

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

CRIMINAL APPLICATION (APL) NO.265 OF 2017
(Pratap Singh Karnuji Gajbhiye and another vs. State of Maharashtra)

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

Shri S. Borkar, Advocate for applicants.

Shri P.S. Tembhare, Additional Public Prosecutor for
respondent.

CORAM : P.N. DESHMUKH, J.

DATED : APRIL 25, 2017

Heard Shri Borkar, learned Counsel for
applicants, and Shri Tembhare, learned Additional Public
Prosecutor for respondent.

By invoking provisions of Section 482 of
Code of Criminal Procedure, applicants challenge order
dated 29/3/2017 passed by learned Additional Sessions
Judge, Gadchiroli thereby allowing application filed by
prosecution under Section 43-D(2) of the Unlawful
Activities (Prevention) Act, 1967 read with Section 167
of the Code of Criminal Procedure extending judicial
custody of applicants by further period of 30 days. By
this application, said order is prayed to be quashed.

In support of the application, Shri Borkar,
learned Counsel for applicants, has contended that both
the applicants are arrested on 28/12/2016 in Crime
No.3010/2016 registered for the offences punishable
under Sections 17, 18, 20, 21 and 40 of the Unlawful
Activities (Prevention) Act, 1967 read with Section

120-B of Indian Penal Code and on their production, their magisterial custody remand was extended from time to time by learned trial Court and lastly upto 27/3/2017. It is submitted that on that day, learned Additional Public Prosecutor moved application before learned Additional Sessions Judge, Gadchiroli for extension of Magisterial custody of applicants under Section 43-D(2) of the Unlawful Activities (Prevention) Act, 1967 read with Section 167 of the Code of Criminal Procedure, which came to be allowed by learned Additional Sessions Judge on 29/3/2017 thereby extending judicial custody of applicants by further 30 days.

Learned Counsel has stressfully contended that since applicants were arrested on 28/12/2016, 90th day was on 28/3/2017 and till that date no charge-sheet was filed nor any application was moved by prosecution before Magistrate's Court for extension of remand beyond 90 days on the ground of pendency of investigation and, therefore, applicants filed application for grant of bail under Section 167(2) of the Code of Criminal Procedure. It is submitted that said application of applicants is pending and applicants have approached this Court on the ground that their remand was illegally extended by learned Additional Sessions Judge with effect from 29/3/2017 for a further period of 30 days by the impugned order. It is, therefore, contended that the impugned order being without any legal basis be quashed and set aside releasing applicants on bail.

Shri Tembhare, learned Additional Public

Prosecutor for respondent, opposed the application on the ground that no illegality is committed by learned Additional Sessions Judge by passing the impugned order in view of the fact that before expiry of period of remand of applicants, which was in force, on 27/3/2017 itself prosecution since wanted further extension of remand of applicants for conducting investigation in respect of offences, which are registered against applicants under the Unlawful Activities (Prevention) Act, 1967 had filed application before Special Judge on 27/3/2017. As there was holiday on 28/3/2017 on account of Gudi Padwa, said application was heard and allowed by learned Additional Sessions Judge on 29/3/2017 extending judicial custody of applicants by 30 days. It is, therefore, submitted that there is no substance in the application and, therefore, same be rejected.

In the background of submissions as aforesaid, admitted facts appear to be of arrest of applicants on 28/12/2016 and on their production before Magistrate's Court granting their judicial custody from time to time till 27/3/2017. Admittedly, 90th day fell on 28/3/2017, on which day it was holiday on account of Gudi Padwa and no charge-sheet was filed against applicants on 28/3/2017. It is material to note that on 27/3/2017 itself, prosecution had moved application before Sessions Court, Gadchiroli praying for extension of custody of both applicants for a further period of 90 days as investigation was in progress and for the grounds mentioned in the application, such

prayer was allowed by learned Additional Sessions Judge by passing the impugned order on 29/3/2017.

Another interesting aspect involved in this case is that since no charge-sheet was filed, applicants on 29/3/2017 itself, i.e. after lapse of 90th day, had filed application for bail under Section 167(2) of the Code of Criminal procedure, which is pending even today and during pendency of same and on 27/3/2017 prosecution had applied for extension of remand by filing application before Sessions Court, which is allowed on 29/3/2017 as it was holiday on 28/3/2017. It is thus noted that before application for bail was filed, as above, application for extension of remand was decided in favour of prosecution.

Shri Borkar, learned Counsel for applicants, in the set of above circumstances, has relied upon the law laid down by the Hon'ble Apex Court in the case of **Union of India vs. Nirala Yadav** {2014 (3) B Cr C 110 (SC)}.

Having considering facts involved in the application in hand and law relied upon, it is material to note that facts in this case are distinguishable primarily for the reason that in that case, admittedly no charge-sheet was filed till expiry of 90 days' period nor prosecution had filed any application for extension of time to file charge-sheet or carry out investigation unlike in the application in hand where on 27/3/2017 prosecution had filed application praying for extension of Magisterial custody remand of applicants under the provisions of Section 43-D(2) of the Unlawful Activities

(Prevention) Act, 1967. In the circumstances, in the case of Union of India through C.B.I. (cited supra), the Hon'ble Apex Court has observed that had an application for extension of time to file charge-sheet been filed, then the matter would have been totally different. In that view of the matter, law laid down cannot be made use of in favour of applicants.

Shri Tembhare, learned Additional Public Prosecutor for respondent, on the other hand, has relied upon the case of Suresh Kumar Bhikamchand Jain vs. State of Maharashtra and another {(2013) 3 SCC 77} wherein considering the scope of Section 167(2) of the Code of Criminal Procedure, the Hon'ble Apex Court in paras 13 and 17 of the judgment has held that :

“Section 167 Cr.P.C. contemplates the completion of investigation in respect of different types of cases within a stipulated period and the right of an accused to be released on bail on the failure of the Investigating Authorities to do so. The scheme of the provisions relating to remand of an accused, first during the stage of investigation and thereafter, after cognizance is taken, indicates that the Legislature intended investigation of certain crimes to be completed within 60 days and offences punishable with death, imprisonment for life or imprisonment for a term of not less than 10 years, within 90 days. In the event, the investigation is not completed by the Investigating Authorities, the accused acquires an indefeasible right to be granted bail, if he offers to furnish bail. Accordingly, if on either the 61st day or the 91st day, an accused makes an application for being released on bail in default of charge-sheet having been filed, the Court has no option, but to release the accused on bail. The language used in Sections 167(2)(a)(i) and (ii) is that on the expiry of the period of 90 days or 60 days, as the case may be, the accused person shall be released on bail, if he is prepared to and does furnish bail. The direction upon

the Magistrate or the trial Court is mandatory in nature and any detention beyond the said period would be illegal.”

Provisions of Section 43-D(2) of the Unlawful Activities (Prevention) Act, 1967 as well as Rules 3 and 4 of the Unlawful Activities (Prevention) (Recommendation and Sanction of Prosecution) Rules, 2008 referred by learned Counsel for applicants when considered, reveal that proviso to sub-section 2 of Section 43-D contemplates that if investigation could not be completed within a period of 90 days, the Court having been satisfied with the report of Public Prosecutor indicating progress of investigation and specific reason for detention of accused beyond said period of 90 days, may extend said period upto 180 days. Perusal of the impugned order as well as application made by prosecution for extension of period of remand reveals the grounds put forth by prosecution for extension of judicial custody of applicants to carry out further investigation.

Rules 3 and 4 of the Rules referred above pertain to time limit for taking decision regarding grant of sanction for prosecution. However, in view of facts involved in the present case, since challenge is to the order of extension of remand as mentioned aforesaid, I find no necessity to go into this aspect at this stage.

By referring to Annexure I filed along with the affidavit-in-reply by prosecution, one of the grounds, which is also raised by learned Counsel for applicants is that prosecution has not sought sanction for invoking provisions of the Unlawful Activities (Prevention) Act,

1967 against applicants, but has sought permission to file charge-sheet. However, this submission does not impress in view of the fact that issue to be considered is not that no cognizance could be taken in the absence of sanction, but what is to be considered is if no charge-sheet is filed within the stipulated time, then whether accused would be entitled for bail under Section 167(2) of the Code of Criminal Procedure.

From the above discussed facts, it is thus clear that since investigation could not be complete within 90 days, prosecution by applying much earlier to expiry of said period, had prayed for extension of Magisterial custody remand of applicants, which extension has been duly granted by the competent Court under the impugned order. Filing of charge-sheet and grant of sanction actually are two separate aspects. Merely because sanction had not been obtained to prosecute the accused, it cannot be said that accused is entitled for statutory bail as envisaged under Section 167 of the Code of Criminal Procedure and it is material to note that grant of sanction nowhere is contemplated under Section 167 of the Code of Criminal Procedure. Sanction is an enabling provision to prosecute and as such, is totally separate from concept of investigation, which is concluded on filing of charge-sheet.

Considering facts as aforesaid and involvement of applicants in the present crime, the impugned order needs no interference as according to case of prosecution, on the day of arrest of applicants, based on secret information, they were found possessing

old currency notes in the denomination of Rs.500/- and Rs.1000/- to the extent of Rs.52,72,500/-, which came to be recovered from their house and in addition to this, further amount of Rs.33,28,000/- was recovered from one of their vehicles. During investigation it is revealed that said currency notes were received by applicants from naxallites and applicants being sympathisers of naxallites wanted said currency notes to be exchanged for them from Bank as said currency notes were then denotified. It is also revealed during investigation that applicants are having contacts with hard core naxallites whose involvement in the crime is also under investigation and in the light of facts of crime as aforesaid, on 17/3/2017, on the strength of material collected during the course of investigation, the Superintendent of Police, Gadchiroli forwarded same for obtaining sanction from the State Government, which needs to go through channel by first being placed before the Deputy Inspector General of Police, who in turn would forward with his remarks to Director General of Police, who would thereafter submit to State Government for grant of sanction.

From the affidavit-in-reply of respondent, it is revealed that the proposal for grant of sanction for prosecution of accused submitted on 17/3/2017, on scrutiny, was forwarded to the Office of Director General of Police on 24/3/2017, which Authority on further scrutinising the same had forwarded it to Additional Chief Secretary, Department of Home, Government of Maharashtra on 3/4/2017 for taking further steps for

obtaining sanction from State Government. It, therefore, appears that grant of sanction is yet to be finalised. However, as already stated above, grant of sanction and investigation are two different aspects and this Court is presently concerned only with grant of time for further investigation. Since investigation in the present crime appears to be in progress, extension of Magisterial custody remand as required was rightly granted by learned Additional Sessions Judge under Section 43-D(2) of the Unlawful Activities (Prevention) Act, 1967 by the impugned order

Thus, material facts, which need consideration, are that after arrest of applicants on 28/12/2016, their custodial remand was extended from time to time till 27/3/2017 by Magistrate and on 27/3/2017 itself, i.e. prior to expiry of 90 days' period, Application No.09/2017 came to be filed by prosecution before learned Additional Sessions Judge, Gadchiroli for extension of Magisterial custody remand of applicants beyond period of 90 days and on 29/3/2017 said application came to be allowed by extending remand of applicants by further 30 days. It is material to note that on 27/3/2017 itself, learned Special Judge had issued production warrant for production of applicants on 29/3/2017 and on their production, custody is further extended by learned Additional Sessions Judge after perusing the case diary and considering grounds put forth in the application requiring grant of further extension of custody for carrying out investigation.

Having considered facts as aforesaid,

application is thus liable to be dismissed. Hence, following order :

Order

The criminal application is dismissed.

Needless to say that above observations are made while considering application of applicants for bail under Section 167(2) of the Code of Criminal Procedure only and learned trial Court should not get influenced by the same.

JUDGE

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