REPORTABLE

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 319 OF 2021
(arising out of SLP(Crl.) No. 6181/2020)

FAKHREY ALAM Appellant(s)

VERSUS

THE STATE OF UTTAR PRADESH Respondent(s)

ORDER

Leave granted.

An FIR bearing No. 04/2017 has been registered against the appellant-accused Fakhrey Alam under Section 420,467, 468, 471 and 120-B, IPC and 3/25/30 of the Arms Act and under Section 18 of the UAPA Act, 1967.

The appellant was arrested on 08.03.2017 and on 03.06.2017, learned Court of Chief Judicial Magistrate, Lucknow granted a total of 180 days to the police for filing the charge sheet. The police filed charge sheet on 04.09.2017 under the aforesaid provisions, except under the UAPA Act as it was mandatory to obtain prosecution sanction from the State Government which had not been forthcoming till the date of filing of the charge sheet. Thus, the charge sheet states as under :

> " That the accused are in Judicial Custody and the remand period of the accused Fakhrey Alam is completing today. Therefore, the Charge Sheet under Section 420/467/468/471/120-B IPC

> and Section 3/25/30 Arms Act is being filed before this Hon'ble Court against the accused persons. It is requested to summon the witnesses and commences the Trial of the Case. A separate Charge Sheet shall be under Section 18 UA (P) Act shall be filed against obtaining the prosecution sanction."

Thereafter, a second charge sheet was filed after obtaining sanction of the State Government on 05.10.2017. We are concerned with the order passed by the Chief Judicial Magistrate, Lucknow dated 13.10.2017 on an application filed by the appellant on 03.10.2017 for default bail under Section 167 (2) of the Code of Criminal Procedure, 1973 (hereinafter referred to as "the Cr.P.C.") two days prior to the charge sheet having been filed under the UAPA Act. The case set up by the appellant was that the charge sheet had been filed after 180 days and thus he was entitled to default bail. The Court, however, opined that what was stated to be a second charge sheet was really a supplementary charge sheet and thus default bail would not be admissible. The aforesaid view was given its imprimatur by the High Court in terms of the impugned order dated 03.11.2020 which has been assailed before us.

Learned senior counsel for the appellant has made a dual submissions before us:

Firstly, it is his submission that the Chief Judicial Magistrate, Lucknow on 03.06.2017 could not have

granted 180 days for filing of the charge sheet as the jurisdiction in respect of offences under the UAPA Act, which cases are entrusted to NIA, vests only with the special courts and this aspect was no more *res integra* in view of judgment of this Court in the case of Bikramjit Singh vs. State of Punjab.[1]

Secondly, it was urged before us that even within the 180 days period, the charge sheet/supplementary charge sheet under the UAPA Act was not filed which gave a cause to the appellant to file the application for default bail on 03.10.2017 and it is only two days thereafter on 05.10.2017 after a lapse of 211 days that this charge sheet had been filed.

On the other hand, learned counsel for the State submits that the judgment of this Court in Bikramjit Singh's case (supra) was in the given situation prevalent in the State of Punjab, but on the other hand in State of Uttar Pradesh the competent Court was of the special Chief Judicial Magistrate and it is only recently now about a month back that special Courts had been notified.

On the second aspect, it is urged that what is called as the second charge sheet is really a supplementary charge sheet as there is no restriction on the number of supplementary charge sheets which can be filed but there will be only one charge sheet in view of 1

(2020) 10 SCC 616

judgment of this Court in the case of Vinay Tyagi vs. Irshad Ali @ Deepak & Ors.[2]

We have examined the aforesaid pleas.

Insofar as the first aspect is concerned, suffice to say that the situation in the State of Uttar Pradesh is different and it is not as if there were any notified special courts in existence.

On the second aspect we cannot lose sight of the fact that what was envisaged by the Legislature was that the investigation should be completed in 24 hours but practically that was never found feasible. It is in these circumstances that Section 167 of the Cr.P.C. provided for time period within which the investigation should be completed, depending upon the nature of offences. Since, liberty is a Constitutional right, time periods were specified in the default of which the accused will have a right to default bail, a valuable right.

If we look at the scenario in the present case in that conspectus, the charge sheet under the provisions of law as originally filed on 04.09.2017 were required to be filed within 90 days but was actually filed within 180 days. This was on the premise of the charge under Section 18 of the UAPA Act. However, no charge sheet was filed even within 180 days under the UAPA Act, but post filing of the application for default bail, it was filed after

2 (2013) 5 SCC 762

211 days. Thus, undoubtedly the period of 180 days to file the charge sheet qua UAPA Act had elapsed. We do not think that the State can take advantage of the fact that in one case there is one charge sheet and supplementary charge sheets are used to extend the time period in this manner by seeking to file the supplementary charge sheet qua the offences under the UAPA Act even beyond the period specified under Section 167 of the Cr.P.C beyond which default bail will be admissible, i.e, the period of 180 days. That period having expired and the charge sheet not having been filed qua those offences (albeit a supplementary charge sheet), we are of the view the appellant would be entitled to default bail in the aforesaid facts and circumstances.

We need only emphasize what is already observed in Bikramjit Singh case (supra) that default bail under first proviso of Section 167(2) of the Cr.P.C. is a fundamental right and not merely a statutory right as it is, a procedure established by law under Article 21 of the Constitution. Thus a fundamental right is granted to an accused person to be released on bail once the conditions of the first proviso to Section 167(2)of the Cr.P.C. are fulfilled.

In fact in the majority judgment of this Court it has been held that an oral application for grant of default bail would suffice [See. Rakesh Kumar Paul vs.

State of Assam][3]. The consequences of the UAPA Act are drastic in punishment and in that context, it has been held not to be a mere statutory right but part of the procedure established by law under Article 21 of the Constitution of India.

We are thus of the view that the impugned order(s) are liable to be set aside. The appellant is entitled to default bail under Section 167(2)of the Cr.P.C. in the given facts of the case on the terms and conditions to the satisfaction of the trial Court.

The appeal is accordingly allowed leaving he parties to bear their own costs.

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

.....J.
[R. SUBHASH REDDY]

New Delhi;
March 15, 2021.

3 (2017) 15 SCC 67

ITEM NO.28 Court 9 (Video Conferencing) SECTION II

SUPREME COURT OF INDIA
RECORD OF PROCEEDINGS

Petition for Special Leave to Appeal (Crl.) No. 6181/2020

(Arising out of impugned final judgment and order dated 03-11-2020 in BN No. 12269/2019 passed by the High Court Of Judicature At Allahabad, Lucknow Bench)

FAKHREY ALAM Petitioner(s)

VERSUS

THE STATE OF UTTAR PRADESH Respondent(s)

Date :15-03-2021 This petition was called on for hearing today.

CORAM :
HON'BLE MR. JUSTICE SANJAY KISHAN KAUL
HON'BLE MR. JUSTICE R. SUBHASH REDDY

For Petitioner(s) Mr. S. Wasim A. Qadri, Sr. Adv.
Mr. Md. Ali, AOR
Mr. Mohit Mishra, Adv.

For Respondent(s) Mr. V.k. Shukla, Sr. Adv.
Mr. Adarsh Upadhyay, AOR
Ms. Mayuri Raghuvanshi, Adv.

UPON hearing the counsel the Court made the following
ORDER

Leave granted.

The appellant is entitled to default bail on the terms and conditions to the satisfaction of the trial Court.

The appeal is allowed in terms of the signed reportable order leaving the parties to bear their own costs.

[CHARANJEET KAUR] [POONAM VAID]
ASTT. REGISTRAR-cum-PS COURT MASTER (NSH)

[Signed reportable order is placed on the file]