

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL BAIL APPLICATION NO. 2172 OF 2016**

Umesh Ramesh Kokate

...Applicant

Versus

The State of Maharashtra

...Respondent

Mr. A. P. Mundargi, Sr. Counsel with Mr. Vikas Shivarkar, Mr. Sharad Bhoite and Mr. D. S. Bhoite for the Applicant

Mr. S. S. Pednekar, A.P.P for the Respondent-State

PSI Mr. U. N. Budgude from Bharati Vidhyapith Police Station, Pune, is present.

CORAM : REVATI MOHITE DERE, J.
FRIDAY, 21st APRIL, 2017

P.C. :

1. Heard learned Counsel for the parties.
2. The applicant prays that the learned Special Judge, MCOCA be directed to accept fresh surety as may be submitted by the applicant in C.R. No. 197 of 2015.
3. Learned Senior Counsel for the applicant submits that the applicant's application for bail was allowed by the learned Judicial

Magistrate First Class vide order dated 21st July, 2015. He submits that the applicant had applied for permission to furnish sureties on 19th August, 2015 and that the learned Magistrate was pleased to accept the sureties furnished by the applicant, on 20th August, 2015, however, the actual order for release was not issued. He submits that the prosecution had in the interregnum on 13th August, 2015 applied MCOC Act to C.R. No. 197 of 2015. He submits that when the applicant preferred an application before the learned Magistrate praying therein to accept sureties, the learned Magistrate observed that the earlier order passed by him was *non-est*, as MCOCA was invoked in the interregnum. Learned Senior Counsel submitted that infact, the State had preferred an application seeking cancellation of the applicant's bail before the learned Special Judge, MCOCA, however, the said application was rejected and that the State has not challenged the said order. He relied on an order passed by this Court in Criminal Bail Application No. 749 of 2014 (Coram : A.M. Thipsay, J.) dated 6th August, 2014.

4. Learned A.P.P opposed the application. He does not however dispute the fact that the order passed by the learned Special Judge, MCOC

Court rejecting their application seeking cancellation of the applicant's bail, has not been challenged.

5. Perused the papers. It is necessary to set out a few dates as are relevant to decide the application. On 8th June, 2015, C.R. No. 197 of 2015 was registered with the Bharati Vidhyapith Police Station, Pune, as against the applicant and others alleging an offence punishable under Section 387 r/w 34 of the Indian Penal Code. Pursuant to the registration of the aforesaid C.R, the applicant was arrested on 13th July, 2015. On 20th July, 2015, the applicant applied for bail. On the same day, the applicant was taken in police custody in another C.R. i.e. C. R. No. 478 of 2014, registered with the same Police Station. On 21st July, 2015, the applicant's application for bail was allowed and the applicant was enlarged on bail by the learned Judicial Magistrate First Class, Pune. The said order reads thus:

“Accused Umesh Ramesh Kokate be released on PB & SB of Rs. 15,000/- on condition that he shall not threaten the witness and attend concerned Police Station on every Monday during 11:00 a.m. to 01:00 p.m. till filing of charge-sheet.”

6. On 19th August, 2015, the applicant filed an application seeking permission to furnish sureties. On 20th August, 2015, the learned Magistrate was pleased to accept the sureties and the order of release of the applicant was passed, however, the actual release memo was not issued. On 21st August, 2015, the learned Magistrate, who had passed the earlier orders allowing the bail application of the applicant and the release order, observed that the said orders were *non-est*, as MCOCA was applied in the said C.R. on 13th August, 2015. On 3rd September, 2015, the State preferred an application before the learned Special Judge MCOC, Pune, seeking cancellation of the applicant's bail. The said application was rejected by the learned Special Judge, MCOC vide order dated 21st October, 2015. The said order has not been challenged by the State in this Court. On 29th December, 2015, the applicant applied to the learned Magistrate to accept the sureties given earlier or, sought permission to furnish fresh sureties, however, the same was rejected by the learned Magistrate. All the aforesaid dates are not in dispute and are a matter of record. It is also not in dispute that co-accused Santosh Marathe who was similarly placed was enlarged on bail by the learned Magistrate, as his

formalities were completed, prior to invocation of MCOC Act in the said C.R.

7. Admittedly, when bail was granted to the applicant on 21st July, 2015, MCOCA was not applied to C.R. No. 197 of 2015. The learned Special Judge, MCOC Act, had also rejected the application filed by the State seeking cancellation of the applicant's bail granted vide order dated 21st July, 2015. The said order has not been challenged by the State till date nor do they intend to challenge the said order. In this light of the matter, merely because the provisions of the MCOC Act were applied to this case later, bail granted by the learned Magistrate would not come to an end. The learned Magistrate could not have refused to accept the sureties already furnished by the applicant or ought to have directed the applicant to furnish fresh sureties and ought to have released the applicant, as there was an order granting bail in applicant's favour.

8. Accordingly, the application is allowed. The applicant be released on bail in the same amount, as was granted by the learned Magistrate First Class vide order dated 21st July, 2015 and on the same

conditions. The learned Magistrate to accept the fresh sureties as may be submitted by the applicant in compliance with his order dated 21st July, 2015, in C.R. No. 197 of 2015 registered with Bharati Vidhyapith Police Station, Pune.

9. Application is disposed of on the aforesaid terms.
10. All concerned to act on the authenticated copy of this order.

REVATI MOHITE DERE, J.