

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

CRIMINAL APPLICATION (APL) NO.285/2015

Manoj Sakharam Sadmek ..vs.. State of Maharashtra thr. PSO Bhamragarh,
Dist. Gadchiroli

AND

CRIMINAL WRIT PETITION NO.164/2017

Ganesh s/o Ramchandra Wadte ..vs.. The State of Maharashtra thr. PSO
P. S. Darwha, Yavatmal.

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's Orders.

Court's or Judge's orders.

Mr. Anil Mardikar, Senior Advocate/Amicus Curiae
Mr. S. V. Sirpurkar, Advocate for applicant in APL No.285/2015
Mr. A. J. Mirza, Advocate for petitioner in W.P. No.164/2017.

CORAM : V.M. DESHPANDE, J.

DATED : JULY 13, 2017

At the outset, I put on record my appreciation for the assistance given by Mr. Anil Mardikar, learned Senior Counsel to this Court. He has painstakingly made elaborate submissions in respect of the contentious issue that every time Court faced in respect of Section 167 (2) of Cr.P.C. as to how the 90th or the 60th day, as the case may be, has to be calculated while considering the application moved by the applicants commonly known as "Application for Default Bail". He has taken me in detail through the decisions of the Hon'ble Apex Court in Changati Satyanarayana and ors. vs. State of Andhra Pradesh; AIR 1986 SC 2130., Porritts & Spencer (Asia) Ltd. vs. Collector of Central Excise, New Delhi; 1995 Supp. (3) SCC 219, and Ravi Prakash Singh @ Arvind

Singh vs. State of Bihar; 2015 ALL MR (Cri) 1230 (SC), while construing the provisions of Section 57 and Section 167 (2) of the Cr. P. C. He has also assisted the Court in respect of the factual aspect in both these applications though for a limited purpose i.e. for calculating the 90th day.

I have also heard Mr. S. V. Sirpurkar and Mr. A. J. Mirza, learned counsel for the applicant and petitioner in the respective matters. I have also heard Ms T. Udeshi, learned A.P.P. for the State.

After hearing all the learned counsel, when I expressed my view that in view of the latest Apex Court decision reported in **Ravi Prakash Singh @ Arvind Singh** (*supra*) and the law laid down by the Hon'ble Apex Court in **State of M.P. Vs. Rustam & Ors.; 1995 Supp. (3) SCC 221**, it is not possible for me to accept the contentions raised by learned counsel for the applicant and petitioner. Upon that, the learned counsel submit that they may be permitted to withdraw the respective matters.

Mr. Sirpurkar, learned counsel for the applicant in Criminal Application No.285/2015 submits that the interim order is operating in favour of the applicant from 27.04.2015. Mr. Mirza, learned counsel for the petitioner in Criminal Writ Petition No.164/2017 submits that the interim order is operating in favour of the petitioner from 01.03.2017. They submit that for period of one week, the said protection may be extended

so as to enable them to move before the appropriate Court by preferring appropriate applications seeking regular bail.

Looking to the fact that the interim orders are operating in favour of the respective parties since long, I see no reason as to why their prayers should not be accepted. Hence, the following order is passed.

ORDER

(i) Criminal Application No.285/2015 and Criminal Writ Petition No.164/2017 are allowed to be withdrawn so as to enable the applicant and petitioner to move before the appropriate Court for seeking a relief under Section 439 of the Cr. P. C.

(ii) The interim order granted in favour of the applicant in Criminal Application No.285/2015 on 27.04.2015 and interim order granted in favour of the petitioner in Criminal Writ Petition No.164/2017 on 01.03.2017 shall continue to operate till 20.07.2017. The interim orders shall cease to operate after 20.07.2017.

(iii) Needless to mention that it is expected from the learned Judge of the Court before whom the applications will be filed to decide the applications as expeditiously as possible.

JUDGE