

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

CRIMINAL APPLICATION NO. 1883 OF 2016

ASHOK S/O DATTATRAYA JADHAV
VERSUS
THE STATE OF MAHARASHTRA

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Advocate for Applicant : Mr. Rajendra S. Deshmukh
APP for Respondent : Mr. M. B. Bharaswadkar.
Advocate for Complainant : Mr. G. G. Kadam.

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CORAM : **INDIRA K. JAIN, J.**
DATE : 06th May, 2016.

ORDER:

. By this application, Applicant / Accused is seeking bail on the count of failure of investigating agency to submit charge-sheet within a period of 60 days as provided under Section 167(2) of the Code of Criminal Procedure.

2 Heard the learned counsel for parties. Perused papers annexed to the application.

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

On 7th July, 2015 informant Ramdas Taru lodged report to Shivajinagar Police Station, Nanded against Applicant and one Vijay Namdeo Borse, Manager of FX Capital a financial establishment

alleging that Applicant allured Complainant to invest money with the said financial establishment so that he would get benefit of interest to the tune of 20% per month out of which 8% was to be retained by manager of FX Capital.

4 On the basis of report crime was registered for the offences punishable under Sections 420 and 406 read with 34 of the Indian Penal Code and Sections 3, 4, 5 and 7 of the Maharashtra Protection of Interest of Depositors (in Financial Establishments) Act, 1999.

5 Applicant was arrested on 4th January, 2016 and produced before the learned Magistrate on 5th January, 2016. Police custody remand of Applicant was granted on 5th January, 2016.

6 Applicant submits that he was charged with the offences not punishable with death, imprisonment for life or imprisonment for a term not less than ten years and so charge-sheet ought to have been filed within 60 days as provided in Section 167(2) of the Code of Criminal Procedure. According to Applicant since charge-sheet was not filed within 60 days he is entitled to default bail. A grievance is made that application filed by him was wrongly rejected by the learned Additional Sessions Judge, Nanded.

7 It is not in dispute that Applicant was arrested on 4th January, 2016 and produced before the learned Magistrate on 5th January, 2016. The date of first remand of Applicant is thus 5th January, 2016. It is also not in dispute that offences for which Applicant was arrested were not punishable with death, imprisonment for life or imprisonment for a term not less than ten years. In such a case charge-sheet ought to have been filed within 60 days as provided in Section 167(2) of the Code of Criminal Procedure.

8 In this connection learned APP submitted that 5th March, 2016 was the 60th day and so application itself was premature. Learned APP submitted that on 5th March, 2016 Investigating Officer has submitted an application to the Sessions Court and informed that provisions of Section 467, 468 and 471 of the Indian Penal Code have been added in the offences. This application reached the Court at 05:42 p.m. It is submitted that offence under Section 467 IPC is punishable with imprisonment for life and so charge-sheet was to be submitted within 90 days and not within 60 days.

9 For considering aforesaid contentions raised by the parties it would be appropriate to reproduce the provisions of Section 167(2) of the Code of Criminal Procedure here:

“167 (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, for 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 so released under the provisions of Chapter XXXIII for the purposes of that Chapter;

(b) no Magistrate shall authorise detention in any custody under this section unless the accused is produced before him;

(c) no Magistrate of the second class, not specially empowered in this behalf by the High Court, shall authorise detention in the custody of the police.

Explanation I.— For the avoidance of doubts, it is hereby declared that, notwithstanding the expiry of the period specified in paragraph (a), the accused shall be detained in custody so long as he does not furnish bail.

Explanation II.— If any question arises whether an accused person was produced before the Magistrate as required under paragraph (b), the production of the accused person may be proved by his signature on the order authorising detention.”

10 From the careful reading of the proviso to Section 167(2) of the Code of Criminal Procedure it is apparent that said proviso is intended only for keeping an arrested person under detention for the purpose of investigation and the Legislature has provided a maximum

period for such detention. On expiry of said period further custody becomes unauthorized and so it is a mandate of law that arrested person shall be released on bail if he is prepared to and does furnish bail.

11 In the case on hand, so far as date of first remand and date of filing of application for bail by default is concerned, it is an undisputed fact that 5th January, 2016 is the date of remand and on 5th March, 2016 application for default bail was submitted to the Court.

12 Now moot question is when would 60 days period expire. For computation of period of 60 days when it comes to bail on account of default period commences from the date of first remand of Accused. So from 5th January, 2016 the period of 60 days would come to an end on 4th March, 2016. Admittedly charge-sheet was not submitted to the Court till 4th March, 2015 and on account of default of investigating agency to complete investigation within 60 days right had accrued to Applicant / Accused on 5th March, 2016.

13 In view of above this Court is of the view that Accused is entitled to be released on bail by default. Hence the following order –

ORDER

- I. Criminal Application No.1883 is allowed in terms of prayer clause (C).
- II. Applicant is released on bail in Crime No.108 of 2015 registered with Shivajinagar Police Station, Nanded for the offences punishable under Sections 420 and 406 read with 34 of the Indian Penal Code and Sections 3, 4, 5 and 7 of the Maharashtra Protection of Interest of Depositors (in Financial Establishments) Act, 1999, on P.R. and S.B. of Rs.15,000/- (Rupees Fifteen Thousand Only) each.
- III. Applicant shall not tamper with the prosecution evidence and shall make himself available as and when required for investigation.
- IV. Bail before the Trial Court.

[INDIRA K. JAIN, J.]