

**A.F.R.**

**Reserved on 25.08.2022**

**Delevered on 26.09.2022**

**Court No. - 27**

**Case :-** APPLICATION U/S 482 No. - 2958 of 2022

**Applicant :-** Sallahuddin

**Opposite Party :-** State Of U.P. Thru. Home Secy.  
And Another

**Counsel for Applicant :-** Vivek Abhir

**Counsel for Opposite Party :-** G.A.

**Hon'ble Ajai Kumar Srivastava-I, J.**

**1.** Counter affidavit filed by the State is taken on record.

**2.** Heard Sri Arsh R. Shaikh, learned counsel for the applicant, Sri Shiv Nath Tilhari, learned A.G.A. for the State and perused the entire record.

**3.** The instant application under Section 482 Cr.P.C. has been filed praying *inter alia* following reliefs:-

*"1. Allow this application and quash and set aside the impugned order dated 27.04.2022 passed by the learned Additional District and Sessions*

*Judge, ADJ-3, Lucknow, Uttar Pradesh in CMRA number 2823 of 2022;*

*2. Release the applicant on default bail in connection with Case Crime number 9 of 2021 registered with ATS Gomtinagar police station, Lucknow pending in the court of Learned Additional District and Sessions Judge, ADJ-3 in connection with sections 153A, 153B, 295A, 417, 298, 121A, 123 and 120B of the Indian Penal Code, 1860 and sections 3, 5 and 8 of The Prohibition of Unlawful Religious Conversion Act, 2021.*

*3. Release the applicant on ad-interim bail during pending admission, hearing and final disposal of the present application in the interest of justice."*

**4.** The facts as culled out from the pleadings are that the applicant, Sallahuddin was arrested on 30.06.2021 from District Ahmedabad, Gujarat in connection with Crime No.9/2021 under Sections 420, 120B, 153A, 153B, 295A, 511 I.P.C. and 3/5 Uttar Pradesh Prohibition of Unlawful Conversion of Religion Act 2021. His transit remand was allowed from 18:00 hours on 30.06.2021 upto 17:00 hours on 03.07.2021 by the learned Magistrate at Ahmedabad. The accused/ applicant was produced before the Special CJM Custom, Lucknow on 02.07.2021 and his judicial custody remand was granted for 14 days by an order passed by the learned Special CJM Custom, Lucknow. For a period from 06.07.2021 to 13.07.2021, his first police custody remand was allowed. For a period from 13.07.2021 to 15.07.2021, his second police

custody remand was allowed. Thereafter, his judicial custody remand was granted from time to time i.e. from 15.07.2021 to 26.07.2021, from 26.07.2021 to 09.08.2021 and from 09.08.2021 to 18.08.2021. Charge sheet dated 13.08.2021, under Sections 471, 120-B, 153-A, 153-B, 295-A, 298-A I.P.C. and Sections 3/5/8 U.P. Prohibition of Unlawful Conversion of Religion Act, 2021 against the applicant came to be filed in the court below on 18.08.2021 keeping the investigation pending. This charge sheet against the accused/ applicant was filed on 48<sup>th</sup> day from the date of first remand, which was well within the prescribed period under proviso (a) to Section 167(2) Cr.P.C. During the course of further investigation, the offence under Sections 121-A and 123 I.P.C. were added on 31.08.2021 and the remand was obtained on 01.09.2021 for the offence under Sections 121-A and 123 I.P.C. As the offence under Sections 121-A and 123 I.P.C. are scheduled offences as mentioned in the Schedule to the National Investigating Agency Act, 2008 (*hereinafter referred to as 'N.I.A. Act'*), the information to this effect was sent to the State Government on 02.09.2021 in compliance with the provision contained under Section 6 of N.I.A. Act. The State Government sent the information to the Central Government on 21.09.2021. The supplementary charge sheet dated 17.09.2021 for the offence under Sections 121-A and 123 I.P.C.

came to be filed in the court on 18.09.2021 i.e. on 79<sup>th</sup> day from the date of first remand by competent court at Lucknow and 81<sup>st</sup> day, inclusive of the time of transit remand too. The sanction for prosecution for the offences under Section 121-A/ 123 I.P.C. appears to have been granted on 22.11.2021. The learned court below took cognizance of the matter on 18.12.2021.

**5.** It is submitted by learned counsel for the applicant that the applicant was taken into custody and transit remand for three days was granted by the court of Ahmedabad. However, he was produced before the court at Lucknow on 02.07.2021 and the Chief Judicial Magistrate granted seven days' remand from 06.07.2021 to 13.07.2021. The applicant is in judicial custody since 15.07.2021.

**6.** His further submission is that on 14.09.2021, the applicant applied for default bail under Section 167(2) Cr.P.C. which was disposed of by order dated 22.09.2021. The accused/applicant again filed an application for default bail by challenging the earlier order dated 22.09.2021 and the learned Additional District & Sessions Judge ADJ-3 was pleased to reject the second application for default bail by the order dated 27.04.2022, both the orders as aforesaid, denying the applicant the benefit of default bail are illegal.

**7.** Learned counsel for the applicant has also submitted that the first charge sheet was filed on 18.08.2021 and thereafter the Investigating Officer filed an application dated 31.08.2021 for adding Sections 121-A and 123 I.P.C. Thereafter, the supplementary charge sheet came to be filed on 18.09.2021, without obtaining sanction as required by Section 196 Cr.P.C.

**8.** He then contended that the applicant was entitled to default bail as investigation was not concluded within sixty days. The investigating agency, only to deprive the applicant of his right of getting default bail, moved an application for adding Section 121A and 123 I.P.C. with a view to extend the time limit of investigation upto 90 days. There is no provision in the Code of Criminal Procedure, 1989 for addition/subtraction/alteration in the charge sheet once submitted and as such the application dated 31.08.2021 for adding Sections 121A and 123 I.P.C. was not liable to be allowed by the learned Magistrate.

**9.** In order to substantiate his aforesaid contentions, the learned counsel for the applicant has placed reliance on the law laid down by Hon'ble Supreme Court in the Case of Fakhrey Alam vs. State of Uttar Pradesh reported in 2021 SCC Online 532, Achpal @ Ramswoop & Another vs. State of Rajasthan reported in (2019) 14 SCC 599 as well as law laid down by Gauhati High

Court in the case of Ved Kumar Seth and another vs. The State of Assam reported in 1974 SCC Online Gau 44. He has also placed reliance on the judgment passed by Jammu and Kashmir High Court in the case of Zakir Hussain vs. UT of Ladakh and others reported in 2021 SCC Online J&K 64, judgment passed by Kerala High Court in the case of S.M. Purtado and etc. vs. Dy. S.P. C.B.I. Cochin and etc. reported in 1996 Cri. L.J. 3042. and judgment passed by Punjab and Haryana High Court in the case of Tarlok and others vs. State of Haryana, 2019 (3) R.C.R. (Criminal) 348.

**10.** Per contra, learned A.G.A. has opposed the prayer by submitting that the first charge sheet for the offence under Sections 471, 120B, 153A, 153B, 295A, 298A I.P.C. and Sections 3/5/8 of U.P. Prohibition of Unlawful Conversion of Religion Act, 2021 was filed in the court below on 18.08.2021 keeping the investigation pending and as such the first charge sheet was filed on the 48<sup>th</sup> day from the date of first remand and keeping the investigation pending in respect of alleged anti-national activities committed by the accused person. Thereafter, the supplementary charge sheet dated 17.09.2021 was filed in respect of the offence under Sections 121A and 123 I.P.C. on 79<sup>th</sup> day from the date of first remand.

**11.** His further submission is that both the charge sheets were filed well within the time prescribed under Section 167 Cr.P.C. and, therefore, the applicant has no right to claim default bail. The prayer for default bail itself is not maintainable as the charge sheet was filed well within time. The right of being enlarged on bail under Section 167 Cr.P.C., arises only when the charge sheet is not filed within time.

**12.** Learned A.G.A. for the State has also submitted that the contention of the applicant to the effect that the addition/ alteration of the other sections during investigation is not permissible under Cr.P.C., is neither acceptable nor tenable in the eyes of law as Section 173(8) Cr.P.C. permits the further investigation in respect of an offence even after the report under sub Section 2 of Section 173 Cr.P.C. has been forwarded to the Magistrate. Therefore, the filing of the first charge sheet and thereafter undertaking further investigation was legally sustainable and filing of supplementary charge sheet, well within ninety days from the date of first remand was within the domain of the investigating agencies. There is no illegality in filing the first charge sheet dated 13.08.2021 in the court below on 18.08.2021 and the supplementary charge sheet in court below on 17.09.2021 because the first charge sheet was

filed on 48<sup>th</sup> day and supplementary charge sheet was filed on 79<sup>th</sup> day.

**13.** His further submission is that the first application for default bail filed by the applicant on 14.09.2021 was not pressed by the applicant before the court below. The order dated 22.09.2021, on the face of the application dated 14.09.2021, which is available at page No.58 to the instant application, goes to show that the default bail application was rejected because the same was not pressed. The applicant after getting his first application for default bail rejected after not pressing the same, filed another application for default bail on 13.04.2022 was not maintainable on two counts, first that the charge sheet was already filed well within ninety days and, therefore, the default bail application was not maintainable and second is that the application for default bail dated 13.04.2022 was filed much after filing of charge sheet and order of prosecution sanction dated 18.12.2021 and the order of cognizance dated 18.12.2021.

**14.** Learned A.G.A. for the State has contended that it would not be open to accused to claim that he is entitled to bail under proviso (a) to Section 167(2) Cr.P.C. even if charge sheet is filed within time or the charge sheet is filed before any time prior to filing of application for default bail and making any submission that accused is



prepared to furnish bail. In the present case, both the conditions are not available. Charge sheet was filed within ninety days. Further, the application for default bail being moved on 13.04.2022 does not entitle the applicant in any manner to get the default bail.

**15.** He has concluded his submissions by stating that the law laid down by Hon'ble Supreme Court in the Case of Fakhrey Alam (supra), Achpal @ Ramswoop (supra) as well as law laid down by Gauhati High Court in the case of Ved Kumar Seth (supra), Jammu and Kashmir High Court in the case of Zakir Hussain (supra), judgment passed by Kerala High Court in the case of S.M. Purtado and etc. (supra) and judgment passed by Punjab and Haryana High Court in the case of Tarlok and others (supra), which have been relied by learned counsel for the applicant have no application in this case for the reason that the same are not applicable in the facts of the present case.

**16.** His further submission is that the other contentions of the applicant are that in want of sanction, order taking cognizance was bad in law, is not sustainable as the learned court below took cognizance on 18.12.2021, only after the sanction for prosecution was granted on 22.11.2021 as is evident from Annexures No.14 and 15 to counter affidavit. Whether, the cognizance is taken or not is not material as far as grant of default bail under

proviso (a) to Section 167(2) Cr.P.C. is concerned. Merely because sanction has not been obtained to prosecute the accused and to proceed to the stage of Section 309 Cr.P.C., it cannot be said that the accused is entitled to get default bail. Grant of sanction is nowhere contemplated under proviso (a) to Section 167(2) Cr.P.C. To buttress his aforesaid contention, reliance has been placed on the law laid down by Hon'ble Supreme Court in the case of Suresh Kumar Bhikamchand Jain vs. State of Maharashtra and others, 2013 (3) SCC 77.

**17.** Having heard the learned counsel for the applicant, learned A.G.A. for the State and upon perusal of record, it transpires that the applicant, Sallahuddin was arrested on 30.06.2021 from District Ahmedabad, Gujarat in connection with Crime No.9/2021 under Sections 420, 120B, 153A, 153B, 295A, 511 I.P.C. and 3/5 Uttar Pradesh Prohibition of Unlawful Conversion of Religion Act 2021. His transit remand was allowed from 18:00 hours on 30.06.2021 upto 17:00 hours on 03.07.2021 by the learned Magistrate at Ahmedabad. The accused/ applicant was produced before the Special CJM Custom, Lucknow on 02.07.2021 and his judicial custody remand was granted for 14 days by an order passed by the learned Special CJM Custom, Lucknow. For a period from 06.07.2021 to 13.07.2021, his first police custody remand was allowed. For a period

from 13.07.2021 to 15.07.2021, his second police custody remand was allowed. Thereafter, his judicial custody remand was granted from time to time i.e. from 15.07.2021 to 26.07.2021, from 26.07.2021 to 09.08.2021 and from 09.08.2021 to 18.08.2021. Charge sheet dated 13.08.2021, under Sections 471, 120-B, 153-A, 153-B, 295-A, 298-A I.P.C. and Sections 3/5/8 U.P. Prohibition of Unlawful Conversion of Religion Act, 2021 against the applicant came to be filed in the court below on 18.08.2021 keeping the investigation pending. This charge sheet against the accused/ applicant was filed on 48<sup>th</sup> day from the date of first remand, which was well within the prescribed period under proviso (a) to Section 167(2) Cr.P.C. During the course of further investigation, the offence under Sections 121-A and 123 I.P.C. were added on 31.08.2021 and the remand was obtained on 01.09.2021 for the offence under Sections 121-A and 123 I.P.C. As the offence under Sections 121-A and 123 I.P.C. are scheduled offences as mentioned in the Schedule to the National Investigating Agency Act, 2008 (*hereinafter referred to as 'N.I.A. Act'*), the information to this effect was sent to the State Government on 02.09.2021 in compliance with the provision contained under Section 6 of N.I.A. Act. The State Government sent the information to the Central Government on 21.09.2021. The supplementary charge sheet dated 17.09.2021 for

the offence under Sections 121-A and 123 I.P.C. came to be filed in the court on 18.09.2021 i.e. on 79<sup>th</sup> day from the date of first remand by competent court at Lucknow and 81<sup>st</sup> day, inclusive of the time of transit remand too. The sanction for prosecution for the offences under Section 121-A/ 123 I.P.C. appears to have been granted on 22.11.2021. The learned court below took cognizance of the matter on 18.12.2021.

**18.** Therefore, no occasion for accused/ applicant arose to seek default bail under the provision contained in proviso (a) to Section 167(2) Cr.P.C. Thus, the impugned order dated 27.04.2022, whereby the Special Court has rejected the application moved by the applicant seeking default bail does not suffer from any illegality.

**19.** A Division Bench of Kerala High Court in the case of Abdul Azeez vs. National Investigation Agency, (2014) 144 AIC 380, has held that in case, after further investigation under Section 173(8) Cr.P.C., any supplementary charge sheet is submitted, in such a case it cannot be said that filing of such supplementary charge sheet within statutorily stipulated period is designed to defeat the right of an accused to get default bail.

**20.** Be that as it may, the application seeking default bail came to be filed by the

applicant on 13.04.2022 after filing of charge sheet/ supplementary charge sheet and even after cognizance of the matter was taken by the court below. Therefore, the application seeking default bail under proviso (a) to Section 167(2) Cr.P.C. was not maintainable. The question that whether sanction was necessary or not or whether sanction was obtained or not, does not appear to be material in view of admitted fact that the application seeking default bail by the applicant came to be filed after cognizance was taken by the learned trial court. The first charge sheet was filed on 13.08.2021 and the supplementary charge sheet was filed on 17.09.2021. Therefore, this Court does not find any substance in the submissions of learned counsel for the applicant to the effect that the applicant was wrongly denied default bail to which he was entitled to get in this matter.

**21.** From a bare perusal of provisions contained in proviso (a) to Section 167(2) Cr.P.C. makes it clear that any bail, purportedly granted in exercise of power vested by the aforesaid proviso, would have effect of the bail granted under Chapter XXXIII Cr.P.C., which pertains to grant or refusal of bail.

**22.** The Hon'ble Supreme Court in **Hitendra Vishnu Thakur vs State Of Maharashtra, AIR 1994 SC 2623** has held that the object behind

the enactment of Section 167 Cr.P.C. is to see that the detention of the accused should not be permitted for any unreasonably longer period. The Parliament has introduced the proviso to Section 167(2) Cr.P.C. prescribing the outer limit within which the investigation must be completed. If the investigation is not completed within the specified period the accused would acquire a right to be released on bail and if he is prepared to and does furnish the bail, the Magistrate shall release him on bail and **such release shall be deemed to be grant of bail under Chapter XXXIII of the Code.**

**23.** In view of the above, this matter may be viewed from another perspective also. The impugned order rejecting the application seeking default bail was passed on 27.04.2022 by the learned Additional District & Sessions Judge-3/ Special Judge NIA/ATS, Lucknow. This Special Court was constituted under Section 22 of N.I.A. Act and as such the impugned order dated 27.04.2022 passed by the special court is appealable under Section 21(4) of N.I.A. Act which, for ready reference, is quoted herein below:-

*"21 Appeals. -*

*(1) Notwithstanding anything contained in the Code, an appeal shall lie from any judgment, sentence or order, not being an*

*interlocutory order, of a Special Court to the High Court both on facts and on law.*

*(2) Every appeal under sub-section (1) shall be heard by a Bench of two Judges of the High Court and shall, as far as possible, be disposed of within a period of three months from the date of admission of the appeal.*

*(3) Except as aforesaid, no appeal or revision shall lie to any court from any judgment, sentence or order including an interlocutory order of a Special Court.*

***(4) Notwithstanding anything contained in sub-section (3) of section 378 of the Code, an appeal shall lie to the High Court against an order of the Special Court granting or refusing bail.***

*(5) Every appeal under this section shall be preferred within a period of thirty days from the date of the judgment, sentence or order appealed from: Provided that the High Court may entertain an appeal after the expiry of the said period of thirty days if it is satisfied that the appellant had sufficient cause for not preferring the appeal within the period of thirty days: Provided further that no appeal shall be entertained after the expiry of period of ninety days."*

**24.** Thus, on the basis of aforesaid, it can safely be said that rejection of application seeking default bail by Special Court vide order dated 27.04.2022 is an appealable order in view of the provisions contained in Section 21(4) N.I.A. Act.

**25.** In this view of matter also, this Court does not find the instant application to be maintainable.

**26.** In view of the aforesaid discussion, this Court does not see any illegality, impropriety and incorrectness in the impugned order. There is no abuse of court's process either. Therefore, the instant application lacks merit, which deserves to be dismissed.

**27.** Accordingly, the instant application under Section 482 Cr.P.C. is **dismissed**.

**(Ajai Kumar Srivastava-I, J.)**

**Order Date :-** 26.09.2022

A.Dewal/cks/-