

**IN THE HIGH COURT AT BOMBAY
APPELLATE SIDE, BENCH AT AURANGABAD**

910. CRI.APPLN/6603/2014

YUNUS S/O CHAND SHAIKH
V/S
THE STATE OF MAHARASHTRA

Mr. Shaikh Mazhar A. Jahagirdar, Advocate for applicant.

Mrs. M.A. Deshpande, APP for State.

CORAM : T.V. NALAWADE, J.
DATED : 29th January, 2015.

ORDER :

1. The application is filed for bail. Both the sides are heard. This Court has perused the papers of investigation.

2. The application is filed mainly on the ground which is available under section 167 (2) of Criminal Procedure Code, the ground of default. The learned counsel for the applicant also argued the matter on merits.

3. It appears that the applicant came to be arrested on 6.8.2014 in C.R. No. 43/2014 registered in Shevgaon Police Station, District Ahmednagar for the offences punishable under sections 395, 307, 149 etc. of Indian Penal Code and sections 3 r/w. 25 and 4 r/w. 25 of Arms Act and also for offence punishable

under section 120-B of I.P.C. He came to be produced before Magistrate for taking in custody on 6.8.2014 and some period of police custody was given. It appears that since 6.8.2014, the applicant is behind bars and as yet chargesheet is not filed. The learned APP submitted that the chargesheet could not be filed as this Court in Criminal Application No. 4026/2014 (Division Bench) had granted stay to the addition of provisions of the Maharashtra Control of Organised Crimes Act, 1999 ('MCOC Act' for short) and till the appearance of APP, interim relief was granted as per the prayer clause 'C' of the said proceeding. She submitted that the stay came to be vacated on 20.11.2014 and the stay was in existence from 15.9.2014. She submitted that this period of stay needs to be excluded from the period given under section 167 of Cr.P.C. and so, the bail cannot be granted on default ground. In this regard, it needs to be mentioned that present applicant was not party to the aforesaid proceeding bearing Criminal Application No. 4026/2014. Thus, it cannot be said that the addition of the provisions of MCOC Act, 1999 was stayed in favour of the present applicant. In any case, till today the chargesheet is not filed against the present applicant. The present proceeding came to be filed on 5.12.2014. The application before Judicial Magistrate, First Class was filed on 11.11.2014.

4. The learned APP took this Court through the provisions of section 21 of MCOC Act, 1999 and she submitted that notice of the proposed action was given to the present applicant and so, the extension granted by the Special Judge under the Special Act can be used against present applicant also. If the provision of section 21 of the Act is read in relation to section 167 of Cr.P.C., it can be said that the purpose behind it is to authorize the detention of the accused beyond the period of 90 days which is mentioned in section 167 of Cr.P.C. The said extension was sought against the other accused and not against the present applicant. If the extension was given, that was against the other accused and not against the present applicant. The other accused was arrested before the present applicant and so, that step was taken by the investigating agency. It is a fact that till today no application was moved before the Special Judge for seeking extension as provided under section 21 of the MCOC Act in respect of the present applicant. The aforesaid facts show that the present applicant has been behind bars since 6.8.2014, for the period of more than 90 days and no extension is granted under the provisions under the Special Act. The developments of the present case do not show that even after filing of the present matter, such steps were taken by the investigating agency. As

the chargesheet is not filed, there is no meaning now in using the aforesaid provisions against the applicant and the provision of section 167 of Cr.P.C. can be used in the the present matter. This Court holds that there was no extension obtained under section 21 of the Special Act in respect of the present applicant. Thus, on the ground of default, the applicant is entitled to get bail.

5. The learned APP submitted that the applicant is the history sheeter and many cases are pending against him. List of some cases is given. For deciding the matter which is filed under section 167 (2) of Cr.P.C. the merits are not supposed to be discussed. So, this Court holds that the applicant is entitled to get bail under section 167 (2) of Cr.P.C.

6. On merits also, it can be said that the incident in question took place out of dispute between two businessmen. These two businessmen want to control the business of sand. There are allegations against the present applicant that in incident dated 15.2.2014, the applicant took his men to the side of excavation, they were armed with weapons including fire arms, they used the fire arms, they caused injuries to the persons from other side, they robbed them and set on fire the

vehicles of the other side. From the year 1998 as many as 15 cases were shown to be registered against the present applicant as per the submissions. The submissions made, however, show that one proceeding is quashed by this Court and in nine cases, the applicant is acquitted. It appears that in addition to the present crime, there is one more crime registered against the present applicant, but it is also in respect of the same incident and that is for the offence punishable under section 435, 149 etc. of I.P.C. and section 4 r/w. 25 of Arms Act. In view of the nature of dispute and the record of the present case, this Court holds that on merits also, the applicant is entitled to get bail. He has been behind bars since 6.8.2014.

7. In the result, the application is allowed. The applicant is to be released on bail on his furnishing PR and SB of Rs. 30,000/- (Rupees thirty thousand) with one solvent surety of like amount. He is not to tamper with the prosecution witnesses. He is not to commit similar offence.

[T.V. NALAWADE, J.]

ssc/