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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL APPLICATION NO. 2654 OF 2016

1. Akshay s/o Ravindra Kajare,
 2. Parmeshwar s/o Balasaheb Magar,
- Both R/o. Bhaji Mandi, Ranjangaon,
Tq. Gangapur, Dist. Aurangabad. ..APPLICANTS

VERSUS

The State of Maharashtra ..RESPONDENT

Mr A.S. Barlota, Advocate for applicants;
Mr C.V. Dharurkar, Addl. Public Prosecutor for respondent

CORAM : N.W. SAMBRE, J.

DATE : 16th JUNE, 2016

ORDER :

The applicants were arrested for the offence punishable under Section 392, 395 read with Section 34 of the Indian Penal Code vide Crime No. 17 of 2016.

2. As the charge sheet was not filed pursuant to the provisions of Section 167(2) of the Code of Criminal Procedure, the application was made by the applicants for grant of default bail, which was allowed on 16/04/2016. Thereafter, the accused persons furnished an application to comply with the conditions as are incorporated in the order of grant of bail passed on 16/04/2016, which application came to be rejected by learned magistrate on 21/04/2016, confirmed in Application No. 112 of 2016 by

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learned Sessions Judge, Vaijapur vide order dated 30/04/2016.

3. Learned Counsel for the applicants submits that once after exhausting statutory period of 90 days as provided under Code of Criminal Procedure for filing of the charge sheet, no charge sheet is filed, in such eventuality, legislature has conferred the benefit on the accused to seek bail in the matter. The provisions of Section 167(2) of Code of Criminal Procedure are held to be mandatory and as such, the order of release on bail passed by the Magistrate should have been taken to its logical end. Just because there is some delay in complying with the conditions of bail and in the intervening period i.e. from the point of order of grant of bail till the application moved for complying with the conditions, if the prosecution has filed charge sheet, by such act of prosecution, right of present applicants for releasing on bail conferred under Section 167(2) of the Code of Criminal Procedure cannot be taken away in absence of any express provision to that effect. According to him, the Court below have committed an error in relying upon the minority view expressed by the Apex Court in the matter of **Uday Mohanlal Acharya vs. State of Maharashtra** reported in **2001(1) Bom.C.R 354** and as such, he would submit that the applicants are entitled to be released on bail. He would submit that other co-accused is already ordered to be released on bail by this Court.

4. Learned A.P.P. while opposing the application would submit that the proposition of law as is cited cannot be disputed. According to him, while dealing with similar issue in the matter of **Umaji Raghunath**

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Shende and others vs. State of Maharashtra, reported in **2012 ALL MR (Cri) 1204**, this Court has also gone into merits of the matter and as such, according to him, in addition to issue of grant of default bail under Section 167(2) of the Code of Criminal Procedure, the matter is required to be considered on merits, particularly on the aspect of entitlement of applicants for grant of regular bail.

5. Having bestowed my thought to the submissions made, it is required to be noted that privileges as are conferred pursuant to the provisions of Section 167(2) of Code of Criminal Procedure are by the act of legislature. To regulate the same by putting embargo on such right has in fact already gone into and decided by the Apex Court in the matter of ***Uday Mohanlal Acharya*** cited supra. The Apex Court while dealing with similar eventuality has observed that once any right is conferred on the applicant by legislature, same cannot be taken away by the prosecution by raising the claim of dilution thereof, by submitting the charge sheet before completion of formalities of furnishing bail bond. Appropriate support can be drawn from the observations of the Apex Court in the aforesaid matter, particularly in paragraph-13 of the said judgment. Apart from above, the law laid down by the Apex Court (majority view) in the matter of ***Umaji Raghunath Shende***, cited supra, particularly the observations made in paragraph-3 are worth referring to reproduce.

“3. Learned Magistrate relied upon minority view taken in the decision in case of *Uday Mohanlal Acharya V/s State of Maharashtra* reported in AIR 2001 Supreme Court 1910 : [2001

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ALL MR (Cri) 713 (S.C.)]. What has been laid down in the case supra is that if the accused files an application for being released on bail and offers to furnish bail when the charge sheet is not filed within the period of 60 days (now 90 days), it amounts to accused availing indefeasible right for being released on bail and shall be released on bail. It was further held that subsequent filing of charge sheet in mean time does not extinguish right of accused to be released on bail. Learned Magistrate has misread the ratio laid down in the case supra by observing that “availing of the right to be released on bail” means not merely applying for bail but also furnishing sureties. This seems to be an erroneous view. If the accused files an application for being released on bail and offers to furnish bail, irrespective of the fact that whether the Magistrate disposes of that application or not, it amounts to the accused availing of his indefeasible right. Offers to furnish bail means applying for bail expressing willingness to furnish sureties as may be ordered by the Court. This does not include the time consumed in arranging for sureties, actually executing the bond of the accused and sureties, furnishing necessary affidavit relating to sufficiency or fitness of the sureties and completing other formalities as required under law. It is very unfortunate that learned Additional Sessions Judge in a very casual manner dealt with this aspect of the matter and ignored glaring flaws committed by the learned Magistrate in relying upon minority view in Uday Mohanlal Acharyas case, [2001 ALL MR (Cri) 713 (S.C.) (Supra). In an exactly similar situation, wherein the application for being released on bail was filed at 11 a.m. and at 3 p.m. prosecution filed charge sheet; the Honble Single Judge of this Court in Rajubhai @ Jacob Mathew Pinto & Anr. V/s State of Maharashtra reported in 2005 ALL MR (Cri) 290 by relying upon Division Bench decision of this Court in case of Ramesh Madhukar V/s State of Maharashtra reported in 1999(2) Mh.L.J. 554 and Uday Mohanlal Acharyas case, [2001

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ALL MR (Cri) 713 (S.C.)] (supra) held that once right to be released on bail is accrued and availed of by filing application for bail, filing of charge sheet posterior in point of time, will make no difference to the legal position."

6. Similar view is also expressed in the recent judgment of Apex Court in the matter of ***Union of India through C.B.I. vs. Nirala Yadav @ Raja Ram Yadav @ Deepak Yadav***, reported in ***A.I.R. 2014 SC 3036***. In view of above, the view as is expressed by the Magistrate and confirmed by learned Sessions Judge refusing release of the applicants on regular bail as the charge sheet is submitted is not sustainable in view of the proposition of law as referred to above.

7. As such, the application stands allowed. The applicants be released, in the light of order on the conditions as are incorporated by learned Magistrate in its order dated 16/04/2016 in Crime No. 17 of 2016 registered with MIDC Waluj Police Station, District Aurangabad, for the offence punishable under Sections 392, 395 read with Section 34 of the Indian Penal Code.

(N.W. SAMBRE, J.)

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