

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

CRIMINAL BAIL APPLICATION NO. 2174 OF 2015

Mr. Vijay Kasbe & Anr.

... Applicants.

V/s.

The State of Maharashtra

... Respondent.

Mr. Sanjeev Kadam, Advocate for the Applicants.

Mr. Pravin Chavan, Special P.P. a/with Mrs. S. D. Shinde, APP
for the Respondent- State.

CORAM : A. S. GADKARI, J.

DATE : 27th JANUARY, 2016.

P.C. :

1 The Applicants by the present application are seeking in-default bail, as contemplated under section 167 (2) of the Criminal Procedure Code, in connection with the C.R. No. 336 of 2015 registered with Dahisar Police Station dated 18th July, 2015 for the offences under sections 406, 408, 409, 420, 465, 467, 468, 471, 384 & 120-B r/w. 34 of the Indian Penal Code.

2 As per the prosecution case, in the present crime the Applicant No.1-Vijay Kasbe was arrested on 19th July, 2015. He was produced before the learned Magistrate for remand on 20th July, 2015. The time to submit charge-sheet in the present case is 90 days, as the maximum punishment prescribed is life

imprisonment. The investigating agency submitted the chargesheet on 16th October, 2015. The Applicant No.1 filed an Application under section 167(2) of the Cr.P.C. before the trial Court on 17th October, 2015 for the in-default bail.

3 The Applicant No.2-Ms. Harshada Arun Bendre was arrested on 25th July, 2015 and was produced before the Special Court on the same day. In her case also, the charge-sheet is submitted by the investigating agency on 16th October, 2015. The Applicant No.2, thereafter, preferred an Application under section 167 (2) of the Cr.P.C., on 26th October, 2015 for the in-default bail.

4 The Bail Application bearing No. 67 of 2015 preferred by the Applicant No.1 and the Bail Application bearing No.69 of 2015 preferred by the Applicant No.2 came to be rejected by the learned Special Court by its orders dated 20th October, 2015 and 27th October, 2015 respectively.

5 Heard the learned counsel appearing for the respective parties and perused the record. Learned counsel for the Applicants submitted that, merely submitting some document in the Registry of the Court and naming the said document as a charge-sheet does not *ipso facto* mean that in reality the chargesheet was submitted before the Court. It is submitted that, as the chargesheet was not produced before the

trial Court on the date of the hearing, the learned trial Court was pleased to call for report from its Registry. That it was informed by the Registry by its report dated 20th October, 2015 to the concerned Trial Court that the investigating agency has submitted the charge-sheet on 16th October, 2015 at 5 p.m.. and that the said charge-sheet is running into 16 files, which contains around 3,000 pages and it is essential to check each and every page. That there are already 6 charge-sheets of CBI & ACB matters, pending in that department and, therefore, 10 working days will be required to check and number the charge-sheet. The learned counsel for the Applicants therefore, contended that, as the chargesheet was not submitted before the trial court, the Applicants were entitled for bail as contemplated under section 167 (2) of the Cr.P.C..

6 Learned Special Public Prosecutor on the other hand submitted that as a matter of fact and as per record, the charge-sheet was submitted by the investigating agency on 16th October, 2015 itself and, therefore, the contention of the learned counsel for the Applicants that the charge-sheet was not filed within the stipulated period does not hold any water in it.

7 Admittedly, in the present case, as far as the Applicant No.1 is concerned, he was arrested on 19th July,

2015 and the period of 90 days had come to an end on 17th October, 2015. The report dated 20th October, 2015 submitted by the Registry of the City Civil & Sessions Court, Mumbai is produced before me and the said report reveals the said fact as mentioned herein above. Even as per the said report, the chargesheet was submitted in the Registry of the Sessions Court on 16th October, 2015 at 5 p.m.. that is before the expiry of 90 days period, which would have come to an end on 17th October, 2015.

8 As far as the Applicant No.2 is concerned, the said period of 90 days ended on 24th October, 2015. Thus it is clear that the investigating agency has filed the charge-sheet in her case also before the expiry of 90 days period. The Applicants have not produced any other material to substantiate their contention that only some documents were filed and not the charge-sheet as per section 173 (2) of Cr.P.C. was filed before the trial Court. It is needless to mention that in view of the provisions of section 173(2) of the Cr.P.C., the Form prescribed for submission of the final report constitutes a part of the charge-sheet. The Applicants have failed to produce or substantiate their claim that the said final report and the Form was not submitted by the investigating agency alongwith the other documents in the said chargesheet.

9 Be it as it may, in view of the fact that the investigating agency has submitted the charge-sheets before the expiry of the period of 90 days, in my considered opinion, the Applicants are not entitled for the benefit under section 167 (2) of the Cr.P.C., as the alleged indefeasible right did not accrue in their favour at all.

10 In view of the above, I am of the view that the trial court has rightly rejected the Applications preferred by the Applicants. I find no merit in the present Application filed by the Applicants and the same is dismissed accordingly.

(A.S. GADKARI,J.)

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