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SUPREME COURT OF INDIA

CENTRAL BUREAU OF INVESTIGATION ...APPELLANT(S)
VERSUS
KAPIL WADHAWAN & ANR. ...RESPONDENT(S)

The accused is not entitled to claim statutory default bail merely because the investigation of another accused is pending: Supreme Court

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CRIMINAL APPEAL NO. 391 OF 2024 (@ SPECIAL LEAVE PETITION (Crl.) No. 11775 OF 2023)

Date of Judgement: 24/01/2024

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Facts of the Case:

The Central Bureau of Investigation (CBI) registered an FIR on June 20, 2022, against Dewan Housing Finance Corporation Ltd. (DHFL), its Chairman and Managing Director Kapil Wadhawan, and 12 others for allegedly defrauding a consortium of 17 banks, led by Union Bank of India. The accused were said to have siphoned off and misappropriated funds from loans amounting to Rs. 42,000 crores, resulting in a loss of Rs. 34,000 crores to the banks. Kapil Wadhawan and his brother, Dheeraj Wadhawan, were arrested on July 19, 2022. On October 15, 2022, the CBI filed a chargesheet against 75 individuals and entities, including the Wadhawans. A Special Court later granted them default bail on December 3, 2022, a decision upheld by the Delhi High Court on May 30, 2023. The CBI subsequently challenged this order in the Supreme Court.

Issues Advanced:

Whether the accused were entitled to default bail under Section 167(2) CrPC when the investigation against some accused was pending, even though a chargesheet was filed against them within the prescribed time limit and cognizance was taken?

Judgement:

The key legal issue before the Supreme Court was whether the accused persons were entitled to default bail under Section 167(2) of the CrPC. The CBI had filed a chargesheet within the prescribed period, but certain aspects of the investigation remained pending. The respondents argued that since the chargesheet was incomplete, they were entitled to default bail.

The Court reiterated the well-settled legal principle that default bail under Section 167(2) CrPC is a statutory and indefeasible right but applies only if the chargesheet is not filed within the statutory period. Once a chargesheet is filed, the right to default bail ceases, irrespective of whether the investigation is entirely completed or not. The Court explained that under Section 173(8) of the CrPC, the investigating agency is permitted to continue further investigation after filing a chargesheet.

The Court rejected the respondents' argument that the chargesheet was incomplete because parts of the investigation were still pending. The Court made it clear that once a court takes cognizance of an offence based on the chargesheet filed, the question of default bail does not arise.

The relevant paras of the judgment are reproduced below:

Para 22.....there remains no shadow of doubt that the statutory requirement of the report under Section 173 (2) would be complied with if the various details prescribed therein are included in the report. The report under Section 173 is an intimation to the court that upon investigation into the cognizable offence, the investigating officer has been able to procure sufficient evidence for the court to inquire into the offence and the necessary information is being sent to the court. The report is complete if it is accompanied with all the documents and statements of witnesses as required by Section 175 (5). As settled in the afore-stated case, it is not necessary that all the details of the offence must be stated.

Para 23 : The benefit of proviso appended to sub-section (2) of Section 167 of the Code would be available to the offender only when a chargesheet is not filed and the investigation is kept pending against him. Once however, a chargesheet is filed, the said right ceases. It may be noted that the right of the investigating officer to pray for further investigation in terms of sub-section (8) of Section 173 is not taken away only because a chargesheet is filed under sub-section (2) thereof against the accused. Though ordinarily all documents relied upon by the prosecution should accompany the chargesheet, nonetheless for some reasons, if all the documents are not filed along with the chargesheet, that reason by itself would not invalidate or vitiate the chargesheet.

It is also well settled that the court takes cognizance of the offence and not the offender. Once from the material produced along with the chargesheet, the court is satisfied about the commission of an offence and takes cognizance of the offence allegedly committed by the accused, it is immaterial whether the further investigation in terms of Section 173(8) is pending or not. The pendency of the further investigation qua the other accused or for production of some documents not available at the time of filing of chargesheet would neither vitiate the chargesheet, nor would it entitle the accused to claim right to get default bail on the ground that the chargesheet was an incomplete chargesheet or that the chargesheet was not filed in terms of Section 173(2) of Cr.P.C.

The Hon'ble Court held that the chargesheet having been filed against the respondents-accused within the prescribed time limit and the cognizance having been taken by the Special Court of the offences allegedly committed by them, the respondents could not have claimed the statutory right of default bail under Section 167(2) Cr.P.C. on the ground that the investigation qua other accused was pending. Both, the Special Court as well as the High Court having committed serious error of law in disregarding the legal position enunciated and settled by this Court, the impugned orders deserve to be set aside and are accordingly set aside.

The Hon'ble Court set aside the impugned orders of the Special Court and the Delhi High Court, which had granted default bail to the accused persons. The Court directed that the respondents be taken into custody if they had been released on default bail pursuant to those orders. Additionally, the Court clarified that its observations in this judgment should not influence any further proceedings on the merits before the Special Court or the High Court.

