

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.838 OF 2021

(Arising out of SLP(Cr1.) No.5442/2021)

SIDDHARTH

APPELLANT(S)

VERSUS

THE STATE OF UTTAR PRADESH & ANR.

RESPONDENT(S)

O R D E R

Leave granted.

The short issue before us is whether the anticipatory bail application of the appellant ought to have been allowed. We may note that as per the Order dated 02.8.2021 we had granted interim protection.

The fact which emerges is that the appellant along with 83 other private persons were sought to be roped in a FIR which was registered seven years ago. The appellant claims to be supplier of stone for which royalty was paid in advance to these

holders and claims not to be involved in the tendering process. Similar person was stated to have been granted interim protection until filing of the police report. The appellant had already joined the investigation before approaching this Court and the chargesheet was stated to be ready to be filed. However, the reason to approach this Court was on account of arrest memo having been issued.

It is not disputed before us by learned counsel for the respondent that the chargesheet is ready to be filed but submits that the trial court takes a view that unless the person is taken into custody the chargesheet will not be taken on record in view of Section 170 of the Cr.P.C.

In order to appreciate the controversy we reproduce the provision of Section 170 of Cr.P.C. as under:

"170. Cases to be sent to Magistrate, when evidence is sufficient. - (1) If, upon an investigation under this Chapter, it appears to the officer in charge of the police station that there is sufficient evidence or reasonable ground as aforesaid, such officer shall forward the accused under custody to a Magistrate empowered to take cognizance of the offence upon a police report and to try

the accused or commit him for trial, or, if the offence is bailable and the accused is able to give security, shall take security from him for his appearance before such Magistrate on a day fixed and for his attendance from day to day before such Magistrate until otherwise directed."

There are judicial precedents available on the interpretation of the aforesaid provision albeit the Delhi High Court.

In *Court on its own motion v. Central Bureau of Investigation*¹, the Delhi High Court dealt with an argument similar to the contention of the respondent that Section 170 Cr.P.C. prevents the trial court from taking a chargesheet on record unless the accused is taken into custody. The relevant extracts are as under:

"15. Word "custody" appearing in this Section does not contemplate either police or judicial custody. It merely connotes the presentation of accused by the Investigating Officer before the Court at the time of filing of the chargesheet whereafter the role of the Court starts. Had it not been so the Investigating Officer would not have been vested with powers to release a person on bail in a bailable offence after finding that there was sufficient evidence to put the accused on trial and it would have been obligatory upon him to produce such an accused in custody before the Magistrate for being released on bail by the Court.

¹ 2004 (72) DRJ 629

16. In case the police/Investigating Officer thinks it unnecessary to present the accused in custody for the reason that accused would neither abscond nor would disobey the summons as he has been co-operating in investigation and investigation can be completed without arresting him, the IO is not obliged to produce such an accused in custody.

[...]

19. It appears that the learned Special Judge was labouring under a misconception that in every non-bailable and cognizable offence the police is required to invariably arrest a person, even if it is not essential for the purpose of investigation.

20. Rather the law is otherwise. In normal and ordinary course the police should always avoid arresting a person and sending him to jail, if it is possible for the police to complete the investigation without his arrest and if every kind of co-operation is provided by the accused to the Investigating Officer in completing the investigation. It is only in cases of utmost necessity, where the investigation cannot be completed without arresting the person, for instance, a person may be required for recovery of incriminating articles or weapon of offence or for eliciting some information or clue as to his accomplices or any circumstantial evidence, that his arrest may be necessary. Such an arrest may also be necessary if the concerned Investigating Officer or Officer-in-charge of the Police Station thinks that presence of accused will be difficult to procure because of grave and serious nature of crime as the possibility of his absconding or disobeying the process or fleeing from justice cannot be ruled out."

In a subsequent judgment the Division Bench of the Delhi High Court in *Court on its own Motion v. State*² relied on these observations in *Re Court on its own Motion (supra)* and observed that it is not essential in every case involving a cognizable and non-bailable offence that an accused be taken into custody when the chargesheet/final report is filed.

The Delhi High Court is not alone in having adopted this view and other High Courts apparently have also followed suit on the proposition that criminal courts cannot refuse to accept a chargesheet simply because the accused has not been arrested and produced before the court.

In *Deendayal Kishanchand & Ors. v. State of Gujarat*³, the High Court observed as under:

"2....It was the case of the prosecution that two accused, i. e. present petitioners Nos. 4 and 5, who are ladies, were not available to be produced before the Court along with the charge-sheet, even though earlier they were released on bail. Therefore, as the Court refused to accept the charge-sheet unless all the accused are produced, the charge-sheet could not be submitted, and ultimately also, by a specific letter, it seems from the record, the charge-sheet was submitted

² (2018) 254 DLT 641 (DB)

³ 1983 Cr.LJ 1583

without accused Nos. 4 and 5. This is very clear from the evidence on record. [...]

...

8. I must say at this stage that the refusal by criminal Courts either through the learned Magistrate or through their office staff to accept the charge-sheet without production of the accused persons is not justified by any provision of law. Therefore, it should be impressed upon all the Courts that they should accept the charge-sheet whenever it is produced by the police with any endorsement to be made on the charge-sheet by the staff or the Magistrate pertaining to any omission or requirement in the charge-sheet. But when the police submit the charge-sheet, it is the duty of the Court to accept it especially in view of the provisions of Section 468 of the Code which creates a limitation of taking cognizance of offence. Likewise, police authorities also should impress on all police officers that if charge-sheet is not accepted for any such reason, then attention of the Sessions Judge should be drawn to these facts and get suitable orders so that such difficulties would not arise henceforth."

We are in agreement with the aforesaid view of the High Courts and would like to give our imprimatur to the said judicial view. It has rightly been observed on consideration of Section 170 of the Cr.P.C. that it does not impose an obligation on the Officer-in-charge to arrest each and every accused at the time of filing of the chargesheet. We have, in fact, come across cases where the accused has cooperated with the

investigation throughout and yet on the chargesheet being filed non-bailable warrants have been issued for his production premised on the requirement that there is an obligation to arrest the accused and produce him before the court. We are of the view that if the Investigating Officer does not believe that the accused will abscond or disobey summons he/she is not required to be produced in custody. The word "custody" appearing in Section 170 of the Cr.P.C. does not contemplate either police or judicial custody but it merely connotes the presentation of the accused by the Investigating Officer before the court while filing the chargesheet.

We may note that personal liberty is an important aspect of our constitutional mandate. The occasion to arrest an accused during investigation arises when custodial investigation becomes necessary or it is a heinous crime or where there is a possibility of influencing the witnesses or accused may abscond. Merely because an arrest can be made because it is lawful does not mandate that arrest must be made. A

distinction must be made between the existence of the power to arrest and the justification for exercise of it.⁴ If arrest is made routine, it can cause incalculable harm to the reputation and self-esteem of a person. If the Investigating Officer has no reason to believe that the accused will abscond or disobey summons and has, in fact, throughout cooperated with the investigation we fail to appreciate why there should be a compulsion on the officer to arrest the accused.

We are, in fact, faced with a situation where contrary to the observations in *Joginder Kumar's* case how a police officer has to deal with a scenario of arrest, the trial courts are stated to be insisting on the arrest of an accused as a pre-requisite formality to take the chargesheet on record in view of the provisions of Section 170 of the Cr.P.C. We consider such a course misplaced and contrary to the very intent of Section 170 of the Cr.P.C.

In the present case when the appellant has joined the investigation, investigation has completed and he has been roped in after seven

⁴ *Joginder Kumar v. State of UP & Ors.* (1994) 4 SCC 260

years of registration of the FIR we can think of no reason why at this stage he must be arrested before the chargesheet is taken on record. We may note that learned counsel for the appellant has already stated before us that on summons being issued the appellant will put the appearance before the trial court.

We accordingly set aside the impugned order and allow the appeal in terms aforesaid leaving the parties to bear their own costs.

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

.....J.
[HRISHIKESH ROY]

NEW DELHI;
AUGUST 16, 2021.

ITEM NO.38 Court 6 (Video Conferencing)

SECTION II

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Petition(s) for Special Leave to Appeal (Crl.) No.5442/2021

(Arising out of impugned final judgment and order dated 09-07-2021 in CRMABA No. 5029/2021 passed by the High Court of Judicature at Allahabad, Lucknow Bench)

SIDDHARTH

Petitioner(s)

VERSUS

THE STATE OF UTTAR PRADESH & ANR.

Respondent(s)

Date : 16-08-2021 This petition was called on for hearing today.

CORAM : HON'BLE MR. JUSTICE SANJAY KISHAN KAUL
HON'BLE MR. JUSTICE HRISHIKESH ROY

For Petitioner(s) Mr. P. K. Dube, Sr. Adv.
Mr. Ravi Sharma, AOR
Mr. Sandeep Gaur, Adv.
Mr. Sujeet Kumar, Adv.
Ms. Madhulika Rai Sharma, Adv.
Ms. Chhaya Gupta, Adv.
Mr. Anjani kumar Rai, Adv.

For Respondent(s) Ms. Garima Prashad, Sr. Adv., AAG
Mr. Sarvesh Singh Baghel, AOR
Mr. Utkarsh Sharma, Adv.

UPON hearing the counsel the Court made the following

O R D E R

Leave granted.

Appeal is allowed in terms of the signed reportable order.

Pending applications stand disposed of.

(RASHMI DHYANI)
COURT MASTER

(POONAM VAID)
COURT MASTER

(Signed reportable order is placed on the file)