

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL BAIL APPLICATION NO. 1277 OF 2018

Vilas Shivaji Wagh. ..Applicant.

V/s.

The State of Maharashtra. ..Respondent.

Mr. Santosh M. Deshpande, advocate for applicant.

Mr. Prashant Jadhav, APP for State.

Mr. Sunit Sawant, PSI, Crime Branch, Navi Mumbai.

CORAM : SMT. SADHANA S. JADHAV,J.

DATE : JULY 4, 2018.

P. C. :

1 Heard the learned Counsel for the applicant and the learned APP for State.

2 This is an application under section 439 of the Code of Criminal Procedure, 1908 seeking bail under section 167(2) of the Code of Criminal Procedure, 1973. The applicant herein is the original accused No. 2 in Crime No. 6 of 2017 registered at Khandeshwar Police Station, Navi Mumbai on 8/1/2017 for offence punishable under section 394, 341 read with section 34 of the Indian Penal Code. The applicant is arrested on 27th March, 2017 in Crime No. 6 of 2017.

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3 It is the case of the prosecution that the complainant happens to be the manager of Reliable Carrier Pvt. Ltd. And has been engaged by ITC company for the purpose of carrier services. The ITC company situated at Ranjangaon manufactures cigarettes. That on 3/1/2017 the driver of the container of the truck namely, Sunil Yadav had been to Ranjangaon, MIDC to load the consignment. He had left the company on 4/1/2017 in the evening and was carrying 640 packets of cigarettes. On 5/1/2017, the supervisor of the GPS system has informed that the cell phone of Sunil Yadav is out of reach. Upon enquiry, it was learnt that the container had not reached godown. The last location of the truck was seen at Panvel. An unknown person had called upon the Manager and informed that the driver Sunil Yadav had given the number of the manager and it was learnt that the hands and legs of Sunil Yadav were tied up and he was taken to Sivur Bangala Police Station. On the basis of the information received from Sunil Yadav FIR was lodged, wherein it was alleged that on 5/1/2017 the truck was accosted. The people who had alighted from the car had given a current to the driver, covered his face, tied his hands and legs and had taken consignment alongwith truck. On the basis of the said report, offence was registered.

4 The applicant and Amol Dushing were arrested from Shrirampur on 27/3/2017 and Arvind Ramesh Bagul was arrested on

28/3/2017. While in custody they had disclosed names of 3 more persons, who are still absconding. There was recovery at the instance of the applicant. In the course of investigation, 256 boxes of cigarettes out of 640 boxes have been recovered.

5 It appears that the charge-sheet was not filed on or before 25/6/2017 i.e. within 90 days. The charge-sheet was filed within limitation as far as original accused Nos. 4 and 5 are concerned. Thereafter, the public prosecutor had filed a report and has submitted that inadvertently, application seeking extension for filing charge-sheet was not filed before the court. That on 90th day an indefeasible right had accrued upon the accused to seek bail.

6 The application alongwith report seeking extension of time to file charge-sheet was filed by the public prosecutor on 1/7/2017. In fact, such an application ought to have been filed on or before 25th June, 2017. A notice was issued to the accused person, which was made returnable on 4/7/2017. The advocate representing the accused Nos. 1 to 3 had given their say on the report on 4/7/2017. However, the date mentioned on the application is 5/7/2017. In the course of investigation, the provisions of MCOCA were invoked and on 25/5/2017 accused were produced before the learned Special (MCOCA) Court. Police Custody

Remand was granted till 6/6/2017 and thereafter, accused were in judicial custody.

7 In fact on 25/6/2017 an indefeasible right had accrued upon the accused to have been enlarged on bail. The learned Judge has committed an error in rejecting the application by observing that "It is pertinent to note that considering the seriousness of the offence the investigating officer did not give his report to the Public Prosecutor within time for the best reasons to known to him."

8 Once the Statute contemplates and it is held by the Apex Court that it is an indefeasible right, there is no question of considering either the gravity of the offence, or the reason for filing an application at a belated stage, seeking extension of time to file charge-sheet. In the case of **Union of India through C.B.I. v/s. Nirala Yadav @ Raja Ram Yadav @ Deepak Yadav (AIR 2014 Supreme Court 3036)**, the Hon'ble Apex Court has observed that -

"That an accused must be held to have availed of his right flowing from the legislative mandate engrafted in the proviso to Sub-section (2) of Section 167 of the Code if he has filed an application after the expiry of the stipulated period alleging that no challan has been filed and he is prepared to offer the bail that is ordered, and it is found as a fact that no challan has been filed within the period prescribed from the date of

the, arrest of the accused In such a case, therefore, even if the application for consideration of an order of being released on bail is posted before the court after some length of time, or even if the Magistrate refuses the application erroneously and the accused moves the higher forum for getting a formal order of being released on bail in enforcement of his indefeasible right, then filing of challan at that stage will not take away the right of the accused”.

9 In the case of **Saquib Abdul Hamid Nachan v/s. State of Maharashtra reported in 2016(10) SCALE 306**, the Hon'ble Apex Court has observed as follows :

“(i) As per the provisions of Section 167 of the Code of Criminal Procedure, 1973 maximum period during which the investigation has to be completed is 90 days. Sub-section (2) of Section 167 provides that if the investigation is not completed within the said period of 90 days and charge-sheet filed, the accused is, as a matter of right, entitled to bail. Since in the instant case the provisions of MCOCA were also invoked, Section 21 thereof got attracted. It modifies, to a certain extent, the provisions of Section 167 of the Code of Criminal Procedure, 1973. Insofar as the provision relating to completion of investigation and filing of charge-sheet within a period of 90 days is concerned, that can be extended by further 90 days under certain conditions as mentioned in the proviso which is added vide Clause (b) of Sub-section (2) of Section 21 of MCOCA.

(ii) None of the grounds mentioned in the application

warrant for an extension for further period of 90 days to complete the investigation. Once it was found that the order of the Special Judge in rejecting the application for extension of time was proper and there was no reason to set aside the same, the Appellant shall be entitled to consideration of his application filed under Section 167(2) of the Code of Criminal Procedure, which was filed. The order of the High Court was set aside and the Special Judge was directed to dispose of such application filed by the Appellant on its own merits."

10 In view of the above observations and the object of Section 167(2) of the Code of Criminal Procedure, 1973, the application deserves to be allowed.

11 It is submitted that now the charge-sheet is filed. In the instant case, the only issue for consideration is the right of accused to have been enlarged on bail on 25/6/2017 by availing statutory bail under section 167(2) of the Code of Criminal Procedure, 1973 read with section 21(2) of M.C.O.C.A. Once it is held that the order rejecting the application for bail under section 167(2) of the Code of Criminal Procedure, 1973 deserves to be quashed and set aside, natural corollary would follow and that is the accused deserves to be enlarged on bail.

12 The observations are prima facie and restricted to the

application under section 439 of the Code of Criminal Procedure, 1973 and the same shall not be taken into consideration for discharge or at the time of trial.

13 Hence, following order is passed :

ORDER

- (i) The application is allowed.
- (ii) The applicant be enlarged on bail on furnishing P.R. Bond in the sum of Rs. 75,000/- with one or more solvent sureties in the like amount.
- (iii) The applicant shall attend the concerned police station every Sunday for 4 months from release on bail and cooperate with the investigating agency to the best of his capacity.
- (iv) The applicant shall furnish his details regarding his place of residence, his contact number such as cell phone number, landline number etc. to the concerned investigating officer.
- (v) The applicant shall also file undertaking to the Court to attend

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each every date of hearing.

(vi) The applicant shall not tamper with the evidence.

14 The application is disposed of accordingly.

Aruna
Sandeep
Talwalkar

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[SMT. SADHANA S. JADHAV, J.]

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