2002 and ECIR bearing No. RNZO/18/2022 was recorded on 21.10.2022 and investigation under the provisions of the PMLA Act, 2002 was initiated. He further submits that during investigation the petitioner was arrested on 04.05.2023 for committing offences under section 3 of the PMLA, 2002 and during his remand the data of mobile phone seized from his

possession during searches dated 13.04.2023 was examined in his presence along with digital devices of his accomplices which were seized during the searches conducted in the investigation. He submits that in details the property in all the ECIR/18/2022, the role of the petitioner surfaced in addition to the ongoing investigation such as, (A) illegal acquisition of land admeasuring 7.16 acres situated at Plot No.1323, 1337/1349, 1333, 1334, 1338, 1324, Khata No.140, Hehal, Ranchi; (B) Property admeasuring 1 acre, situated at Plot No.28, Khata No.37, Village Gari, Cheshire Home Road, Ranchi, having deed value of Rs.1,80,00,000/-; (C) Property situated at Khata No.93, Plot No.543, 544, 546 and 547, total area 9.30 acres having deed value of Rs.22,01,49,000/-; and (D) Property admeasuring 5.883 acres, situated at M.S. Plot No.908, 851(P) and 910(P), Ward No.VI of Ranchi Municipality, Ranchi having deed value of Rs.24,37,72,780/-. He submits that the property with regard to (B) and (D) have been acquired by one Bishnu Kumar Agarwal who is a close accomplice of the petitioner. He submits that with regard to one acre property in Plot No.28, Khata No.37, FIR bearing No.399 of 2021 was also registered by Ranchi police on the basis of which separate ECIR/RNZO/10/2023 dated 07.03.2023 was registered. He submits that in this background, while the petitioner was in custody, in the first case, he was also confronted with the other materials with regard to the forgery linked to him besides Morabadi land admeasuring 4.55 acres. He refers to paragraph nos.20, 22, 23, 29, 30, 32, 37, 40 and 42 of the counter affidavit filed by the Enforcement Directorate and submits that the details have been disclosed therein and submits that prosecution complaint has been filed against the petitioner on 12.06.2023 after gathering concrete evidences against him. He submits that the contention of the petitioner that the respondent has filed an incomplete prosecution complaint is not true and contention is

misplaced. He further submits that arrest dated 04.05.2023 of the petitioner was for his involvement in respect of his role in acquisition of 4.55 acres of property situated at Morabadi, Ranchi which was acquired in the name of Jagatbandhu Tea Estates Pvt. Ltd with his active support and assistance. He further submits that for 3(three) properties, namely, Cheshire Home property, Pugru property and Bajra property, the prosecution complaint dated 01.09.2023 has been filed under ECIR/RNZO/10/2023 dated 07.03.2023 which is based on separate FIR No.399 of 2022 and having different scheduled offences. He draws the attention of the Court to section 44, particularly, Explanation (ii) of Sub-Section (1), and submits that the power is there of investigation of any subsequent complaint. He further refers to the judgment of Hon'ble Supreme Court in the case of ***Vijay Madanlal Choudhary v. Union of India***, reported in, ***(2022) SCC OnLine SC 929*** and he relied on paragraph nos.313, 314 and 457 of the said judgment, which are quoted below :

“313. Concededly, the 2002 Act provides for an inquiry to be conducted by the Authorities and with power to collect evidence for being submitted to the Adjudicating Authority for consideration of confirmation of provisional attachment order passed by the Authorities in respect of properties being proceeds of crime involved in the offence of money-laundering. In that sense, the provisions in 2002 Act are not only to investigate into the offence of money-laundering, but more importantly to prevent money-laundering and to provide for confiscation of property related to money-laundering and matters connected therewith and incidental thereto.

314. The process of searches and seizures under the 2002 Act are, therefore, not only for the purposes of inquiring into the offence of money-laundering, but also for the purposes of prevention of money-laundering. This is markedly distinct from the process of investigating into a scheduled offence.

457. Suffice it to observe that being a special legislation providing for special mechanism regarding inquiry/investigation of offence of money-laundering, analogy cannot be drawn from the provisions of 1973 Code, in regard to registration of offence of money-laundering and more so

being a complaint procedure prescribed under the 2002 Act. Further, the authorities referred to in Section 48 of the 2002 Act alone are competent to file such complaint. It is a different matter that the materials/evidence collected by the same authorities for the purpose of civil action of attachment of proceeds of crime and confiscation thereof may be used to prosecute the person involved in the process or activity connected with the proceeds of crime for offence of money-laundering. Considering the mechanism of inquiry/investigation for proceeding against the property (being proceeds of crime) under this Act by way of civil action (attachment and confiscation), there is no need to formally register an ECIR, unlike registration of an FIR by the jurisdictional police in respect of cognizable offence under the ordinary law. There is force in the stand taken by the ED that ECIR is an internal document created by the department before initiating penal action or prosecution against the person involved with process or activity connected with proceeds of crime. Thus, ECIR is not a statutory document, nor there is any provision in 2002 Act requiring Authority referred to in Section 48 to record ECIR or to furnish copy thereof to the accused unlike Section 154 of the 1973 Code. The fact that such ECIR has not been recorded, does not come in the way of the authorities referred to in Section 48 of the 2002 Act to commence inquiry/investigation for initiating civil action of attachment of property being proceeds of crime by following prescribed procedure in that regard.”

8. Relying on the above judgment, he submits that the Hon’ble Supreme Court has considered that the said PMLA Act, 2002 is a separate legislation and special mechanism regarding enquiry and investigation is there. On this background, he submits that the petitioner, so far as the ECIR/18/2022 is concerned, the investigation is complete and the learned court has taken cognizance and in view of that the contention of the petitioner of default bail under Sub-Section (2) of Section 167 of the Cr.P.C is not attracted. He submits that the judgments relied by the learned counsel for the petitioner are on different footing and in those cases, the Court has come to the conclusion that investigation was not completed and that is why, the privilege of bail under Sub-Section (2) of Section 167 Cr.P.C was allowed.

9. In view of the above submission of the learned counsels

appearing on behalf of the parties, the Court has gone through the materials on record and finds that admittedly the petitioner was arrested on 04.05.2023 and was remanded on 05.05.2023. The prosecution complaint being ECIR/RNZO/18/2022 was filed on 12.6.2023. The learned court has taken cognizance on 19.06.2023. If the contention of the learned counsel for the petitioner is accepted, the 60 days' period came to an end on 03.07.2023 and the petitioner filed a petition for default bail on 04.07.2023 which has been rejected by the learned court by the impugned order dated 10.07.2023. It appears that FIR bearing No.141/ 2022 dated 04.06.2021 was registered by Bariyatu police station, Ranchi under section 420, 467, 471 of the I.P.C against one Pradip Bagchi. The said sections are scheduled offences under Part-A of the Schedule of PMLA Act, 2002 and pursuant to that, the ECIR/RNZO/18/ 2022 was registered on 21.10.2022 by the Enforcement Directorate (E.D.) under the provisions of PMLA, 2002. In the investigation, it has come that the petitioner as well as Amit Kumar Agarwal and Prem Prakash were aware that Pradip Bagchi was a fake owner of property and the deed was false and they acquired the property worth several crores of rupees by paying only Rs.25 lacs. Amit Kumar Agarwal was the beneficial owner of M/s Jagatbandhu Tea Estates Pvt. Ltd who acquired the said property in the name of said tea estate. The petitioner being the then Deputy Commissioner of Ranchi utilized his official position and helped them in transferring of the land. The property with regard to ECIR/ RNZO/18/2022 was the subject matter of the lands which has been noted in the submission of the learned A.S.G.I. appearing on behalf of the respondent Enforcement Directorate (E.D)(supra). It further appears that FIR bearing No.399 of 2022 was registered by Ranchi police and on the basis of which a separate ECIR/RNZO/10/2023 dated 07.03.2023 was also recorded by the Enforcement Directorate (E.D). It

appear the since the properties of forgery linked to Morabadi land admeasuring to 4.55 acres, the petitioner was also confronted with other materials while he was in arrest. It has been asserted by way of filing counter affidavit that so far as the first ECIR being ECIR/RNZO/18/2022 is concerned, the investigation is already completed and the learned court has already taken cognizance and this is an admitted fact that the learned court has already taken cognizance on 19.06.2023. It further appears that four properties are under investigation and for other properties, the another ECIR No.10/2023 has been registered by the Enforcement Directorate [E.D].

10. In view of the above facts, it appears that so far the first ECIR in which the petitioner is in jail custody, the investigation has already complete. The judgment relied by Mr. Indrajit Sinha, the learned counsel appearing on behalf of the petitioner in the case of ***Uday Mohanlal Acharya v. State of Maharashtra(supra)*** still holds the field that is not in dispute and once a right of default bail is accrued in favour of any of the accused, the default bail is a rule, but in the case in hand, it appears that in the first case in which the petitioner is in the jail custody, the investigation is already complete and the learned court has taken the cognizance. The PMLA, 2002 is a special legislation and there are procedure prescribed therein and Section 44 speaks as under:

“44. Offences triable by Special Courts.—(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974),—

[(a) an offence punishable under Section 4 and any scheduled offence connected to the offence under that section shall be triable by the Special Court constituted for the area in which the offence has been committed:

Provided that the Special Court, trying a scheduled offence before the commencement of this Act, shall continue to try such scheduled offence; or]

(b) a Special Court may, [* *] upon a complaint made by an authority authorised in this behalf under this Act take [cognizance of offence under Section 3, without the accused being committed to it for trial]:*

[Provided that after conclusion of investigation, if no offence of money laundering is made out requiring filing of such complaint, the said authority shall submit a closure report before the Special Court; or]

[(c) if the court which has taken cognizance of the scheduled offence is other than the Special Court which has taken cognizance of the complaint of the offence of money-laundering under sub-clause (b), it shall, on an application by the authority authorised to file a complaint under this Act, commit the case relating to the scheduled offence to the Special Court and the Special Court shall, on receipt of such case proceed to deal with it from the stage at which it is committed.

(d) a Special Court while trying the scheduled offence or the offence of money-laundering shall hold trial in accordance with the provisions of the Code of Criminal Procedure, 1973 (2 of 1974), as it applies to a trial before a Court of Session.]

[Explanation.—For the removal of doubts, it is clarified that,—

(i) the jurisdiction of the Special Court while dealing with the offence under this Act, during investigation, enquiry or trial under this Act, shall not be dependent upon any orders passed in respect of the scheduled offence, and the trial of both sets of offences by the same court shall not be construed as joint trial;

(ii) the complaint shall be deemed to include any subsequent complaint in respect of further investigation that may be conducted to bring any further evidence, oral or documentary, against any accused person involved in respect of the offence, for which complaint has already been filed, whether named in the original complaint or not.]

(2) Nothing contained in this section shall be deemed to affect the special powers of the High Court regard bail under Section 439 of the Code of Criminal Procedure, 1973 (2 of 1974) and the High Court may exercise such powers including the power under clause (b) of sub-section (1) of that section as if the reference to “Magistrate” in that section includes also a reference to a “Special Court” designated under Section 43.”

11. Looking into the aforesaid provision of Sub-Section (d)(ii) of Section 44 of PMLA, 2002 subsequent complaint and further investigation can be made by the Enforcement Directorate even if the final form is

submitted. Further in view of the above discussion made hereinabove, the Court finds that the materials which are on the record disclosed that it was a final report. Further merely because certain facets of the matter called for further investigation it does not lead to a conclusion that final report is anything other than a final report. The petitioner is arrested on 04.05.2023 and after completion of the investigation, the prosecution report was filed on 12.06.2023 and, therefore, Sub-Section (2) of Section 167 of Cr.P.C stood fully complied with the facts of the present case. A charge sheet is a final report within the meaning of Section 173(2) Cr.P.C. It is filed so as to enable the court concerned to apply the mind as to whether the cognizance of the offence thereupon should be taken or not? The report is ordinarily filed in the form prescribed therefor. One of the requirements for submission of police report is whether any offence appears to have been complete and if so by whom. In some cases, the accused having not been arrested, the investigation against him may not be complete. Therefore, may not be sufficient material for arriving at a decision that the absconding accused is also a person by whom the offence appears to have been committed. If the investigating officer finds sufficient evidence even against such an accused who has been absconding, the law does not require that filing of the charge sheet must await the arrest of the accused as has been held in paragraph no.19 in the case of ***Dinesh Dalmia v. C.B.I***, reported in, ***(2007) 8 SCC 770***. Further, so long as the charge sheet is not filed within the meaning of section 173(2) of the Cr.P.C., the investigation remains pending. Filing of final report or charge sheet, however, does not preclude the investigating officer to carry on further investigation in terms of Section 173(8) Cr.P.C. Indisputably, the power of the investigating officer to make a prayer for making further investigation in terms of section 173(8) of the Cr.P.C., is not taken away only because a charge sheet has been filed under section

173(2) Cr.P.C. The further investigation is permissible even if an order of cognizance of offence has been made by the learned court. A reference may be made to the paragraph nos. 20, 38 and 39 of the judgment in the case of ***Dinesh Dalmia v. C.B.I(supra)***. The investigating agency is required to complete the investigation within a reasonable time. The ideal period under section 167(2) Cr.P.C. has been prescribed in the Cr.P.C i.e. 60 or 90 days, as the case may be, but, if the same is not done within the stipulated period, the same could not be detrimental to the accused and, thus, he on the expiry thereof will be entitled to apply for bail subject to fulfilling the conditions prescribed therefor. There is no doubt that such right of bail although is a valuable right, but the same is a conditional one. The condition precedent being pendency of the investigation. 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.

12. Coming to the case in hand, what has been discussed hereinabove, it appears that the materials which has come in the first ECIR, the investigation in the first case is complete and the learned court has taken the cognizance on 19.06.2023. Thus, it cannot be said that the investigation is still pending so far as ECIR/18/2022 is concerned. The another ECIR, being ECIR/10/2023 is the subject matter of other properties in which the final form has been submitted on 01.09.2023. The Court finds that it cannot be said, in the aforesaid facts, that charge sheet was not submitted within the stipulated period, and in view of that, Sub-Section (2) of Section 167 Cr.P.C. is not available to the petitioner. The judgments relied by the learned counsel for the petitioner are on different footing as in those cases, the Court came to the conclusion that the investigation is not complete and this Court is also of the view

considering the several judgments including the landmark judgment of the Hon'ble Supreme Court in the case of ***Uday Mohanlal Acharya v. State of Maharashtra(supra)*** that once the investigation is not complete, the default bail is a rule and that right cannot be taken away by any court. However, in the case in hand, the investigation in the first case in which the petitioner is remanded is also complete and the cognizance has been taken.

13. In view of the above facts, reasons and analysis, the Court come to the conclusion that this is not a case to grant default bail to the petitioner under section 167(2) of the Cr.P.C.

14. Accordingly, Cr.M.P. No.2578 of 2023 is dismissed.

15. Pending petition, if any, also stands dismissed accordingly.

(Sanjay Kumar Dwivedi, J.)

SI/
A.F.R.