

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 15 OF 2021
(Arising out of SLP (Crl.) No. 5715 of 2020)

KAMLESH CHAUDHARY

Appellant (s)

VERSUS

THE STATE OF RAJASTHAN

Respondent(s)

ORDER

Leave granted.

The appellant is accused of committing offences under Sections 406, 409, 420, 467, 468, 471, 477-A, 201, 120-B of IPC and Section 5 of the Prize Chits Money Circulation Scheme (Banning Act), 1978 and Section 65 of the IT Act. He was arrested on 25.05.2019. Incomplete charge sheet was filed on 22.07.2019. On the ground that charge sheet was not filed within the prescribed period, an application for bail under Section 167(2) Cr.P.C. was filed by the appellant. The High Court ruled in his favour by holding that the appellant is entitled to bail under Section 167 as a complete charge sheet was not filed within the prescribed period. While granting bail, the High Court held that the appellant can be re-arrested after the charge sheet is filed.

Mr. S. Hari Haran, learned counsel appearing for the appellant, submitted that the direction for re-arrest of the

appellant on filing of the charge sheet is contrary to the

law laid down by this Court in *Bashir v. State of Haryana*

[(1977) 4 SCC 410].

In the said judgment, this Court held

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Nidhi Ahuja
Date: 2024.01.06
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Reason:

that it is open to the prosecution to file an application for cancellation of bail on the grounds known to law and the receipt of the charge sheet in Court can by itself be no ground for cancellation of bail.

Mr. Ashish Kumar, learned Additional Advocate General for the State of Rajasthan, argued that the High Court has the power to impose any condition while granting bail under Section 437(3) and 439(2) of Cr.P.C. The grant of bail in this case is under Section 167(2) Cr.P.C. and the submissions made on the basis of Sections 437 and 439 Cr.P.C. are not relevant.

It is clear from the judgment of this Court in *Bashir's* case (*supra*) that filing of charge sheet by itself cannot be a ground for cancellation of bail. Bail granted under Section 167 Cr.P.C. can be cancelled on other grounds available in law to the prosecution.

In view of the aforesaid discussion, the finding recorded in paragraph 17 of the judgment of the High Court is set aside.

The criminal appeal stands disposed of.

.....
, J. [L. NAGESWARA RAO]

.....
, J. [NAVIN SINHA]

New Delhi;
January 05, 2021.

....., J.
[INDU MALHOTRA]

ITEM NO.23

Court 7 (Video Conferencing) SECTION II S U P R E M E C O U R T

O F I N D I A
RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (Cr.) No. 5715/2020

(Arising out of impugned final judgment and order dated 10-02-2020 in SBCRMBA No. 16464/2019 passed by the High Court of Judicature for Rajasthan at Jaipur)

KAMLESH CHAUDHARY

Petitioner(s)

VERSUS

THE STATE OF RAJASTHAN

Respondent(s)

(FOR ADMISSION and I.R. and IA No.118128/2020-EXEMPTION FROM FILING O.T.)

Date : 05-01-2021 This matter was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE L. NAGESWARA RAO
HON'BLE MR. JUSTICE NAVIN SINHA HON'BLE MS.
JUSTICE INDU MALHOTRA

For Petitioner(s)

Mr. S. Hari Haran, Adv. Ms. Jaikriti S.
Jadeja, AOR

For Respondent(s)

Mr. Ashish Kumar, AAG. Mr.
Milind Kumar, AOR

UPON hearing the counsel the Court made the following

O R D E R

Leave granted.

The criminal appeal stands disposed of in terms of the signed order.

Pending application stands disposed of.

(NIDHI AHUJA)
AR-cum-PS

(BEENA JOLLY)
COURT MASTER (NSH)

[Signed order is placed on the file.]