

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL BAIL APPLICATION NO. 2521 OF 2014**

Dinesh Shantaram Jaitapkar,
Aged 40 years, Occu : Business,
R/o. Dipti Saffire, Natwarnagar Road No.3,
Jogeshwari (East), Mumbai.
(The Applicant is presently lodged at
Thane Central Prison)

...Applicant

Versus

The State of Maharashtra
(At the instance of E.O.W, Unit-3,
C.B. C.I.D., Mumbai in C.R. No. 06/2013)

...Respondent

Mr. Ashok M. Mundargi, Sr. Advocate i/by Mr. D. S. Manerkar and
Mr. S. D. Bhujbal for the Applicant

Ms. P. P. Shinde, A.P.P for the Respondent-State

Mr. M. K. Kocharekar for the original complainant

CORAM : REVATI MOHITE DERE, J.

RESERVED ON : 23rd MARCH, 2015

PRONOUNCED ON : 10th APRIL, 2015

ORDER :

1. Heard learned Counsel for the applicant, the learned A.P.P for the State and the learned Counsel for the original complainant.

2. By this application, the applicant seeks his enlargement on bail in connection with C.R. No. 6 of 2013 registered with the Economic Offences Wing, Unit-3, C.B. C.I.D., Mumbai, for the alleged offences punishable under Sections 420, 465, 467, 468, 471, 201, 204, 120B and 34 of the Indian Penal Code ('IPC') and under Sections 3 and 4 of the Maharashtra Protection of Interest of Depositors (Financial Establishments) Act, 1999 ('MPID Act'). The bail is essentially sought under Section 167(2) of the Code of Criminal Procedure, 1973 ('Cr.P.C').

3. A few dates which are germane for deciding the present application are as under :

The applicant came to be arrested on 4th January, 2013 in connection with C.R. No. 1 of 2013, registered with the Jogeshwari Police Station, Mumbai, for the alleged offences punishable under Section 420 r/w 34 of the IPC. Thereafter, on 5th January, 2013, he was produced before the learned Metropolitan Magistrate, 10th Court at Andheri, Mumbai and the learned Magistrate was pleased to grant police custody till 14th January,

2013. Whilst the applicant was in police custody, the investigation of the aforesaid C.R which was registered with the Jogeshwari Police Station came to be transferred to the Economic Offences Wing, Unit-3 and the case was re-registered as C.R No. 6 of 2013 for the same offences. On 14th January, 2013, the learned Magistrate was pleased to further grant police custody of the applicant till 19th January, 2013; and on 19th January, 2013, the applicant was sent to judicial custody. On 19th February, 2013, the applicant preferred an application seeking his enlargement on bail, being Bail Application No. 35 of 2013. The learned Additional Chief Metropolitan Magistrate, 47th Court, Mumbai, was pleased to enlarge the applicant on bail vide order dated 28th February, 2013, subject to certain conditions. During investigation, the police added Sections 201 and 204 of the IPC to the aforesaid C.R. On 22nd August, 2014, the complainant, in the aforesaid C.R, filed a Misc. Application No. 405 of 2014 before the Additional Chief Metropolitan Magistrate, 47th Court, Mumbai, and sought cancellation of the applicant's bail, as the applicant had flouted the condition of bail i.e. the applicant had sold his properties, despite the condition restraining him from doing so. Accordingly, on 22nd August, 2014, the applicant's bail came to be cancelled and the applicant was taken

into judicial custody. On 29th October, 2014, the applicant preferred an application before the learned Sessions Judge, seeking regular bail, on the ground that the property was sold for settling the dues of investors. The said bail application came to be rejected. On 22nd September, 2014, i.e. during the pendency of the applicant's bail application before the Sessions Court, the Investigating Officer of the Economic Offences Wing, Unit-3 added Sections 3 and 4 of the Maharashtra Protection of Interest of Depositors Act ('MPID') and Sections 120B, 465, 467, 468 and 471 of the IPC to the aforesaid C.R. On 30th October, 2014, the applicant preferred an application seeking his enlargement on bail, under Section 167(2)(a)(ii) of the Cr.P.C, on the ground, that he was in custody for more than 60 days and that charge-sheet had not been filed in the said case. The learned Special Judge was pleased to reject the said bail application vide order dated 13th November, 2014.

4. Mr. Mundargi, the learned Senior Counsel for the applicant submitted that the applicant was entitled to the indefeasible right that had accrued to him under Section 167(2) of the Cr.P.C, as admittedly, the police had not filed a charge-sheet either under the IPC or under the MPID on 30th

October, 2014. He submitted that the right that had accrued to the applicant, was an indefeasible right and the learned Special Judge ought to have allowed the said application preferred by the applicant and released the applicant forthwith under Section 167(2) of the Cr.P.C. The learned Senior Counsel, in the alternative, submitted that, even if the applicant had committed a breach of the condition imposed on him whilst enlarging him on bail, the applicant had already served four to five months in jail for the same, which is sufficient punishment for the alleged breach. According to him, the breach of the condition was not deliberate but to make good the payments of the borrowers. He submitted that several properties of the applicant have been attached and that almost 50% of the amount has been secured.

5. Learned A.P.P and the learned Counsel appearing for the original complainant, opposed the bail application. They submitted that the applicant is not entitled to be enlarged on bail, either, under Section 167(2) of the Cr.P.C or on merits. The learned A.P.P on the instructions of the Investigating Officer, submitted that the charge-sheet has been filed in the present case, on 20th March, 2015.

6. Perused the papers. The applicant seeks bail essentially under Section 167(2) of the Cr.P.C. The moot question is, whether Section 167(2) of the Cr.P.C applies to the facts of the present case. Section 167 is reproduced herein below:

“167. Procedure when investigation cannot be completed in twenty-four hours.- (1)

(2) The Magistrate to whom an accused person is forwarded under this section may, whether he has or has not jurisdiction to try the case, from time to time, authorise the detention of the accused in such custody as such Magistrate thinks fit, a term not exceeding fifteen days in the whole; and if he has no jurisdiction to try the case or commit it for trial, and considers further detention unnecessary, he may order the accused to be forwarded to a Magistrate having such jurisdiction:

Provided that—

(a) the Magistrate may authorise the detention of the accused person, otherwise than in the custody of the police, beyond the period of fifteen days, if he is satisfied that adequate grounds exist for doing so, but no Magistrate shall authorise the detention of the accused person in custody under this paragraph for a total period exceeding—

(i) ninety days, where the investigation relates to an offence punishable with death, imprisonment for life or imprisonment for a term of not less than ten years;

(ii) sixty days, where the investigation relates to any other offence, and, on the expiry of the said period of ninety days, or sixty days, as the case may be, the accused person shall be released on bail if he is prepared to and does furnish

bail, and every person released on bail under this sub-section shall be deemed to be released under the provisions of Chapter XXXIII for the purposes of that Chapter;

.....”

7. Whether Section 167(2) of the Cr.P.C applies to the facts of the present case, is to be considered in the light of the provision of Section 167(2) of the Cr.P.C. It is not disputed that the applicant was arrested in connection with the aforesaid C.R on 4th January, 2013 and that whilst in police custody, the C.R, which was registered with the Jogeshwari Police Station, was transferred to the Economic Offences Wing, Unit-3, Mumbai, and the case was re-registered as C.R No. 6 of 2013 alleging offences punishable under Section 420 r/w 34 of the IPC. It is also not disputed that on 19th February, 2013, the applicant filed an application, seeking his enlargement on bail and that on 28th February, 2013, the applicant came to be enlarged on bail. The terms and conditions on which the bail was granted, are reproduced as under :

“Order

(i) *The application is allowed.*

(ii) *The applicant/accused Dinesh Shantaram Jaitapkar is hereby released on furnishing bail bond of Rs.1,00,000/- (Rupees one lac)*

with one or two solvent sureties to the satisfaction of the Court and P.R.Bond in like amount.

(iii) The applicant/accused Dinesh Shantaram Jaitapkar is further directed to deposit cash security of Rs.1,00,000/- (Rupees one lac) in the court till disposal of the trial.

(iv) The applicant/accused is further directed to attend the concerned police station for interrogation on every Monday between 9.00 to 12.00 p.m. till further order.

(v) The applicant/accused is further directed to cooperate with the investigation.

(vi) The applicant/accused is further directed, not to alienate or dispose of the property, seized by the I.O., till further order.”

8. It is pertinent to note, that the applicant, despite the direction imposed by clause (vi) of the order dated 28th February, 2013, sold two of his properties i.e. (i) one house having Gat No. 297, Hissa No. 531, Panhale Tarfe Saundal, Taluka Rajapur, Dist. Ratnagiri; and (ii) one house having Gat No. 297, Hissa No. 528, Panhale Tarfe Saundal, Taluka Rajapur, Dist. Ratnagiri. The said fact is undisputed. However, the explanation offered is that the said properties were sold to satisfy the debts of the borrowers. It is also pertinent to note, that no application, admittedly was moved by the applicant, seeking permission of the Court/or for modification of the said condition. As the applicant had breached the condition set out in clause (vi) of the order dated 28th February, 2013 enlarging the applicant on bail, the

complainant sought cancellation of the applicant's bail. Admittedly, the applicant's bail was cancelled vide order dated 22nd August, 2014, as he had breached the condition of bail, in particular, clause (vi) of the said order. The bail of the applicant was cancelled under Section 437(5) of Cr.P.C. The applicant, thereafter, moved an application seeking his enlargement on bail in the Sessions Court, which came to be rejected vide order dated 29th October, 2014.

9. A perusal of the provision of Section 167(2) shows that the same would not apply to the facts of the present case, inasmuch, as the applicant was enlarged on bail on merits and thereafter his bail came to be cancelled under Section 437(5) of Cr.P.C, as he had flouted the condition imposed by the learned Magistrate, whilst granting bail. Section 167(2) would apply to a person who continues to be in detention, on failure of the police, to file a charge-sheet within the stipulated period. In such cases, an indefeasible right, would accrue to a person, as a result of the same. In the present case, by no stretch of imagination, it can be said that the detention of the applicant had continued for applicability of Section 167(2). There was a clear break in the detention of the applicant, inasmuch as, he was

enlarged on bail and thereafter, his bail was cancelled under Section 437(5) of Cr.P.C. Hence, Section 167(2) will have no application to the facts of the present case. Under Section 167(2), an indefeasible right accrues to a person, who continues to be in detention on account of non-filing of the charge-sheet, within the stipulated time frame. In the present case, the applicant, on his own accord, was required to be taken into custody for flouting the condition of bail, and hence, he cannot seek the benefit of the provision of Section 167(2) of Cr.P.C. The statutory right which accrues to an accused under Section 167(2) of Cr.P.C cannot be equated with a person who was enlarged on bail under Section 439 of Cr.P.C and whose bail was cancelled under Section 437(5) of Cr.P.C and who continues to be in custody for the same. Such an accused has no right to claim statutory bail under Section 167(2) of Cr.P.C, as there is a clear break in his custody. The two cannot be equated.

10. As far as merits are concerned, it is not necessary to go into the same, as according to the learned A.P.P, the charge-sheet in the said case has been filed on 20th March, 2015. Accordingly, the prayer for bail under Section 167(2) of Cr.P.C is rejected. However, if an application seeking

regular bail is filed before the trial Court, after filing of the charge-sheet, the same shall be considered by the learned Special Judge, on its own merits, in accordance with law. It is made clear, that this Court has not considered the application on merits, but only under Section 167(2) Cr.P.C.

11. The application is disposed of accordingly.
12. Parties to act on the authenticated copy of this order.

REVATI MOHITE DERE, J.