

Santosh

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
BAIL APPLICATION NO. 1598 OF 2018**

Pravin Prabhakar Parab ...Applicant
Versus
The State of Maharashtra ...Respondent

**Santosh
Subhash
Kulkarni**

Ms. Afsan G., for the Applicant.
Smt. Jyoti S. Lohokare, APP for the State/Respondent.

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Santosh Subhash
Kulkarni

Date: 2018.07.17
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CORAM: A. S. GADKARI, J
DATED: 11th JULY, 2018

PC:-

1. This is an application under Section 167(2) of the Criminal Procedure Code, for indefault bail to the applicant.

Heard the learned Counsel for the applicant and the learned APP. Perused the record.

2. The applicant is an accused in CR No.185 of 2018 dated 5th April, 2018, registered with Parksite Police Station, Vikroli, Mumbai, for the offence punishable under Section 354 of the Indian Penal Code read with Section 8 of the Protection of Children from Sexual Offences Act ("POCSO Act", for short).

3. The record indicates that in the said crime, the applicant was arrested on 5th April, 2018 and was produced before the concerned Magistrate, having jurisdiction over Parksite Police Station, Vikrolil, Mumbai, on 6th April, 2018. Thus, the period to be reckoned with for the purpose of calculation of application under Section 167(2) would start from 6th April, 2018. The maximum punishment prescribed under the said sections is of five years, and therefore, the period for submitting final report/charge-sheet before the competent Court shall be 60 days. The period of 60 days to file final report/charge-sheet came to an end on 4th June, 2018. The applicant thereafter immediately on 5th June, 2018, preferred an application for indefault bail under Section 167(2) of Criminal Procedure Code. The said application has been rejected by the learned Special Judge, under POCSO Act, Greater Bombay, by the impugned order dated 6th June, 2018.

4. The Supreme Court in the case of Hussainara Khatoon & Ors. vs. Home Secretary, State of Bihar reported in (1980) 1 SCC 108 and particularly in para 3 has held as under :-

“3 We find that..... We are also very doubtful whether on the expiry of 90 days or 60 days as the case may be, from the date of arrest, the attention of the under trial prisoners was drawn to the fact that they were entitled to be released on bail under proviso (a) of sub section (2) of Section 167. When an under trial prisoner is produced before a Magistrate and he has been in detention for 90 days or 60 days, as the case may be, the Magistrate must, before making an order of further remand to judicial custody, point out to each under trial prisoner that he is entitled to be released on bail. The State Government must also provide at its own cost a lawyer to the under trial prisoner with a view to enabling him to apply for bail in exercise of his right under proviso (a) to sub section (2) of Section 167 and the Magistrate must take care to see that the right of the under trial prisoner to him and he must deal with the application for bail in accordance with the

guidelines laid down by us in our Order dated February 12, 1979. We hope and trust that every Magistrate in the country and every State Government will act in accordance with this mandate of the Court. This is the constitutional obligation of the State Government and the Magistrate and we have no doubt that if this is strictly carried out, there will be considerable improvement in the situation in regard to under trial prisoners and there will be proper observance of the rule of law”.

5. It is thus clear that, it was for the Magistrate to apprise the applicant about the indefeasible right accrued in favour of the applicant and it was also incumbent on the part of the Investigating Agency to produce the applicant before Magistrate after expiry of 60 days for exercising the said indefeasible right which had accrued in favour of the applicant/accused on that particular date. As has been held by the Supreme Court in the case of Hussainara Khatoon & Ors (supra), it is the obligation of the State Government and the Magistrate to follow the dictum laid

down by the Supreme Court in its strict sense. The Investigating Agency cannot be permitted to raise a specious plea that on the 60th day, there was no date of remand and accused was already remanded for further period under Section 309 of Cr. P.C. by the Court.

6. The Supreme Court in catena of judgments has held that, it is the indefeasible right of an accused person which accrues in favour of an accused on the date of happening of a particular event i.e. non filing of charge-sheet on or before 60 days or 90 days as the case may be, as per the mandate under Section 167(2) of Cr.P.C. In the present case, as noted earlier, on 60th day the Investigating Agency failed to file charge-sheet and therefore an indefeasible right had accrued in favour of the applicant on that date.

7. The chronology mentioned herein above, clearly leads to the conclusion that the 60th day for filing of the charge-sheet came to end on 4th June, 2018 and an indefeasible right had accrued in favour of the applicant on 5th June, 2018 and therefore the finding recorded by the Trial Court in para 3 of the impugned order is erroneous.

8. In view of the above, the applicant deserves to be released on bail under Section 167(2) of Criminal Procedure Code.

Hence the following order :-

: Order :

(i) The Applicant be released on bail, in CR No.185 of 2018 dated 5th April, 2018 registered with Parksite Police Station, Vikroli, Mumbai, on his furnishing P.R. bond of Rs.15,000/- with one or two local sureties in the like amount.

(ii) The Applicant shall not tamper with the evidence and/or influence the prosecution witnesses.

(iii) The Applicant shall attend all the dates before the Trial Court.

9. Application is allowed in aforesaid terms.

[A. S. GADKARI, J.]