

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO.1369 OF 2017

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| 1 | Suvarnamala w/o Bhagwan Chavan
Age 40 years, Occu: Business &
Household, R/o Sonai Nagar,
Taroda (Bdk), Dist. Nanded | ... Applicants |
| 2 | Bhagwan s/o Shekuji Chavan,
Age 50 years, Occu: Service,
R/o As above. | |

VERSUS

The State of Maharashtra, ... Respondent
Through P.S.I., Bhagyanagar
Police Station, Nanded, District
Nanded

Mr. Mr. R. S. Deshmukh, Advocate for the applicant
Mr. K. N. Lokhande, APP for the State.

CORAM : K. L. WADANE, J.

RESERVED ON : 27th June, 2017

PRONOUNCED ON : 5th July, 2017

JUDGMENT :

1. Heard Mr. Deshmukh, learned counsel for the applicant and Mr. Lokhande , learned APP for the State.

2. Crime No. 224/2016 came to be registered with Bhagyanagar Police Station, Nanded against the present applicants and another accused Shivkumar Raut, real brother of applicant No.1, for the offences punishable under sections 406, 420 read with section 34 of the Indian Penal Code.

3. On 29.11.2016, both the applicants were arrested and produced before the Judicial Magistrate, First class at 4.40 p.m. for the first police custody remand. On 3rd December, 2016, both the applicants were taken in M.C.R. The concerned Investigating Officer thereafter added section 3 and 4 of the M.P.I.D. Act in the above said crime.

4. The Investigating officer failed to submit charge-sheet before 27.01.2017 which was the 60th day from the date of arrest and production of the applicants/accused before the Judicial Magistrate, First Class for police custody. The applicants have submitted Application Exh. 3 on 27.01.2017 at 6.00 p.m. for default bail under the provisions of section 167(2)(a)(ii) of the Criminal Procedure Code, 1973. On 28.01.2017, the applicants have submitted another application for bail at Exh.4 under the same provision.

5. On 30.01.2017, both the applicants have filed another application Exh. 5 for bail at 11.30 a.m. for default bail in the Court of Sessions Judge, Nanded, as being 63rd day, till then no charge sheet was filed in the said Court, which is appropriate and competent

to do so. The learned Special Judge received the charge-sheet on 30.01.2017

6. During the course of argument, Mr. Deshmukh, the learned counsel for the applicant pointed out that last date for submission of the charge-sheet was 27.01.2017. However, the Investigating Officer failed to produce the charge-sheet within time and therefore, the applicants are entitled for bail as per the provisions of section 167(2)(a)(ii) Cr.P.C. In support of his contention, the learned counsel pointed out certain endorsements of the Judicial Magistrate, Nanded. The learned Judicial Magistrate, Nanded made the following endorsement.

"Charge-sheet received today.

28.01.2017 at 6.15."

Mr. Deshmukh pointed out another endorsement made by the learned Special Judge which reads as follows:

"28.01.2017.

Spl. Case (MPAD) No. /2017

Charge sheet submitted by P.C.B.

No.---

as MPID Act

Nos.2 & 3 are in jail and A.No.1 is on bail

406,420,34 of the IPC & Sec.3 & 4 of MPID Act.

Assigned to - DJ-2

sd/- 30/01/2017

Principal District Judge. Nanded"

7. From the above endorsements, it appears that Investigating Officer had initially filed the charge-sheet in the Court of Judicial Magistrate, First class on 28.01.2017 that too at 6.15 p.m.

8. The learned APP has relied upon the report submitted by the concerned Assistant Superintendent dated 30.01.2017. On perusal of the report, it appears that the concerned Assistant Superintendent has reported that the charge-sheet in the matter was filed on 28.01.2017, and the matter was numbered as Special Case (MPID)No.01/2017. The learned APP further relied upon the endorsement of the learned Special Judge, quoted above. On perusal of the relevant endorsement/entry, it appears that at the top, date is written as "28.01.2017", however, below signature the learned Special Judge/District Judge has put the date as 30.01.2017. Looking to the this endorsement and the report made by the Assistant Superintendent, it appears that the correct date is 30.01.2017 , because one charge sheet cannot be filed in two courts simultaneously. Probably, by mistake the charge-sheet was filed before the learned Judicial Magistrate, First Class and Investigation Officer my have taken back the charge-sheet and presented it before the Special Judge.

9. The learned Special Judge/District Judge has put the date 30.01.2017 below his signature which cannot be doubted. On the contrary, the date put on the top of endorsement i.e. 28.01.2017 appears to be doubtful simply because on 28.01.2017, the charge-sheet was submitted before the learned Judicial Magistrate First Class. He has put the date as well time as 28.01.2017 at 6.15 p.m.

10. Admittedly, the first application (Exh.3) for bail was submitted on 27.01.2017 before expiry of 60 days. However, another application Exh.4 was submitted on 28.01.2017 and third application (Exh.5) was submitted on 30.01.2017. So, apparently, it seems that bail application Exhs. 4 and 5 were filed on 28.01.2017 and 30.01.2017 respectively i.e. after expiry of sixty days.

11. Mr. Deshmukh, the learned counsel appearing for the applicants has relied on the following cases:

(1) **Rajesh Natwarlal Bangawala Vs. State of Maharashtra, 2015 ALL MR (Cri) 3440 (Bom)**, in which it is observed that the period of ninety days or sixty days as the case may be, is to be counted from the first date of production of accused before Magistrate

whether he has jurisdiction or not to try case.

It has been further observed that the Magistrate could not have taken away the indefeasible right of the petitioner by permitting the CBI to file the charge-sheet and by keeping the application of the petitioner pending. Once the accused files an application under section 167(2) Cr.P.C., the same is to be decided by the Magistrate immediately after its presentation. Supervening circumstances created later on could not take away the indefeasible right which had occurred to the petitioner.

(2) **Shivaji Ashruba Jaibhaye V/s State of Maharashtra, 2010 ALL MR. (Cri) 3794 (Bom),** in which it has been observed that the application for bail under section 167(2) is maintainable for non-filing of charge-sheet before period of 90 days. Period of 90 days to be computed from the first day the accused is produced before the concerned Magistrate.

(3) **Rajesh @ Raju Narayan Amin Poojari Vs. State of Maharashtra 2008 ALL MR (Cri) 1012 (Bom.)** in which it is observed that the application for bail on the ground that charge-sheet was not filed before the Special Court within a period of 180 days of arrest and

first order of remand to police custody. Applicants are entitled to bail. Mistaken filing of charge-sheet earlier before the Judicial Magistrate First Class who had no jurisdiction to try applicants under MCOC Act can be of no avail.

(4) In **Jitendera Maroti Deotare vs. State of Maharashtra 2008 ALL MR (Cri) 2458 (Bom)**, it has been observed about the Right of accused under Section 167(2) of the Criminal Procedure Code after expiry of 90th day on 13.07.2008 i.e. on Sunday.

(5) In **Rajubhai @ Jacob Mathew Pinto Vs. State of Maharashtra 2005 ALL MR (Cri) 290 (Bom.)**, the accused were arrested on 22nd July, 2004. The application for being released on bail filed on 21st October, 2004 at 11.00 a.m. The prosecution filed the charge-sheet on the same day at about 3.00 p.m. after 90 days. The applicant was held entitled for bail.

Relying upon the observations in the cases cited supra, Mr. Deshmukh has submitted that the charge-sheet was submitted before the Special Court beyond the statutory period of 60 days and therefore the applicants are entitled for bail.

12. The learned APP has strongly opposed the application on the ground that charge-sheet was already filed in the Court on 28.01.2017 at about 3.00 p.m. Some time was required for scrutiny of the charge-sheet and therefore application Exhs. 4 and 5 were filed by the applicants after filing of the charge-sheet. I do not agree with the submission of the learned APP, simply because the charge-sheet was filed before the Judicial Magistrate, First Class on 28.01.2017 at about 6.15 p.m. Charge-sheet was to be filed before the Special Court and from the endorsement, it appears that it was filed on 30.01.2017. In such circumstance, at least application for bail at Exh.4 was filed by the petitioner on 61st day i.e. before filing of the charge-sheet in the Special Court.

13. In view of the above, I am of the opinion that the learned Sessions Judge confused about certain incorrect endorsement and the date. In fact there was no reason to disbelieve the date and time put by the learned Judicial Magistrate as well as the Special Judge Nanded.

14. In view of the above, I am of the opinion that

the applicants are entitled for bail as per provisions of section 167(2)(a)(ii) Cr.P.C. Hence following order:

O R D E R

- i. The applicants shall be released on bail on their furnishing personal bond of Rs.25,000/- (Rupees twenty five thousand) each with one solvent surety of like amount.
 - ii. The applicants shall not tamper with prosecution evidence in any manner.
15. Criminal application is disposed of.

(K. L. WADANE, J.)

JPC