

IN THE HIGH COURT OF JUDICATURE AT BOMBAY,  
BENCH AT AURANGABAD.  
APPELLATE SIDE JURISDICTION

**CRIMINAL APPLICATION NO. 6028 OF 2015**

DEEPAK S/O PRALHAD HAKE  
VERSUS  
THE STATE OF MAHARASHTRA

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Advocate for Applicant : Mr. Nilesh S. Ghanekar.

APP for Respondent : Mrs. M. A. Deshpande.

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CORAM : **INDIRA K. JAIN, J.**

DATE : 08<sup>th</sup> December, 2015.

ORDER:

. Here is an application for bail in Crime No.145 of 2015 registered at Gandhi Chowk Police Station, District Latur for the offences punishable under Sections 394 and 395 read with 34 of the Indian Penal Code and under Sections 3(1), (2), (4), (5) and 21 of the M.C.O.C. Act.

2 Heard Mr. Nilesh S. Ghanekar, learned counsel for Applicant and Mrs. M. A. Deshpande, learned APP for Respondent / State. Perused case papers.

3 Facts giving rise to present application may be stated in brief as under:

Complainant Suresh Ranchod Rajput was serving in courier agency. On 30<sup>th</sup> May, 2015 he lodged report with police station alleging therein that after collecting cash of Rs.42,00,000/- when he alongwith Himmat Parmar was proceeding from office at around 07:20 pm – 07:25 pm they were apprehended by dacoits and bag containing cash was snatched and taken away from their custody.

4 Applicant was arrested in connection with said crime on 9<sup>th</sup> June, 2015. He was remanded to police custody till 20<sup>th</sup> June, 2015. Since then he is in judicial custody.

5 According to Applicant on 1<sup>st</sup> October, 2015 an application for extension of time beyond statutory period was submitted by learned Special Public Prosecutor and vide order thereon period was extended by learned Special Judge under Section 21 of the M.C.O.C. Act. The main grievance of Applicant is that without notice to Applicant time was extended and for want of notice Applicant is entitled to bail under Section 167 (2) of the Code of Criminal Procedure. In support thereof learned counsel relied upon the judgment of the Court at Principal Seat

at Bombay in the case of **Mr. Bhagyesh @ Bablu Nitin Shah Vs. State of Maharashtra**<sup>1</sup>.

6 Another contention raised on behalf of Applicant is that charge-sheet was not filed within the statutory period and in view of default right is accrued to him and he be enlarged on bail under Section 167 (2) of the Code of Criminal Procedure.

7 Application is strongly objected on behalf of prosecution on the ground that prior approval to invoke the provisions of M.C.O.C. Act was granted by Special I.G., Nanded range on 4<sup>th</sup> September, 2015 and thereafter by following the procedure of law Applicant was re-arrested. In view of the subsequent development learned APP submits that Applicant would not be entitled to benefit under Section 167(2) of the Code of Criminal Procedure.

8 It can be seen from police papers that Applicant was arrested on 9<sup>th</sup> June, 2015. He was remanded to police custody till 20<sup>th</sup> June, 2015. Provisions of M.C.O.C. Act were made applicable on 4<sup>th</sup> September, 2015 when approval was granted by competent authority.

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1 2009 ALL MR (Cri) 1187

9           On 1<sup>st</sup> October, 2015 remand was extended beyond the period of ninety days in view of the provisions of Section 21 of the M.C.O.C. Act. There is no material on record to indicate that notice of application was served on the Applicant. In the case of *Mr. Bhagyesh @ Bablu Nitin Shah Vs. State of Maharashtra* (*supra*) following the decision of the Honourable Apex Court in **Hitendra Vishnu Thakur Vs. State of Maharashtra**<sup>1</sup> the Court at Principal Seat at Bombay held that notice has to be given to Accused before granting extension and if notice is not served on Accused he would be entitled to bail under Section 167(2) of the Code of Criminal Procedure.

10           Facts in the present case are identical. Necessity of giving notice to Accused is not complied with. Under these circumstances application will have to be allowed. Hence the following order –

### **ORDER**

- I. Criminal Application No.6028 of 2015 is allowed  
in terms of prayer clause (B).
- II. Applicant Deepak s/o Pralahad Hake is released

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1 1994 SCC (Cri) 1087

on bail in Crime No.145 of 2015 registered at Gandhi Chowk Police Station, District Latur for the offences punishable under Sections 394 and 395 read with 34 of the Indian Penal Code and under Sections 3(1), (2), (4), (5) and 21 of the M.C.O.C. Act, on P.R. and S.B. of Rs.50,000/- (Rupees Fifty Thousand Only) each.

- III. Applicant shall not tamper with the prosecution evidence and shall make himself available as and when required.
- IV. Bail before the Sessions Court.

**[ INDIRA K. JAIN, J. ]**

*ndm*