

requirement of law for mentioning the names of all the witnesses in the FIR, the object of which is only to set the criminal law in motion.¹

79. Laconic information received on telephone giving no details of offence—Could not have been said to be First Information.—In the circumstances of the case, the laconic information received on telephone giving no details of the offence could not have been said to be the first information and the SHO did the right thing in reaching the spot on the basis of the information and registering first information report on the basis of statement of PW 1. There was also no force in the contention that since the FIR was sent to the Magistrate on the next day inference of concoction could be drawn against the prosecution. The Session Judge had noted that the FIR was lodged on 16.8.1986 at 4.50 p.m. and it was sent at 9.20 p.m. on the next day, which was a Sunday, to the Magistrate. This cannot be said to be so unusual that the very credibility of the FIR having been lodged at a particular time could be doubted. The Sessions Judge had also rightly noted that on all the documents prepared during investigation, FIR number was mentioned which ruled out the possibility of the FIR having been registered after the investigation.²

80. Object and use—Object of FIR is to set the criminal law in motion.—The object of FIR is to set criminal law into motion and in the instant case the criminal law could not have been said to have been set into motion by the said diary entry at all. Setting criminal law into motion in other words means requiring investigating agency to take steps towards investigation, make some efforts for investigating the crime.³

81. Object of FIR is to put the Police in motion.—Object of lodging FIR is to put the Police in motion. It is statutory right of the complainant. It must be recorded at once. Police cannot wait until it is certain that offence has been committed. Private complaint can be entertained. *Locus standi* of complainant is the concept foreign to criminal jurisprudence.⁴

Though, impugned judgment was practically impossible to assail, counsel for the appellant, left no stone unturned. She made a large number of submission before Court. She firstly urged that, the prosecution case that, 'K' informed 'D' about the incident is unworthy of belief, because in the FIR which was lodged by the latter, there was no mention of this Court regrets that, Court could not accede to her contention for two reasons. *Firstly*, because the FIR is not an encyclopaedia. The object of the FIR is to set-out the gravamen of the allegations against the accused which Court found have been set out in the instant case. *Secondly*, what counsel to the appellant, seems to have lost sight of was that, 'D' when he made the FIR, must have been in a terribly mentally perturbed condition. After all, he had lost his real maternal uncle. If seized by grief, he omitted mentioning that 'K' had told him that

1. *Kunwarpal v. State of Uttarakhand*, 2015 (1) Crimes 217 at 220 (SC).
2. *Godu Ram v. State of Rajasthan*, 1997 Cri LJ 547 (Raj).
3. *Haresh Mahadev Kumble v. State of Maharashtra*, 2002 Cri LJ 1297 (Bom) : 2002 All MR (Cri) 1636 : 2002 (1) Bom LR 338.
4. *Naib Tahsildar Sri Vyasa Narain Umrao v. State of U.P.*, 2003 (9) AIC 603 (All).

Section 395 of the Penal Code which provides punishment to 10 years imprisonment and more and as such proviso (a)(i) to Section 167(2) of the Code is attracted and he can be detained for a maximum period of 90 days during investigation and not sixty days the Courts below rightly did not enlarge the petitioner on bail.¹

68. Accused in jail custody for three years without any charge-sheet submitted against him.—In these circumstances, direction was given by the Court to release the accused on bail on furnishing a personal bond of Rs. 500/- before the jail superintendent and the latter directed to forward the same to the Magistrate concerned.²

69. Accused person's right to be enlarged on bail under.—It can be exercised merely before filing of charge-sheet. After filing of charge-sheet Magistrate empowered to exercise its power under Section 437, Cr PC, 1973 alone.³

70. Accused to be produced before the Magistrate when order of remand is passed.—In view of the proviso (b) to sub-section (2) of Section 167 of the Code of Criminal Procedure, 1973 it is mandatory for the Magistrate to have the prisoner produced before him when he commits him to custody. Therefore, there can be no doubt about the fact that the detention of the applicants in jail at the stage of Section 167, Criminal Procedure Code was illegal because they had not been produced before, the Magistrate on the dates when the orders of remand were passed against them.⁴

71. Application for bail.—The petitioner was a young man and as per the prosecution case he had become a drug-addict. It is reasonable to assume that during this period of more than four years in jail, he must have kicked his bad habit. It has been submitted that he is the sole bread earner of his family. Though the charge-sheet had not been filed in the stipulated period, the petitioner could not avail of the said right, possibly because there was a lot of doubt regarding the applicability of the provision of Section 167(2). Proviso, of the Cr PC to the accused persons alleged to have committed offences under NDPS Act. It was held that in circumstances of cases, bail grand.⁵

72. Application not necessary.—It is the duty of the Magistrate to pass an order of bail on the expiry of 90/60 days period if the charge-sheet has not been filed within that period. It leaves no discretion with the Magistrate but obliges him to pass an order of bail and communicate the accused that he may furnish the requisite bonds. In the present case no such order was passed by the Magistrate or by the Sessions Judge. Once the matter was brought to the notice of the Sessions Judge that the charge-sheet has not been filed within

1. *Raju @ Rajaram Mandal v. State of Bihar*, 1995 (2) BLJ 75 : 1995 (1) East Cri C (NOC) 12 : 1994 (2) PLJR 849 (Pat).

2. *Mohd. Salim Khan v. State of U.P.*, 1982 Cri LJ 1242 (SC) : AIR 1982 SC 1096 : (1982) 2 SCC 347 : 1982 SCC (Cri) 427.

3. *Baburao Raghu Patil v. State of Maharashtra*, 1994 Cri LJ 192 (Bom).

4. *Izhar Ahmad v. State*, 1977 All Cri C 335 : 1977 All LR 589.

5. *Prasanjeet Basu Mallick v. State of Orissa*, 1997 Cri LJ 992 (Ori).

the period of 90/60 days. The order which was to be passed by the Court was that the accused is to be released on bail. This case is also authority for the proposition that no application for bail is necessary by the accused on completion of 90/60 days and before filing of the charge-sheet. This impliedly overrules the proposition according to which an application by the accused is necessary before he could be granted bail.¹

73. Arrest for Forest offences.—Apparently there is no provision of remand in the Indian Forest Act and in that view of the matter provision of Section 167(2), Cr PC will be applied in this case also and admittedly the proposition report has not been submitted up till not as submitted by the learned counsel for the petitioner. As such the order dated 19.12.1995 passed in G. Cases No. 197/95 by A.C.J.M. Kodaram is hereby quashed with this observation that if a petition for bail is filed under Section 167(2), Cr PC the A.C.J.M. Kodaram, will dispose of that application according to law keeping in mind that Section 167(2), Cr PC will apply. *Held*, the provisions of Section 167(2) of the Code apply in the case of prosecution for fresh offences.²

74. Arrest of accused for offence investigated.—Before remand, the accused must have been arrested for the offence which is investigated and forwarded to the Magistrate.³

75. Accused not to be remanded to custody when already granted bail.—It is clear that Magistrate is not empowered to remand the accused to custody under Section 209 (b), Cr PC if the accused was already granted bail.⁴

76. Bail—Grant of.—Whether a person is entitled to be released on bail in view of the provisions of Section 167(2) of the Cr PC does not depend upon the question whether there is a *prima facie* case against the accused and whether the offence is a serious nature. One has only to look to the question whether report under Section 173(2) is submitted to the Court within the prescribed period or not. If it is not submitted within the prescribed period, then the provisions of Section 167(2) of the Cr PC come into play and the Court cannot look to the merits of the case for refusing bail to such an accused. Such accused is entitled to the benefit of Section 167(2) as of right as soon as it is established that report under Section 173(2) of the Code is no submitted to the Court of the Magistrate within the prescribed period.⁵

It is seen that when the accused has been arrested on March 8, 1991, the Investigating Officer is enjoined to produce him before Magistrate having jurisdiction within 24 hours from the date of the arrest. Consequently, the limitation of one year would begin to run and be counted from next date of the arrest, namely, March 9, 1991. Since the charge-sheet has been filed on

1. *Amar Singh v. State of U.P.*, 1993 JIC 141 (All) (LB).
2. *Babulal Yadav v. State of Bihar*, 1996 (2) East Cri C 83 (Pat).
3. *State v. Santokh Singh*, 1956 Cri LJ 619 (MP).
4. *V. Chenna Reddy v. N. Vidyasagar Reddy*, (1983) 1 Cri LC 196 at 198 (All).
5. *Surajmal Kanaiyalal Soni v. State of Gujarat*, 1989 Cri LJ 1678 at 1682 (Guj) : (1989) 30 Guj LR 231 : 1988 Cri LR (Guj) 526.

sub-section, in Court's opinion, do not make report under sub-section (2) incomplete or unacceptable if certain documents on which the prosecution proposes to rely are not forwarded to the Magistrate. In fact, in Court's opinion, the provisions of sub-section (8) of Section 173 contemplates further report or reports under sub-section (2) to be filed even after filing of the first report under the provisions of Section 173(2) and such further report or reports shall be dealt in accordance with the provisions of Section 173(8) of the Cr PC.¹

82. Cognizance of offence and release of the accused.—At the expiration of the maximum period of fifteen days of detention of an accused person and the additional time necessary to bring him before a Magistrate allowed under Sections 61 and 167 an accused must either be released by the police under Section 167, security for his appearance if and when required being taken, or the Magistrate empowered in that behalf must either take cognizance if he has before him a police report (which ordinarily would be a report in the form laid down in Section 173, which he thinks makes out a *prima facie* case or he must release him. The provisions of Section 190 extend to any offence and notwithstanding the use of the word "police report" in Section 173, that Section 190(1) (b) cannot be restricted merely to non-cognizable offence and that the Magistrate is empowered by Section 190(1)(b) to take cognizance both of cognizable and non-cognizable offences upon a report such as is mentioned in Section 190(1)(b), Cr PC.²

83. Commitment of accused to Court of Session.—In the facts and circumstances so demand about the commitment of the accused to the Court of Session as also non-granting of bail or cancellation of bail if already granted is well justified by Section 437(1) read with the proviso and Section 437(5) then on the eve of commitment, the accused can be taken in custody notwithstanding his having been already released on bail though not on merits but only under Section 167(2). It would, therefore, be irrational to say that once the accused is released on bail under Section 167(2) he will have to be continued to be on bail even on the eve of the commitment to the Court of Session whereby Section 209(b) would be controlled by Section 167(2).³

84. Complaint under Section 420, IPC, for swindling of crores of rupees.—The Magistrate, without first considering the request of the police for the police custody has chosen to release the accused on interim bail. This by itself, is very curious. The Magistrate, first ought to have considered the request of the investigating officer. Only when the police custody sought for is found to be unnecessary, the Magistrate ought to have considered the plea of the accused for bail. The fact that the Magistrate released the accused on interim bail immediately on being produced before him. Without even considering the request of the police for police custody, has certainly caused

1. *Rohini v. State of Maharashtra*, 1997 Bom CR (Cri) 34.
2. *Bhola Nath Das v. Emperor*, AIR 1924 Cal 614 at 716.
3. *State of Maharashtra v. Khodya alias Khodidas Sonabhai Chavan*, 1984 Cri LJ 811 at 812, 813 : (1983) 2 Bom CR 100 (Bom).

corpus or pursue remedies as are available to him under the law but he cannot seek bail on the mere ground that at some earlier point of time his detention was unauthorised.¹

100. Expiry of statutory period.—Where the *challan* has been filed after the notice of bail petition is issued to the State the petitioner cannot be deprived of the concession of bail as he has approached the Court before the *challan* is filed. *Held*, filing of *challan* subsequent to filing of bail application does not affect right to bail.²

101. Extension of time for continuance of investigation.—It is the considered view of the High Court that the Investigating Officer must apply before the Magistrate for extension of time within the statutory period, *i.e.*, within the period of six months in a case triable by Magistrate as a summons case and within period of three years in a case exclusively triable by a Court of Session or a case coming under Chapter XVIII of the Indian Penal Code. Whatever may be the special reasons, a prayer of the Investigating Officer cannot be entertained by the Court which is beyond the period enjoined by law. *Held*, after lapse of statutory period if a request is made for extension of time for further investigation, the request cannot be allowed.³

102. Facilities to accused.—Police should not refuse any legal advisor of the accused any interview with him and any relation from supplying food and clothing.⁴

103. Failure of releasing the petitioner on bail on the date of filing the application and passing the remand order thereafter held to be illegal and without authority.—While considering the above provisions, the Full Bench in *Surinder Kumar's* case⁵ referred to the case *Baldev Singh v. State of Punjab*,⁶ decided by a Full Bench of the Court and noticed the observations made by S.S. Sandhwalia, J. (as he then was) to the following effect (at page. 1665) :

“The arrest and detention of an accused person for he purposes of investigation of the crime forms an integral part of the process therefore, Section 167 of the new Code provides a step therein, being the judicial sanction for the custody of an accused person, either wit the police or what is conveniently called judicial custody’. This section, in general, and sub-section (2) with the proviso thereto, directly relates to the arrest, custody or release of an accused person, and, therefore, it is clearly a procedural provision embedded firmly in the scheme of investigation process.”

The attention of the Judges of the Full Bench was drawn to the following further observations made in *Baldev Singh's* case.⁷

1. *Duri Behera v. Suratha Behera*, (1987) 2 Cri LJ 1462 at 1464 (Ori).
2. *Bajrang v. State of Haryana*, 1996 (1) East Cri C 576 : 1996 (1) EFR 108 (SC).
3. *Dilip Kumar Roy v. State of West Bengal*, 1993 East Cri C 600 (Cal).
4. *Amolak Ram v. Emperor*, 32 Cri LJ 1022 : AIR 1932 Lah 13.
5. 1977 Cri LJ 1266 (P&H).
6. (1975) 77 Pun LR 534 : 1976 Cri LJ 1662.
7. 1975 Cri LJ 1662 : (1975) 77 Punj LR 534.