

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL BAIL APPLICATION NO. 1508 OF 2016

Jayprakash alias Sonya Ashok Beg

... Applicant

Versus

The State of Maharashtra

... Respondent

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Mr. S.R. Pasbola i/b. Mr.Aashish Satpute for the Applicant.

Mr. Sooraj S. Hulke, APP for the Respondent-State.

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CORAM: MRS. MRIDULA BHATKAR, J.

DATE : MARCH 22, 2017

P.C.

1. This bail application is made under section 167 (2) of the Code of Criminal Procedure on the ground that the charge-sheet against the applicant-accused was not filed within stipulated time from the date of arrest. Initially, the applicant-accused is facing charges in C.R.No. I-353 of 2015 registered with Shrirampur City Police Station, Ahmednagar for the offences punishable under sections 302, 307, 326, 324, 143, 147, 148, 149, 452, 354, 323, 504, 506 and 427 of the Indian Penal Code and sections 4/25 and 3/25 of the Arms Act and under sections 37(1)(iii) and 135 of the Bombay Police Act. After obtaining sanction on 12th May, 2016, Maharashtra Control of Organised Crime Act (MCOC Act) was applied under sections 3(1)(i), 3(1)(ii) and section 3(2)(4).

2. The learned counsel for the applicant-accused has submitted that the application of the applicant-accused is not to be considered on merit. He has moved this application on the ground of default under section 167(2) of the Code of Criminal Procedure and it is not argued on merits. The applicant-accused was arrested on 8th December 2015. The police have filed the chargesheet on 29th February 2016 prior approval for invoking MCOCA was obtained on 5th May 2016. The applicant-accused was again arrested on 25th May 2016 and he was sent to the police custody from judicial custody. On 6th June 2016, he moved this application on the ground of default for bail. The learned counsel for the applicant-accused has further submitted that the police have obtained permission for further investigation as MCOCA was applied. The applicant-accused was arrested on 8th December 2015. However, no chargesheet was filed by the Investigating Agency within stipulated period of 180 days from the date of arrest i.e. 8th December 2015. He has further submitted that 180 days were completed on 6th June 2016 from the date of arrest of the applicant-accused and therefore, he is entitled to get bail on default. In support of this submission, he relied on the judgments of *Central Bureau of Investigation, Special Investigation Cell-I, New Delhi Vs. Anupam J. Kulkarni*, reported in (1992) 3 SCC 141 and *State of Maharashtra Vs. Bharati Chandmal Varma*, reported

in **(2002) 2 SCC 121**. He has further submitted that if the investigation as per the ratio laid down in the case of **Anupam Kulkarni** (supra) is incomplete even after the expiry of stipulated period of custody, the accused shall be released on bail. He has further submitted that in the case of **Bharti Chandmal Varma** (supra) has specifically held that the stipulated period under section 167 (2) of Cr.P.C. is not extendable for any reason. He has also referred the order dated 5th September 2012 passed by the learned Single Judge of this Court in Criminal Bail Application No. 1046 of 2012 (**Indrabahadur Lalbahadur Khatri & Ors Vs. The State of Maharashtra**). The learned counsel has submitted that in the case of **Indrabahadur Khatri** (supra) though the facts are identical and the law laid down in the case of **Bharti Chandmal Varma** (supra) is not correctly interpreted and therefore, this application is to be allowed under section 167 (2) of Cr.P.C.

3. The learned APP has opposed this application and submitted that earlier, in the month of February 2016 the charge-sheet is filed in the present case which is within stipulated time and therefore, the ratio laid down in the case of **Anupam Kulkarni** (supra) is not applicable and the bail is to be rejected.

4. In the present case, the applicant-accused was arrested on 8th December 2015 and thereafter the offence of murder, other offences and MCOCA were applied after taking the requisite approval in May 2016. The dates which are given by the learned counsel for the applicant-accused are not disputed. Under MCOCA chargesheet is to be filed within 180 days and this position of law is repetitively held in the cases of *Anupam Kulkarni* (supra) and *Bharti Chandmal Varma* (supra). In this case, after the application of MCOCA, the police have obtained custody of applicant-accused and carried out further investigation as per the legal position. The stipulated period of 180 days is not to be counted from the date of application of MCOCA, but it is to be counted from the date of arrest of the applicant-accused as it is laid down in the case of *Bharti Chandmal Varma* (supra). The learned counsel for the applicant-accused has referred and relied on the relevant portion of the judgment which is reproduced as follows:

“11. But if the investigation into the offence for which he was arrested initially had revealed other ramifications associated therewith, any further investigation would continue to relate to the same arrest and hence the period envisaged in the proviso to Section 167 (2) would remain unextendable.”

The Supreme Court has observed that if other clues or other associate circumstances are found to the Investigating Agency and then further investigation relating to the said offence can be carried out. However, the stipulated period under section 167 (2) cannot be extended. Section 167 contemplates the report of the investigation. Thus, it is assumed that the Investigating Agency has completed the investigation and thereafter the same is filed. This legislature has given right to the applicant-accused to know the allegations against him and the evidence collected against him and therefore, time frame of either 60 days or 90 days and in the case of MCOCA it is extended upto 180 days is given by the legislature. Subsequently, MCOCA is applied in the month of May 2016 i.e. five months after the arrest. Between the said period, on 29th February 2016, the chargesheet was filed. Thus, being case of murder the chargesheet is filed within the stipulated period of 90 days. There is no bar of time for the police to carry out further investigation under section 173 (8) of Cr.PC and therefore, the stipulated period of investigation cannot be fixed for further investigation under section 173 (8) of Cr.PC. once the charge-sheet is filed. The facts of the present case and the case of *Indrabahadur Khatri* (supra) are identical. The learned Single Judge has rightly considered that there is another angle to this issue. After filing of the charge-sheet, the applicant could not secure bail on

merit when it is a case of murder. The applicant-accused cannot be granted bail when the Investigating Agency has found more serious offence and had wider and graver ramifications and therefore, the accused who is already facing charges of serious offence cannot be given benefit of bail under section 167 (2) of Cr.PC.

5. The Bail Application is rejected.

(MRIDULA BHATKAR, J.)