(2022) 1 Supreme Court Cases 676

2J

(BEFORE SANJAY KISHAN KAUL AND HRISHIKESH ROY, JJ.)

SIDDHARTH .. Appellant; a

Versus

STATE OF UTTAR PRADESH AND ANOTHER .. Respondents.

Criminal Appeal No. 838 of 2021†, Order dated August 16, 2021

A. **Criminal Procedure Code, 1973 — Ss. 170, 41, 41-A, 41-B, 41-C, 41-D, 42, 438 and 468 — Arrest of the accused prior to taking charge-sheet on record — Held, not mandatory as per S. 170 — Hence, anticipatory bail cannot be denied solely on the ground that as police were ready to file charge-sheet, it was mandatory to arrest appellant-accused, and thus anticipatory bail could not be granted** b

— Insistence of trial courts on arrest of accused as a prerequisite formality to take the charge-sheet on record as per S. 170, held, is misplaced and contrary to the very intent of S. 170 — When police submits charge-sheet, it is the duty of court to take it on record and consider it in accordance with law regardless of whether accused has been arrested or not — This would especially be true in cases where S. 468 provides for a limitation period within which cognizance of offence must be taken c d

— S. 170 does not impose an obligation on police to arrest each and every accused at the time of filing of the charge-sheet and, therefore, if the IO does not believe that the accused will abscond or disobey summons he/she need not be produced in custody

— Appellant had joined the investigation, investigation was completed, and he was roped in the alleged crime after seven years of registration of the FIR — Resultantly, held, in present case there was no necessity to arrest him before taking charge-sheet on record — Appellant also ready to put his appearance before the trial court on summons being issued against him — Resultantly, anticipatory bail granted e

B. **Criminal Procedure Code, 1973 — Ss. 438 and 170 — Anticipatory bail, held, cannot be denied solely on ground that as police were ready to file charge-sheet, it was mandatory to arrest accused under S. 170 and thus anticipatory bail could not be granted (*see in detail* Shortnote *A*)** f

C. **Criminal Procedure Code, 1973 — Ss. 170, 41, 41-A, 41-B, 41-C, 41-D and 42 — Word "custody" occurring in S. 170 — Connotation of — Held, it does not contemplate either police custody or judicial custody but it merely connotes the presentation of the accused by the investigating officer before the court while filing the charge-sheet — Words and Phrases — "Custody"** g

† Arising out of SLP (Crl.) No. 5442 of 2021. Arising from the Judgment and Order in *Siddharth* v. *State of U.P.*, 2021 SCC OnLine All 630 (Allahabad High Court, Lucknow Bench, Criminal Misc. Anticipatory Bail Application under Section 438 CrPC No. 5029 of 2021, dt. 9-7-2021) **[Reversed]** h

D. **Criminal Procedure Code, 1973 — Ss. 170, 41, 41-A, 41-B, 41-C, 41-D and 42 — Arrest of accused — When becomes necessary — Importance of right to personal liberty and right to reputation as fundamental rights — Necessity of respecting**

— Held, in the 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 cooperation is provided by the accused to the investigating officer in completing the investigation — It is only in cases of utmost necessity that arrest becomes necessary, for instance when custodial investigation becomes necessary or when there is a heinous crime or where there is a possibility of influencing the witnesses or accused may abscond, or in other similar circumstances

— Personal liberty and reputation of a person are important aspects of our constitutional mandate — Merely because an arrest can be made because it is lawful does not mandate that arrest must be made — Thus, a distinction must be made between the existence of the power to arrest and the justification for exercise of it — Constitution of India, Art. 21

Allowing the appeal, the Supreme Court

Held :

The word "custody" appearing in Section 170 CrPC 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 charge-sheet 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. (Para 5)

In case the police/investigating officer thinks it unnecessary to present the accused in custody for the reason that the accused would neither abscond nor would disobey the summons as he has been cooperating in investigation and investigation can be completed without arresting him, the IO is not obliged to produce such an accused in custody. (Para 5)

In the 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 cooperation 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 investigating officer concerned or officer in charge of the police station thinks that presence of the 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. (Para 5)

It is not essential in every case involving a cognizable and non-bailable offence that an accused be taken into custody when the charge-sheet/final report is filed. (Para 6)

Criminal courts cannot refuse to accept a charge-sheet simply because the accused has not been arrested and produced before the court. (Para 7)

Refusal by criminal courts either through the 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 submits the charge-sheet, it is the duty of the court to accept it especially in view of the provisions of Section 468 CrPC 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. (Para 8)

High Court of Delhi v. *CBI*, 2004 SCC OnLine Del 53 : (2004) 72 DRJ 629; *High Court of Delhi* v. *State*, 2018 SCC OnLine Del 12306 : (2018) 254 DLT 641; *Deendayal Kishanchand* v. *State of Gujarat*, 1982 SCC OnLine Guj 172 : 1983 Cri LJ 1583, *approved*

Section 170 CrPC does not impose an obligation on the officer-in-charge to arrest each and every accused at the time of filing of the charge-sheet. There are instances of cases where the accused has cooperated with the investigation throughout and yet on the charge-sheet 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. 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 CrPC 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 charge-sheet. (Para 9)

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. 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, then there is no compulsion on the officer to arrest the accused. (Para 10)

Joginder Kumar v. *State of U.P.*, (1994) 4 SCC 260 : 1994 SCC (Cri) 1172, *followed*

The trial courts are stated to be insisting on the arrest of an accused as a prerequisite formality to take the charge-sheet on record in view of the provisions of Section 170 CrPC. Such a course is misplaced and contrary to the very intent of Section 170 CrPC. (Para 11)

In the present case when the appellant has joined the investigation, investigation has been completed and he has been roped in after seven years of registration of the FIR, there is no reason why at this stage he must be arrested before the charge-sheet is taken on record. The appellant has already stated that on summons being issued the appellant will put the appearance before the trial court. Accordingly the impugned order is set aside and the anticipatory bail application of the appellant is allowed. (Paras 12 and 13)

Siddharth v. *State of U.P.*, 2021 SCC OnLine All 630, *reversed*

Siddharth v. *State of U.P.*, 2021 SCC OnLine SC 700, *cited*

SK-D/67899/CR

Advocates who appeared in this case :

P.K. Dube, Senior Advocate [Ravi Sharma (Advocate-on-Record), Sandeep Gaur, Sujeet Kumar, Ms Madhulika Rai Sharma, Ms Chhaya Gupta and Anjani Kr. Rai, Advocates], for the Appellant;

Ms Garima Prashad, Additional Advocate General [Sarvesh Singh Baghel, (Advocate-on-Record) and Utkarsh Sharma, Advocates], for the Respondents.

Chronological list of cases cited ***on page(s)***

1. 2021 SCC OnLine SC 700, *Siddharth* v. *State of U.P.* — 679*f-g*
2. 2021 SCC OnLine All 630, *Siddharth* v. *State of U.P.* **(reversed)** 682*f-g*
3. 2018 SCC OnLine Del 12306 : (2018) 254 DLT 641, *High Court of Delhi* v. *State* 681*b-c*
4. 2004 SCC OnLine Del 53 : (2004) 72 DRJ 629, *High Court of Delhi* v. *CBI* 680*c-d*, 681*b-c*
5. (1994) 4 SCC 260 : 1994 SCC (Cri) 1172, *Joginder Kumar* v. *State of U.P.* 682*d*, 682*e*
6. 1982 SCC OnLine Guj 172 : 1983 Cri LJ 1583, *Deendayal Kishanchand* v. *State of Gujarat* 681*c-d*

ORDER

1. 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 2-8-2021[1] we had granted interim protection.

2. 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 charge-sheet was stated to be ready to be filed. However, the reason to approach this Court was on account of arrest memo having been issued.

1 *Siddharth* v. *State of U.P.*, 2021 SCC OnLine SC 700

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

4. In order to appreciate the controversy we reproduce the provision of Section 170 CrPC 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 of the Delhi High Court.

5. In *High Court of Delhi* v. *CBI*[2], the Delhi High Court dealt with an argument similar to the contention of the respondent that Section 170 CrPC prevents the trial court from taking a charge-sheet on record unless the accused is taken into custody. The relevant extracts are as under: (SCC OnLine Del paras 15-16 & 19-20)

> "*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 charge-sheet 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.
>
> *16*. In case the police/investigating officer thinks it unnecessary to present the accused in custody for the reason that the accused would neither abscond nor would disobey the summons as he has been cooperating 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 cooperation is provided by the accused to the investigating officer in completing the investigation. It is only in

2 2004 SCC OnLine Del 53 : (2004) 72 DRJ 629

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 investigating officer concerned or officer in charge of the police station thinks that presence of the 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."

6. In a subsequent judgment the Division Bench of the Delhi High Court in *High Court of Delhi* v. *State*[3] relied on these observations in *High Court of Delhi*[2] 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 charge-sheet/final report is filed.

7. 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 charge-sheet simply because the accused has not been arrested and produced before the court.

8. In *Deendayal Kishanchand* v. *State of Gujarat*[4], the High Court observed as under: (SCC OnLine Guj paras 2 & 8)

"*2.* … It was the case of the prosecution that two accused i.e. present Petitioners 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 without Accused 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 submits 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."

3 2018 SCC OnLine Del 12306 : (2018) 254 DLT 641
2 *High Court of Delhi* v. *CBI*, 2004 SCC OnLine Del 53 : (2004) 72 DRJ 629
4 1982 SCC OnLine Guj 172 : 1983 Cri LJ 1583

9. 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 CrPC 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 charge-sheet. We have, in fact, come across cases where the accused has cooperated with the investigation throughout and yet on the charge-sheet 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 CrPC 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 charge-sheet.

10. 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[5]. 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.

11. We are, in fact, faced with a situation where contrary to the observations in *Joginder Kumar case*[5] 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 prerequisite formality to take the charge-sheet on record in view of the provisions of Section 170 CrPC. We consider such a course misplaced and contrary to the very intent of Section 170 CrPC.

12. In the present case when the appellant has joined the investigation, investigation has completed and he has been roped in after seven years of registration of the FIR we can think of no reason why at this stage he must be arrested before the charge-sheet is taken on record. We may note that the 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.

13. We accordingly set aside the impugned order[6] and allow the appeal in terms aforesaid leaving the parties to bear their own costs.

---

5 *Joginder Kumar* v. *State of U.P.*, (1994) 4 SCC 260 : 1994 SCC (Cri) 1172
6 *Siddharth* v. *State of U.P.*, 2021 SCC OnLine All 630