

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

CRIMINAL APPLICATION (BA) NO.1017 Of 2016

Anand s/o Harichand Dongre, R/o Kawlewada, Post Alewada, Tahsil Deori, Dist. Gondia

-vs-

The State of Maharashtra, Thr. PSO, PS Amgaon, Dist. Gondia.

Office notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.

Court's or Judge's Orders.

Shri R. M. Daga, Advocate for applicant.

Shri V. G. Gangane, Addl.PP for non-applnt-State.

CORAM : P. N. DESHMUKH, J.

DATE : December 19, 2016

Heard learned counsel for applicant and learned Addl.
Public Prosecutor for the State.

This application is filed for grant of bail under Section 439 of Criminal Procedure Code by accused involved in Crime No.32/2016 for the offence punishable under Section 354-A of IPC and under Sections 8 and 10 of the POCSO Act registered by PSO, Police Station Amgaon, Dist. Gondia. During pendency of present application, since no charge-sheet could be filed, it is the case of applicant that as such right of bail by default has accrued in his favour as contemplated under Section 167(2) of Cr.P.C. Learned counsel for applicant thus without going into merits of the case had contended that as offence under Section 354-A is punishable for a period of three years, Section 8 of POCSO Act is punishable upto five years and Section 10 of POCSO Act since is punishable up to seven years, even if maximum

punishment of seven years for offence under Section 10 of POCSO Act is considered, time to file charge-sheet would be of sixty days. It is thus, contended that since the incident is dated 22/12/2015 of which report is lodged on 06/04/2016 and applicant is arrested on 14/10/2016, sixty days period would come to an end on 14/12/2016, however since no charge-sheet is filed, it is submitted that application be allowed under provisions of Section 167(2) of Cr.P.C. by granting bail by default to applicant.

Learned Addl. Public Prosecutor has not disputed fact of maximum punishment which can be imposed upon applicant in this case would be for seven years under Section 10 of POCSO Act. Considering the dates referred above, it is found that sixty days period for filing charge-sheet which is attracted in present case had come to an end on 14/12/2016. Admittedly, no charge-sheet is filed till that date. On 16/12/2016, pending this application, statement of learned Addl. Public Prosecutor on this count was recorded.

In the circumstances, prima facie, it found that applicant is entitled for bail on default of non filing of charge-sheet as aforesaid. However, it is to be considered if such an order can be passed in an application for bail under Section 439 of Cr.P.C. Hence considering this aspect, it is necessary to consider the scheme of Section 439 of the Cr.P.C.

On reading of Section 439(1) of the Code of Criminal Procedure, it is clear that there is no prohibition therein that the accused cannot raise the ground of default bail under Section 167(2) of the Code of Criminal Procedure in an application filed under Section 439(1).

In this aspect, learned counsel for applicant has placed reliance on judgment in the case of ***Umaji Raghunath Shende vs. State of Maharashtra***, reported in ***2012 ALL MR (Cri) 1204***. Similarly, this Court in its order dated 24th December 2014 in Criminal Bail Application No.820/2014 (Coram : S. B. Shukre,J.) has dealt with similar situation and had observed that in an application under Section 439(1) of Cr.P.C. for bail, grant of bail by default under Section 167(2) can be considered if no charge-sheet is filed within the stipulated period pending application under Section 439 of Cr.P.C.

Having considered the facts as aforesaid, application is thus liable to be allowed. Hence the following order is passed

Applicant shall be released on bail on his executing P.R. Bond in the sum of Rs.25,000/- with one surety in the like amount.

The applicant shall mark his attendance with Police Station Amgaon Dist. Gondia on first Sunday of each month till filing of charge-sheet and thereafter quarterly on first day of each such month.

Applicant shall not enter the territorial jurisdiction of village Amgaon, Dist. Gondia pending trial.

Application is allowed and disposed of in aforesaid terms.

JUDGE