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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

BAIL APPLICATION NO.583 OF 2015

Altaf Ashraf Shaikh
R/at & Post – Gavan,
Taluka Panvel, Dist – Raigad.
(Presently lodged at Taloja Central Prison,
Navi Mumbai.)

... Applicant

Vs

The State of Maharashtra
At the instance of Nhava Sheva Police Station,
Vide their C.R.No.I-06/2014

... Respondent

Mr.Pankaj Kavale, for the Applicant.

Ms.S.V.Gajare, APP for the Respondent – State.

CORAM : REVATI MOHITE DERE, J.

RESERVED ON : 1st SEPTEMBER, 2015.

PRONOUNCED ON : 8th SEPTEMBER, 2015

ORDER :

1. By this application, the applicant seeks his enlargement on bail under Section 167(2) of the Code of Criminal Procedure, 1973, in connection with C.R.No.I-06 of 2014 registered with the Nhava Sheva

Police Station, for the alleged offence punishable under Sections 397, 384 of the Indian Penal Code. Later, the provisions of the MCOC Act were applied to the said case.

2. Learned Counsel for the Applicant submits that the applicant is entitled to be enlarged on bail under Section 167(2) of the Cr.P.C., on the ground of parity. He submits that another co-accused - Pritam Janardhan Koli, in the aforesaid case has been enlarged on bail by this Court (Coram: Abhay M.Thipsay, J.) vide order dated 16th December, 2014 passed in Criminal Bail Application No.1379 of 2014. He contended that the present applicant is identically placed as the co-accused – Pritam Koli and as such seeks bail on the ground of parity.

3. A few dates as are relevant for deciding the present application are as under :-

23 rd February, 2014	-	The alleged incident took place.
20 th March, 2014	-	The applicant was arrested.
6 th June, 2014	-	The prosecution preferred an application seeking extension of time under Section 21(2) of the MCOC Act.

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| 21 st June, 2014 | - | The applicant preferred an application under Section 167(2) of the Cr.P.C. seeking his enlargement on bail. |
| 23 rd June, 2014 | - | The Special Judge rejected the applicant's application for bail under Section 167(2) of the Cr.P.C., and granted extension of time as permissible under Section 21(2) of the MCOC Act. |

4. Learned Counsel for the Applicant submitted that the learned Special Judge granted extension of time to file the charge-sheet, after the applicant's application for bail under Section 167(2) of the Cr.P.C., came to be rejected. He submitted that even the grounds on which extension was sought under Section 21(2) of the MCOC Act, were not valid or cogent.

5. Learned APP opposed the bail application. She submitted that the applicant was involved in serious offences and as such his application ought not to be considered. She does not dispute the aforesaid dates. She only disputes the fact that extension of time was granted first and thereafter the learned Judge rejected the application filed by the applicant under Section 167(2) of the Cr.P.C. She submits that there were valid grounds on which

extension was sought under Section 21(2) of the MCOC Act.

6. Heard the learned counsel at length. The question that arises is whether the applicant's application for bail under Section 167(2) of the Cr.P.C., was rejected first and thereafter the extension was granted or vice-versa. The said issue along with the other issue as to whether valid and proper reasons were given for seeking extension of time to conduct the investigation, were considered in detail by this Court (Coram: Abhay M.Thipsay, J.) vide order dated 16th December, 2014 passed in Criminal Bail Application No.1379 of 2014. Paragraphs 13 to 19 of the said order reads thus :-

“13. I have examined the application for extension of time as made by the Public Prosecutor in the present case.

14. I have gone through the reasons seeking the extension and justifying the extension as mentioned in the said application. I do not find that the reasons are convincing, or even relevant.

15. I have also gone through the order passed by the trial court granting the extension as prayed for. The only reason that has been given for granting extension is that the applications for bail

filed under section 167(2) of the Code, were already rejected. This could not have been a ground for extending the period. Thus, there appears to be non application of mind in that regard.

16. What is significant is that the application for extension of time had been made on 6th June 2014, but till 20th June 2014 i.e. the date on which the applicant made his application for his release on bail, no extension had been granted.
17. It was possibly due to the failure of the State to produce the accused before the Court on the dates fixed by the Court. Possibly because of such non production, the accused could not be heard in the matter of extension of time, and therefore, the question of extension could not be decided. However, the fault in that regard, i.e. non production lies with the State itself, and not with the accused applicant.
18. Since there were no valid or proper reasons for extending of time of investigation, and since extension was granted only after it was decided to reject the bail application – if not after rejecting it – the order refusing bail does not seem to be proper. It is evident from the record that extension was granted just to defeat the

provisions regarding the 'mandatory bail'.

19. In my opinion, the applicant was entitled to be released on bail by virtue of the provisions of the first proviso to section 167(2) of the Code. The right to be released on bail that had accrued in favour of the applicant has been wrongly denied to him. Effect should be given to that right.”
7. The case of the applicant is squarely covered by the order dated 16th December, 2014 passed by this Court (Coram:Abhay M.Thipsay,J.) in Criminal Bail Application No.1379 of 2014 and hence the Applicant is entitled to be enlarged on bail on the ground of parity, on the following terms and conditions :-

ORDER

- i) The Applicant is enlarged on bail on furnishing P.R.Bond in the sum of Rs.50,000/- with one or two local sureties in the like amount ;
- ii) The Applicant shall attend the Nhava Sheva Police Station, everyday between 5.00 p.m. to 7.00 p.m. for a period of 45 days from today and thereafter on every Sunday, till the disposal of the case against him ;

- iii) The Applicant shall not contact, meet or approach any of the prosecution witnesses, in any manner whatsoever.
- 8. The Application is allowed and disposed of in above terms.
- 9. Needless to observe, that the learned Judge shall decide the case on its own merits uninfluenced by the observations made in this order.
- 10. Parties to act on the authenticated copy of this order.

REVATI MOHITE DERE, J.