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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIRCUIT BENCH AT KOLHAPUR
CRIMINAL APPELLATE JURISDICTION

CR. APPEAL NO. 218 OF 2026

Nilesh Vithoba Gadade

...Appellant

Versus

The State Of Maharashtra

...Respondent

*Mr. Abad Ponda, Senior Counsel i/b Mr. Pritesh A. Kharade, Mr. Sajid A. Bagwan, Sumit Tiwari, Samyak Bhatkar for the Appellant.
Mr. Shishir. S. Hiray, Chief PP a/w Mahalaxmi Ganpathy Addl. PP & Smt. S. N. Deshmukh, APP for the Respondent-State.*

**Coram : Sharmila U. Deshmukh &
Neeraj P. Dhote, JJ.**

Date : October 08, 2026.

FINAL ORDER : (Per Neeraj P. Dhote J.)

1. Considering the issue involved and by consent of both sides, the appeal is heard finally at the admission stage.
2. This is an Appeal under Section 12 of the Maharashtra Control of Organized Crime Act, 1999 (for short "MCOCA") against the order dated 8th September, 2026 granting 90 days extension to complete the investigation, passed by the learned Additional Sessions Judge and Special Judge, (MCOCA Court), Sangli below Remand Application dated 07th September, 2026 in respect of accused Nos. 1, 2, 4, 5, 6, 8 and 9 in C.R. No. 235 of 2026 registered with Sanjaynagar Police Station, District

Sangli for the offences punishable under Sections 103(1), 189(4), 332(a) (c), 49 and 13 of the Bharatiya Nyaya Sanhita, 2023; Sections 3, 5, 25, and 27 of the Arms Act; Sections 37(1)(3)/135 and 142 of the Maharashtra Police Act; and Sections 3(1)(i), 3(1)(ii), 3(2), 3(4), and 4 of the MCOCA.

3. The prosecution's case, as stated in paragraph No. 4 of the appeal memo, is reproduced below:

“(a) It is the prosecution case that the First Informant, Sandeep Balu Bandgar, is the son of Vithal @ Balu Bandgar, a former labour (hamali) union representative at the Sangli Market Yard, and the nephew of Maruti Bandgar, a Director of the Sangli Krishi Utpanna Bazar Samiti. The prosecution alleges that the First Informant has known the Appellant for about 10-12 years, from the period when the Appellant was working at the said Market Yard, and was acquainted with Accused Nos. 02 to 05.

(b) It is further the prosecution's case that on 10/06/2026, in the evening, the Appellant went to the residence of one Laxman Kharat, a labour mukadam at Aurangabad Railway Station, Taluka Jat, and allegedly fired gunshots near his residence and demanded that Kharat either vacate the railway-station labour contract or pay an amount of Rs.10,00,000/-, failing which he would be killed. It is alleged that on 11/06/2026 at about 08.00 hours, Balu Bandgar and Maruti Bandgar accompanied Kharat to Jat Police Station to lodge a complaint in that regard and that, at about 16.30 hours on the same day, the Appellant came to the police station and allegedly confronted them and warned them to stay out of the matter.

(c) It is the prosecution's further case that on 11.06.2026 at about 18.15 hours, the Appellant, along with Accused Nos.

2 to 5, allegedly went to the residence of the complainant in a black Thar-type SUV. It is alleged that the Appellant entered the compound, inquired about Balu Bandgar, caught hold of his minor son, Vedant Maruti Bandgar, aged about 14 years, and allegedly fired a pistol shot at his head from close range, resulting in his death. Accused Nos. 02 and 03 are alleged to have provided cover with weapons, while Accused Nos. 04 and 05 are alleged to have threatened the persons present at the spot. Thereafter, all the accused are alleged to have fled from the spot in the said vehicle."

4. The Appellant is arraigned as accused No. 1 in the aforesaid crime. He was arrested on 14th June 2026 and produced before the learned Judicial Magistrate, Sangli on 15th June, 2026 and remanded to police custody till 18th June, 2026. Thereafter, by an order dated 18th June, 2026, the Appellant's police custody was further extended till 20th June, 2026. Thereafter, by an order dated 20th June, 2026, the Appellant came to be remanded to judicial custody.

5. On 08th July, 2026, pursuant to the approval accorded by the Special Inspector General of Police, Kolhapur Range, the aforesaid sections under MCOCA came to be added in the aforesaid C.R. and the matter came to be transferred to the file of the Special Judge, MCOCA, Sangli. On 18th August, 2026, the Appellant was produced before the Special Judge, MCOCA, and was remanded to police custody till 24th August, 2026. Thereafter, by an order dated 24th August, 2024, the Appellant was remanded to judicial custody till 07th September, 2026.

On 07th September, 2026, the Investigating Officer submitted a report before the learned Special Judge, MCOCA, Sangli seeking extension of the period for completion of investigation and filing of the charge-sheet by a further period of 90 days from 10th September, 2026 under Section 21(2)(b) of the MCOCA. The Special Judge, MCOCA, Sangli issued notice to the accused persons, which came to be served on 08th September, 2026. The Special Judge, MCOCA, Sangli passed the impugned order allowing the report submitted by the prosecution and extended the period for completion of investigation and filing of the charge-sheet for a further period of 90 days from 10th September, 2026

6. It is submitted by the learned Senior Counsel for the Appellant that, the application submitted for extension of time was prepared and presented by the Investigating Officer, which merely records that it was presented through the Special Public Prosecutor (SPP), who signed the same and stated that *he has filed the same*. There was no endorsement of whatsoever nature on the application or on any other contemporaneous document demonstrating that the Special Public Prosecutor had perused the application, examined the papers and material collected during the investigation, had independently applied his mind to the question whether further detention of the accused was necessary for completion of investigation, had himself arrived at the satisfaction contemplated by Section 21(2)(b) of the MCOCA, had

instructed the Investigating Officer to file the application, had settled, vetted, or approved the contents of the application, or had otherwise independently considered and endorsed the request for extension. The said omission assumes considerable significance, as the application under Section 21(2)(b) of the MCOCA requires the Public Prosecutor to apply his mind independently to the material and to the necessity for further detention and continuation of investigation. The said requirement was not satisfied in the case at hand. The satisfaction and the application of mind by the Public Prosecutor must be reflected from the record and cannot be supplied subsequently by oral assertions. The defect cannot be cured by a subsequent oral assertions that the Special Public Prosecutor had perused the papers, discussed with the Investigating Officer, suggested alterations or modifications, and thereafter directed the Investigating Officer to file the application. The learned Special Court ought to have examined the application as it stood when it was presented, and not by reference to subsequent explanations or oral submissions seeking to establish that, certain steps were taken by the learned Special Public Prosecutor but were not recorded anywhere on the contemporaneous record. The omission was significant. Mere presence of the Special Public Prosecutor in the court was not sufficient. The extension granted by the learned Special Court was mechanical and against the settled position under the law. In

support of his submissions, he relied on the decisions in:

- i. Hitendra Vishnu Thakur And Another v. State of Maharashtra And Others, [(1994) 4 SCC 602];*
- ii. Darshan Subhash Nandagawali v. State of Maharashtra, Through Police Station Officer, [2023 SCC OnLine Bom 1162];*
- iii. Shaikh Moin Shaikh Mehmood v. State of Maharashtra, Through Ramtirth Police Station, [2020 SCC OnLine Bom 968];*
- iv. Akshay Mahadeo Kamble v. State of Maharashtra, Through Secretary and Others, [2026 SCC OnLine Bom 158];*
- v. State of Maharashtra v. Surendra Pundalik Gadling and Others, [(2019) 5 SCC 178].*

7. It is submitted by the learned Public Prosecutor that, the affidavit of the Sub-Divisional Police Officer, Miraj Division, District Sangli, was submitted in the Appeal. He submitted that there is no specific format under the law for an application seeking extension of time to complete the investigation and file the charge-sheet. The report submitted by the Investigating Officer was scrutinized by the Special Public Prosecutor before submitting to the learned Special Judge, MCOCA, Sangli. During submissions, the learned Public Prosecutor though tendered across the Bar a copy of the same affidavit along with a copy of the report dated 05th September, 2026 under the signature of the Sub-Divisional Police Officer, Miraj Division, addressed to the Special Public Prosecutor before the learned Special Court, he fairly admitted that the said report

was not placed before the learned Special Judge. He submitted that in the judgment of Surendra Gadling (supra), the Apex Court carved out an exception and the ratio will not apply to the case at hand as there are two reports in this case. He further fairly admitted that the impugned order was passed on the report dated 07th September, 2026, which was at page Nos. 125 to 142.

8. The only aspect to be considered and decided in the present appeal is whether the report submitted before the learned Special Judge, Sangli for extension of time to complete the investigation was as per the requirement of Section 21 of the MCOCA. The said provision is quoted below:

"21. Modified application of certain provisions of the Code

(1) Notwithstanding anything contained in the Code or in any other law, every offence punishable under this Act, shall be deemed to be a cognizable offence within the meaning of clause (c) of section 2 of the Code and "cognizable case" as defined in that clause shall be construed accordingly.

(2) Section 167 of the Code shall apply in relation to a case involving an offence punishable under this Act subject to the modifications that, in sub-section (2),-

(a) the references to "fifteen days," and "sixty days," wherever they occur, shall be construed as references to "thirty days" and "ninety days", respectively;

(b) after the proviso, the following proviso shall be inserted, namely:-

Provided further *that if it is not possible to complete the investigation within the said period of ninety days, the Special Court shall extend the said period upto one hundred and eighty days, on the report of the Public Prosecutor indicating the progress of the investigation and the specific reasons for the detention of the accused beyond the said period of ninety days.*

(3) Nothing in section 438 of the Code shall apply in relation to any case involving the arrest of any person on an accusation of having committed an offence punishable under this Act.

(4) Notwithstanding anything contained in the Code, no person accused of an offence punishable under this Act shall, if in custody, be released on bail or on his own bond, unless-

(a) the Public Prosecutor has been given an opportunity to oppose the application of such release; and

(b) where the Public Prosecutor opposes the application, the Court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail.

(5) Notwithstanding anything contained in the Code, the accused shall not be granted bail if it is noticed by the Court that he was on bail in an offence under this Act, or under any other Act, on the date of the offence in question.

(6) The limitations on granting of bail specified in sub-section (4) are in addition to the limitations under the Code or any other law for the time being in force on the granting of bail.

(7) The police officer seeking the custody of any person for pre-indictment or pre-trial interrogation from the judicial custody shall file a written statement explaining the reason for seeking such custody and also for the delay, if any, in seeking the police custody."

9. Perusal of the aforesaid decisions cited by the learned Senior Counsel for the Appellant shows that, the position under the law in respect of the issue involved in this Appeal is well settled.

10. In *Hitendra Vishnu Thakur* (supra), the case was under the Terrorist and Disruptive Activities (Prevention) Act, 1987 (TADA). One of the question for consideration was about the true ambit and scope of Section 20(4) and Section 20(8) of the TADA in the matter of grant of bail to an accused brought before the Designated Court and the factors which the Designated Court has to keep in view while dealing with an

application for grant of bail under Section 20(4) and for grant of extension of time to the prosecution for further investigation under clause (bb) of Section 20(4) and incidentally whether the conditions contained in Section 20(8) of the TADA control the grant of bail under Section 20(4) of the Act. The observation in para 19 of the said judgment shows that, Section 20(4) of the TADA made Section 167 of Cr.P.C. applicable in relation to case involving an offence punishable under TADA, subject to the modifications specified therein. After clause (b) of sub-section (4) of Section 20 of TADA, another clause (bb) was inserted, which reads as under :

"(bb) in sub-section (2), after the proviso, the following proviso shall be inserted, namely:-

'Provided further that, if it is not possible to complete the investigation within the said period of one hundred and eighty days, the Designated Court shall extend the said period up to one year, on the report of the Public Prosecutor indicating the progress of the investigation and the specific reasons for the detention of the accused beyond the said period of one hundred and eighty days; and' "

Considering the said clause (bb), following observations were made:

"23. We may at this stage, also on a plain reading of clause (bb) of sub-section (4) of Section 20, point out that the Legislature has provided for seeking extension of time for completion of investigation on a report of the public prosecutor. The Legislature did not purposely leave it to an investigating officer to make an application for seeking extension of time from the court. This provision is in tune with the legislative intent to have the investigations completed expeditiously and not to allow an accused to be kept in continued detention during unnecessary prolonged investigation at the whims of the police. The Legislature expects that the investigation must be completed with

utmost promptitude but where it becomes necessary to seek some more time for completion of the investigation, the investigating agency must submit itself to the scrutiny of the public prosecutor in the first instance and satisfy him about the progress of the investigation and furnish reasons for seeking further custody of an accused. A public prosecutor is an important officer of the State Government and is appointed by the State under the Code of Criminal Procedure. He is not a part of the investigating agency. He is an independent statutory authority. The public prosecutor is expected to independently apply his mind to the request of the investigating agency before submitting a report to the court for extension of time with a view to enable the investigating agency to complete the investigation. He is not merely a post office or a forwarding agency. A public prosecutor may or may not agree with the reasons given by the investigating officer for seeking extension of time and may find that the investigation had not progressed in the proper manner or that there has been unnecessary, deliberate or avoidable delay in completing the investigation. In that event, he may not submit any report to the court under clause (bb) to seek extension of time. Thus, for seeking extension of time under clause (bb), the public prosecutor after an independent application of his mind to the request of the investigating agency is required to make a report to the Designated Court indicating therein the progress of the investigation and disclosing justification for keeping the accused in further custody to enable the investigating agency to complete the investigation. The public prosecutor may attach the request of the investigating officer along with his request or application and report, but his report, as envisaged under clause (bb), must disclose on the face of it that he has applied his mind and was satisfied with the progress of the investigation and considered grant of further time to complete the investigation necessary. The use of the expression "on the report of the public prosecutor indicating the progress of the investigation and the specific reasons for the detention of the accused beyond the said period" as occurring in clause (bb) in sub-section (2) of Section 167 as amended by Section 20(4) are important and indicative of the legislative intent not to keep an accused in custody unreasonably and to grant extension only on the report of the public prosecutor. The report of the public prosecutor, therefore, is not merely a formality but a very vital report, because the consequence of its acceptance affects the liberty of an accused and it must, therefore, strictly comply with the requirements as contained in clause (bb). The request of an investigating officer for extension of time is no substitute for the report of the public prosecutor. Where either no report as is envisaged by clause (bb) is filed or the report filed by the public prosecutor is not accepted by the Designated Court, since the grant of extension of time under clause (bb) is neither a formality nor automatic, the necessary corollary would be that an accused would be entitled to seek bail and

the court 'shall' release him on bail if he furnishes bail as required by the Designated Court. It is not merely the question of form in which the request for extension under clause (bb) is made but one of substance. The contents of the report to be submitted by the public prosecutor, after proper application of his mind, are designed to assist the Designated Court to independently decide whether or not extension should be granted in a given case. Keeping in view the consequences of the grant of extension i.e. keeping an accused in further custody, the Designated Court must be satisfied for the justification, from the report of the public prosecutor, to grant extension of time to complete the investigation. Where the Designated Court declines to grant such an extension, the right to be released on bail on account of the 'default' of the prosecution becomes infeasible and cannot be defeated by reasons other than those contemplated by sub-section (4) of Section 20 as discussed in the earlier part of this judgment. We are unable to agree with Mr Madhava Reddy or the Additional Solicitor General Mr Tulsi that even if the public prosecutor 'presents' the request of the investigating officer to the court or 'forwards' the request of the investigating officer to the court, it should be construed to be the report of the public prosecutor. There is no scope for such a construction when we are dealing with the liberty of a citizen. The courts are expected to zealously safeguard his liberty. Clause (bb) has to be read and interpreted on its plain language without addition or substitution of any expression in it. We have already dealt with the importance of the report of the public prosecutor and emphasised that he is neither a 'post office' of the investigating agency nor its 'forwarding agency' but is charged with a statutory duty. He must apply his mind to the facts and circumstances of the case and his report must disclose on the face of it that he had applied his mind to the twin conditions contained in clause (bb) of sub-section (4) of Section 20. Since the law requires him to submit the report as envisaged by the section, he must act in the manner as provided by the section and in no other manner. A Designated Court which overlooks and ignores the requirements of a valid report fails in the performance of one of its essential duties and renders its order under clause (bb) vulnerable. Whether the public prosecutor labels his report as a report or as an application for extension, would not be of much consequence so long as it demonstrates on the face of it that he has applied his mind and is satisfied with the progress of the investigation and the genuineness of the reasons for grant of extension to keep an accused in further custody as envisaged by clause (bb) (supra). Even the mere reproduction of the application or request of the investigating officer by the public prosecutor in his report, without demonstration of the application of his mind and recording his own satisfaction, would not render his report as the one envisaged by clause (bb) and it would not be a proper report to seek extension of time. In the absence of an

appropriate report the Designated Court would have no jurisdiction to deny to an accused his indefeasible right to be released on bail on account of the default of the prosecution to file the challan within the prescribed time if an accused seeks and is prepared to furnish the bail bonds as directed by the court. Moreover, no extension can be granted to keep an accused in custody beyond the prescribed period except to enable the investigation to be completed and as already stated before any extension is granted under clause (bb), the accused must be put on notice and permitted to have his say so as to be able to object to the grant of extension."

11. In *Shaikh Moin Shaikh Mehmood* (supra), the order impugned was by the Trial Court allowing the application for extension of time to file the charge-sheet in the crime registered under the provisions of Indian Penal Code, Arms Act and MCOCA. It was the case of the Appellant therein that, the report for extension of time to file the charge-sheet did not satisfy the requirement of Section 21(2)(b) of MCOCA. This Court, considering the earlier judgments of the Hon'ble Apex Court, observed that Section 21(2)(b) of the MCOCA and Section 20(4)(bb) of the TADA were practically identical and Section 49(2)(b) of the Prevention of Terrorism Act, 2002, which replaced the TADA Act, also carried the identical provision. Considering the issue involved therein, it was observed as under :

"21. Notwithstanding the strenuous submissions of the learned APP-Shri San Shri Sangle, we find in the case in hand, the application tendered "through the APP" can be hardly said to be a report of the prosecutor. A representative of the Police Station, Ramtirth is shown to have signed below the said application. In fact, the certified copy of the application placed before us indicates that no authority has signed below the said application and the prosecutor has signed the said application which hardly could be said to be his report.

22. In the light of the above, we deem it advantageous, for the benefit of the litigants and the lawyers, to observe that a report as

understood under the above reproduced provisions of the various enactments, has to be an independent report comprising of (a) reasons evidencing the personal satisfaction of the public prosecutor as regards the progress in investigation made, (b) the reasons for which the investigation could not be completed and (c) the object to be achieved through investigation for which an extended period of time is necessary. These ingredients have to form a part of the report of the prosecutor and he has to tender the said report to the Special Court under his signature. It cannot be in the form of a miscellaneous application to be filed for seeking extension of time. In addition to his report, he should append the report of the Investigation Agency so as to convince the Special Court that extension needs to be granted."

12. In *Darshan Subhash Nandagawali* (supra), the Appellant was one of the accused in the crime registered for the offences punishable under the Indian Penal Code, Arms Act and MCOCA. The challenge in the said Appeal was to the orders passed by the Trial Court extending the time for investigation. This Court considering the decision in *Hitendra Vishnu Thakur* (supra), made the following observation:

"8. We had an opportunity to peruse the applications filed by the learned Public Prosecutor before the Special Court on 07.11.2022 and second application dated 07.01.2023, with the copies of applications produced along with the Pursis dated 19.04.2023, which were addressed by the Investigating Officer to the Public Prosecutor attached to the Special Court, dated 05.11.2022 and 06.01.2023. On minute observations, we are surprised to know that all the contents word by word, paragraph by paragraph, including full stops and commas, in these applications are identically the same. Thus, the only conclusion which could be drawn is that application which was forwarded by the Investigating Officer on 05.11.2022 addressed to the Public Prosecutor attached to the Special Court, is copied word by word and paragraph by paragraph in the application addressed to the Special Court dated 07.11.2022 by the Public Prosecutor. This application presented before the Special Court is jointly signed by the Investigating Officer and Public Prosecutor attached to the Special Court.

11. The above dictum as laid down by the Apex Court clearly goes to show that the duty of the Public Prosecutor attached to the Special

Court is something special in which he has to apply his mind independently and satisfy himself as to whether there is actually need for extension of time to file charge-sheet. Only then the Public Prosecutor, after verifying the case papers and reasons given by the Investigating Officer, may apply by submitting his report to the Special Court for such extension. The Public Prosecutor along with his report may attach the request of the Investigating Officer made to him, but he has to apply his mind and demonstrate by giving his reasons as to why he is supporting the contentions raised by the Investigating Officer for extension of time.

12. The Apex Court very clearly observed in the above quoted paragraph 23 that the Public Prosecutor may label his report as a report or as an application for extension and it would not be of much consequence, so long as it demonstrates on the face of it, that the Public Prosecutor has applied his mind and he is satisfied with the progress of the investigation, the genuineness of the reasons for grant of extension thereby keeping accused in further custody. However, mere reproduction of the application or request of the Investigating Officer by the Public Prosecutor in his report, without demonstration of the application of his mind and recording his own satisfaction, would not render his report as the one envisaged in clause (b) proviso of Section 21(b) and it would not be a proper report to seek extension of time. Likewise, in absence of an appropriate report, the Designated Court would have no jurisdiction to deny to an accused his indefeasible right to be released on bail on account of default of the prosecution to file challan within the prescribed time, if the accused is ready and willing to furnish bail bonds. The Court is duty bound to protect the rights of accused and also to follow the law laid down and no extension can be granted beyond the prescribed period without following such law laid down under Section 21 and by the Apex Court in various decisions."

13. In *Akshay Mahadeo Kamble* (supra), the order impugned was passed by the Trial Court granting extension of 90 days sought by the Investigating Officer for completing the investigation and filing the charge-sheet. One of the ground raised in the Appeal was that, the application for extension of time was not filed by the Public Prosecutor but was filed by the Investigating Officer through the APP without his signature. This Court considering the provisions of Section 21 of the

MCOCA, made the following observations :

11. In support of the aforesaid grounds the learned counsel for the appellant heavily relied on the judgments of this Court as well as Hon'ble Apex Court. In Criminal Appeal No. 732 of 2018 (supra), following observation is made by this Court.

"Both the applications filed under Section 21 of the MCOC Act, were addressed to the learned Special Judge, but the applications were prepared and signed by the investigating officer, Sub-Divisional Police Officer, Sub Division Osmanabad. On the application dated 18th September, 2018, there is signature of Motichand Rathod, SDPO and on the left side of this signature, there is signature of Special Prosecutor appointed by the State showing that through Special Prosecutor application was presented before the learned Special Judge by SDPO. The contents of the application also show that the application was drafted, prepared by the investigating officer. Except the signature of the learned Special Prosecutor on both the applications, there is nothing to show that the learned Special Prosecutor has considered the contentions of the investigating officer made for getting extension of time and he was satisfied that there were reasons for extension of time. Thus, the applications as they are, do not show that the Special Prosecutor had applied his mind, he was satisfied about the grounds mentioned for getting extension of time. On the application dated 19th September, 2018, in addition to the signature of the learned Special Prosecutor, two more words are written like "submitted by".

With this observation this Court had allowed the appeal setting aside the order of extension of time for investigation passed by the learned Special Judge in the said matter.

12. Learned counsel for the appellant has also relied on the judgment in of this court at Nagpur Bench in Criminal Appeal No. 43 of 2023 (supra), wherein following observation is made.

"We had an opportunity to peruse the applications filed by the learned Public Prosecutor before the Special Court on 07.11.2022 and second application dated 07.01.2023, with the copies of applications produced along with the Pursis dated 19.04.2023, which were addressed by the Investigating Officer to the Public Prosecutor attached to the Special Court, dated 05.11.2022 and 06.01.2023. On minute observations, we are surprised to know that all the contents word by word, paragraph by paragraph, including full stops and commas, in these applications are identically the same. Thus, the only conclusion

which could be drawn is that application which was forwarded by the Investigating Officer on 05.11.2022 addressed to the Public Prosecutor attached to the Special Court, is copied word by word and paragraph by paragraph in the application addressed to the Special Court dated 07.11.2022 by the Public Prosecutor. This application presented before the Special Court is jointly signed by the Investigating Officer and Public Prosecutor attached to the Special Court".

In the same judgment this Court has made reference to the observation of the Hon'ble Apex Court in the case of Hitendra Vishnu Thakur v. State of Maharashtra, (1994) 4 SCC 602 1994 SCC (Cri) 1087 as follows:

"The above dictum as laid down by the Apex Court clearly goes to show that the duty of the Public Prosecutor attached to the Special Court is something special in which he has to apply his mind independently and satisfy himself as to whether there is actually need for extension of time to file charge-sheet. Only then the Public Prosecutor, after verifying the case papers and reasons given by the Investigating Officer, may apply by submitting his report to the Special Court for such extension. The Public Prosecutor along with his report may attach the request of the Investigating Officer made to him, but he has to apply his mind and demonstrate by giving his reasons as to why he is supporting the contentions raised by the Investigating Officer for extension of time".

On going the above observations, it is clearly evident that the application/report for extension is supposed to be filed independently by the Special Public Prosecutor and it cannot be merely submitted by the Investigating Officer through learned Special Prosecutor. It has been specifically observed that the request of Investigating Officer for extension of time is no substitute for the report of Public Prosecutor as per the proviso to Section 21 of MCOC Act. Moreover, in the light of observation of the Hon'ble Apex Court in the case of Hitendra Thakur (supra), it has been laid down that the Public Prosecutor attached to the Special Court is having some special duty in which he has to apply his mind independently and satisfy himself whether there is actual need for extension of time to file charge-sheet. Only on such satisfaction of Public Prosecutor after verifying the material on record, he shall submit report to the Special Court for such extension. A duty is therefore cast upon the learned Prosecutor so attached, to apply his mind for seeking extension and that too after going through material on record. He cannot merely act as a post office. By observing this, the Hon'ble Apex Court as well as this Court in the aforesaid judgments, have rejected the extension of time to file charge-sheet, as prayed. The same view is reiterated by this Court in

the case of Shaikh Moin v. State of Maharashtra in Criminal Appeal No. 502 of 2020 that how should be the approach of Public Prosecutor by making the following observation.

"In Asiam Babalal Desai (supra), Hon'ble Justice Ahmed, speaking for the majority, referred with approval to the law laid down in Rajnikant Jivanlal (supra) wherein it was observed as under:

The public prosecutor is expected to independently apply his mind to the request of the investigating agency before submitting a report to the court for extension of time with a view to enable the investigating agency to complete the investigation. He is not merely a post office or a forwarding agency. A public prosecutor may or may not agree with the reasons given by the investigating officer for seeking extension of time and may find that the investigation had not progressed in the proper manner or that there has been unnecessary, deliberate or avoidable delay in completing the investigation. In that event, he may not submit any report to the court under clause (bb) to seek extension of time. Thus, for seeking extension of time under clause (bb), the public prosecutor after an independent application of his mind to the request of the investigating agency is required to make a report to the Designated Court indicating therein the progress of the investigation and disclosing justification for keeping the accused in further custody to enable the investigating agency to complete the investigation. The public prosecutor may attach the request of the investigating officer along with his request or application and report, but his report, as envisaged under clause (bb), must disclose on the face of it that he has applied his mind and was satisfied with the progress of the investigation and considered grant of further time to complete the investigation necessary. The use of the expression "on the report of the public prosecutor indicating the progress of the investigation and the specific reasons for the detention of the accused beyond the said period" as occurring in clause (bb) in sub-section (2) of Section 167 as amended by Section 20(4) are important and indicative of the legislative intent not to keep an accused in custody unreasonably and to grant extension only on the report of the public prosecutor. The report of the public prosecutor, therefore, is not merely a formality but a very vital report, because the consequence of its acceptance affects the liberty of an accused and it must, therefore, strictly comply with the requirements as contained in clause (bb). The request of an investigating officer for extension of time is no substitute for the report of the public prosecutor. Where either no report as is envisaged by clause (bb) is filed or the report filed by the public prosecutor is not

accepted by the Designated Court, since the grant of extension of time under clause (bb) is neither a formality nor automatic, the necessary corollary would be that an accused would be entitled to seek bail and the court 'shall' release him on bail if he furnishes bail as required by the Designated Court."

14. In *State of Maharashtra* (supra), the Appeal was by the State against the order passed by the High Court setting aside the order passed by the Trial Court granting extension of time for investigation, on the ground that the mandatory requirement of the proviso of clause (b) of sub-section (2) of Section 43D of the Unlawful Activities (Prevention) Act, 1967 was not met. In that case, the first report for extension of time for investigation was made by the Investigating Officer and on the same day, another report was submitted by the Public Prosecutor. It was observed that *"Undoubtedly the request of an IO for extension of time is not a substitute for the report of the Public Prosecutor but since we find that there has been, as per the comparison of the two documents, an application of mind by the Public Prosecutor as well as an endorsement by him, the infirmities in the form should not entitle the respondents to the benefit of the default bail when in substance there has been an application of mind."*

15. Coming to the case at hand, the Special Judge, MCOCA, Sangli has passed the following order, which is impugned in this Appeal.

"1. Accused No.1 Nilesh Gadade Accused No. 2 Kiran Shankar Lokhande, accused No. 4 Sagar @ Nanaso Manik Chougule No. 5 Atul Dadaso Waydandé and No. 6 Sandesh @ Sandry Ramchandra

Ghagare, Accused No. 8 Malik Shaikh, and Accused No. 9 Mohammad Jamal Nadaf are produced on V.C. from concerned Jails, there respective Advocates are present. I.O. and Additional P. P. present.

Learned additional P. P. filed report for extension of period of 90 days as per section 21(2)(b). Copy of application of served on accused in Jail.

Heard learned A.P.P., I. O. also heard advocates representing respective accused. Perused report. The offence of registered on 12.06.2026. The extension is sought as absconding accused are to be traced, investigation in respective of bank detail and money trails of syndicate activities are to be traced, permission for charge-sheet from competent authority is to be obtained. Considering the these reasons as well as previous investigation papers, I hold that extension is necessary.

Hence, the order.

ORDER

1. *The extension of further period of the 90 days from 10.09.2026 is granted as prayed as per section 21(2)(b) of MCOC Act."*

16. The aforesaid impugned order is passed on the report/application by the Sub-Divisional Police Officer, Miraj Division, Miraj dated 07th September, 2026. The copy of the said report is enclosed to the Appeal from page Nos. 125 to 142. Perusal of the same goes to show that, the Investigating Officer gave the details of the crime, the investigation done, and the grounds for extension of time up to 90 days to carry out the investigation from 10th September, 2026. The last page of the said report/application shows that, it was filed through the Special P.P. There is a signature under the words 'filed by', which appears to be made by the Special P.P. Whatever report/application was filed, upon which the impugned order came to be passed, was by the Investigating Officer.

The said application nowhere shows that it was the report as contemplated under the provisions of Section 21(2)(b) of MCOCA, which requires the report of the Public Prosecutor. There is nothing to show that, the Special P.P. applied his mind to the request made by the Investigating Officer. The said report/application nowhere indicates that the Special P.P. was satisfied with the request made by the Investigating Officer for extension of time for investigation. Mere endorsement 'filed by' and the signature below that, cannot be said that the said report/application fulfilled the requirement of the aforesaid provision requiring submission of the report by the Public Prosecutor. The said report/application is *sans* independent consideration, application of mind and satisfaction of the Special P.P. Even the order impugned nowhere records the finding that, the report/application was submitted after application of mind and satisfaction of the Special P.P. From this, it is clear that, the impugned order was passed on the report/application which did not fulfill the requirement of law. Though there is no prescribed format for such report/application, as contended by the learned Special P.P., the aforesaid provision of Section 21 of the MCOCA and the law laid down in the aforesaid decisions mandates that, the report/application for extension of time to carry out the investigation should satisfy the aforesaid requirement under the law. The report/application filed by the Investigating Officer, upon which the

impugned order is passed, was merely filed through the learned Special P.P. with his signature. In these facts and circumstances of the case and in the light of the above legal position, the impugned order is unsustainable in the eye of law and therefore needs to be interfered with.

17. As regards prayer clause (b) is concerned, it is submitted by the learned Senior Counsel for the Appellant that the Appellant has already filed an application for bail before the learned Additional Sessions Judge and Special Judge, (MCOCA Court), Sangli which the Appellant would pursue and he would therefore not press prayer clause (b).

18. At this stage the learned Special P.P. submits that, the State wants to challenge this order before the Hon'ble Supreme Court and prays for stay for a period of four (4) weeks. The prayer is opposed by the learned Senior Counsel for the Appellant. He submit that, since this Court has allowed the Appeal, the right has accrued to the Appellant for default bail and the Appellant has filed the application before the learned Additional Sessions Judge and Special Judge, (MCOCA Court), Sangli and the stay will affect the Appellant's right. This Court has considered the matter on merits. Considering the ground on which the impugned order is quashed and set aside and as the full text of this order would be ready today itself, the prayer made by the learned Special P.P. stands rejected. In view of the above, the following order:

ORDER

- i. The Criminal Appeal is allowed.
- ii. The impugned order dated 8th September, 2026 passed by the Additional Sessions Judge and Special Judge, (MCOCA Court), Sangli in Crime No. 235 of 2026 is quashed and set aside.

[Neeraj P. Dhote, J.]

[Sharmila U. Deshmukh, J.]