

sas

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL BAIL APPLICATION NO.304 OF 2016

Swapnil Kishore Junnare	..Applicant.
V/s.	
State of Maharashtra	..Respondent.

Mr.Aniket Nikam i/b. Aashish Satpute for the applicant.

Mr.Deepak Thakery, APP for respondent-State.

CORAM : A.M.BADAR, J.

DATED : 27TH JULY, 2016

P.C. :-

1. This is application by the applicant / accused in Crime No.182/2015 for offence punishable under section 376(2) registered with Gangapur Road Police Station, Nashik challenging the order dated 1st January, 2016 passed by the Special Judge and Additional Sessions Judge-1, Nashik thereby rejecting the application filed by the applicant / accused under section 167(2) of the Criminal Procedure Code for releasing him on bail due to non filing of the charge-sheet within a period of 90 days.

2. Heard the learned counsel for the applicant / accused. He argued that after his arrest on 21st September, 2015, the applicant / accused was produced before the learned J.M.F.C. on 22nd September, 2015. The period of 90 days lapsed on 20th December, 2015 but the charge-sheet was not filed by the Investigating Officer. The learned counsel further pointed out that at about 11.20 a.m. on 21st December, 2015, the applicant / accused filed an application claiming statutory bail under section 167(2) of the Criminal Procedure Code. Subsequently, the charge-sheet came to be filed, but still the learned Special Judge and Additional Sessions Judge rejected the application. This order, in submission of the learned counsel for the applicant, is *per se* illegal and needs to be quashed and set aside with consequent directions to enlarge the applicant / accused on bail.

3. I heard the learned APP. He submitted that the offence is serious and the trial has begun. He further argued that section 167(2) of the Criminal Procedure Code contemplates willingness of the applicant / accused to furnish bail.

4. I have carefully considered the submissions advanced as well as record made available. In the matter of ¹**Sayed Mohd. Ahmad Kazmi V/s. State (Government of NCT Delhi) and Ors.** the Hon'ble Supreme Court has categorically held in para 25 that it is well established that if an accused does not exercise his right to grant of statutory bail before the charge-sheet is filed, he loses his right to such benefit once such charge-sheet is filed and can thereafter only apply for regular bail. This implies that such statutory right has to be exercised prior to filing of the charge-sheet. It is well established that computation of statutory period is to be started from the first date of the remand by the learned Magistrate. In the case in hand, if we start computing the period of 90 days from the first date of remand i.e. 22nd September, 2015, the period of 90 days comes to an end on 20th December, 2015. As such, the Investigating Officer was obliged to file the charge-sheet by 20th December, 2015. It was not done on the pretext that 20th December, 2015 was Sunday. Thereafter, as seen from the record page 9 at about 11.20 a.m. of 21st December, 2015 the applicant / accused moved an application for statutory bail due to non filing of the

1 (2012) 12 Supreme Court Cases 1

charge-sheet against him. The endorsement of the Superintendent (Judicial) of the concerned Court goes to show that by that time, the charge-sheet was not filed and it was ultimately filed at about 4.20 p.m. on 21st December, 2015. This fact seems to have been admitted by the learned Additional Public Prosecutor appearing before the trial Court in his say by accepting the fact that period of 90 days came to an end on Sunday.

5. In this view of the matter, it was incumbent on the part of the Investigating Officer to file charge-sheet before the 90th day when the office of the Court was open. He could have filed the charge-sheet on 89th day. Perusal of the impugned order dated 1st January, 2016 goes to show that the learned Additional Sessions Judge has incorrectly decided the matter by holding that as the period of 90 days came to an end on 20th December, 2015, which was Sunday, the filing of the charge-sheet on the next day is permissible. Considering the mandatory provision under section 167(2) of the Criminal Procedure Code, such finding cannot be sustained.

6. In the result, the impugned order dated 1st January,

2016 passed by the learned Special Judge and Additional Sessions Judge-1, Nashik on the application Exhibit 7 in Sessions Case No.357/2015 is quashed and set aside.

- (i) The application is allowed. The applicant / accused in Crime No.182/2015 for the offence punishable under section 376(2) of the Indian Penal Code with Gangapur Road Police Station, Nashik be released on bail on his executing P.R. bond in the sum of Rs.25,000/- and on furnishing one or more sureties in the like amount;
- (ii) As a condition, the applicant / accused shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of accusation against him so as to dissuade him / her from disclosing such facts either to the Court or to any police officer and that he shall not tamper with the evidence;
- (iii) The applicant / accused shall co-operate for expeditious disposal of the trial which is stated to be part-heard;
- (iv) The applicant / accused shall not commit an offence

similar to the offence of which he is accused or suspected of commission;

(v) Breach of any of these conditions shall entail consequence of cancellation of bail;

(vi) The application is disposed of accordingly.

(A.M.BADAR, J.)