

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

**CRIMINAL APPLICATION NO.1571 OF 2018
IN
CRIMINAL APPLICATION NO.715 OF 2018**

The State of Maharashtra ... Applicant

Vs.

Satyanarayan Rajaiah Karrela & Ors. ... Respondents

**WITH
CRIMINAL APPLICATION NO.1572 OF 2018
IN
CRIMINAL APPLICATION NO.716 OF 2018**

The State of Maharashtra ... Applicant

Vs.

Krishna Lingayya Ghoshaka ... Respondents

Mr.Raja Thakare, Spl. P.P. with Vaibhav Bagade with Mr.A.R. Patil,
APP, for the Applicant – State
Mr.S. Pasbola i/b Susan Abraham for Respondents

**CORAM: Mrs.MRIDULA BHATKAR, J.
DATED: DECEMBER 18, 2018**

P.C.:

1. Upon urgent mentioning, taken on Production Board.
2. Today, these applications are moved by the State for granting stay to the order dated 17.12.2018 passed in Criminal Application Nos.715 of 2018 and 716 of 2018 and asking for any other

appropriate relief in the interest of justice. This Court has set aside the order dated 9.4.2018 of the learned Sessions Judge, Greater Mumbai, giving extension of time to file chargesheet under section 43D of the Unlawful Activities (Prevention) Act. The prayer for stay of the said order was rejected by the Court yesterday. Hence, these applications are moved by the prosecution again making a prayer that the said order is to be stayed.

3. Mr.Thakare, the learned Special Public Prosecutor, has submitted that by refusal of extension of the time, the prosecution is placed at a disadvantageous position. He has submitted that the prosecution has complied with all the steps and the requirements under section 43D of the Unlawful Activities (Prevention) Act in the Special Case No.11 of 2018 (C.R. No.2 of 2018 of ATS). He has submitted that the prosecutor had filed the application giving reasons in detail for more time than 90 days to file the chargesheet. Notice was also issued to the accused persons, who are detained in prison. However, they refused to accept the notices and, therefore, the trial Court held that the notices when refused, are deemed to be served on the accused. The learned Prosecutor has submitted that whether refusal of notices by the accused persons who are in the prison is to be considered a good service or it is deemed to be served or not, is

an issue involving point of law and, therefore, either the order passed by this Court is to be stayed to enable the prosecution to approach the Supreme Court or a Certificate under Article 134A of the Constitution of India is to be issued by this Court. He has submitted that a similar issue was agitated before the Division Bench of this Court in a group of Appeals i.e., **Appeal No.825 of 2013 and other connected appeals**, wherein by an order dated 31.1.2018, the Division Bench has admitted all the appeals. He has submitted that the present issue is also of the similar nature and it requires deliberation and to be tested on legal parameters. When the prosecution has complied with all the procedural aspects of section 43D of the Unlawful Activities (Prevention) Act, then, only on the point of technicality, the prosecution should not be the sufferer and should not be put on a disadvantageous position.

4. Mr.Pasbola, appearing for the respondents, submitted that no point of law is involved in the present case as the issue is already settled in the case of **Sanjay Dutt vs. State through CBI, Bombay (II) reported in (1994) 5 SCC 410**.

5. Yesterday, the matter was heard after giving sufficient time to the prosecution for preparation. The order was passed in the open

Court. At the end of it, the learned Prosecutor prayed that this order be stayed. However, this Court has stated that in view of the ratio laid down by the Supreme Court in the case of **Hitendra Vishnu Thakur & Ors. vs. State of Maharashtra & Ors. reported in (1994) 4 SCC 602**, rejected the application for stay. In the order of the present case, this Court has specifically stated that on 9.4.2018, on the day of remand, the accused were not produced before the Court and the 90 days were to get over on 12.4.2018. Thus, there was a gap of 2 to 3 days and the presence of the accused persons could have been obtained for service of notices in the Court. However, though there was a time of 3 days in between, without giving audience to either the accused or their respective advocates, the time was extended for filing chargesheet. I am of the view that considering the facts of the case, the law laid down in the case of **Sanjay Dutt (supra)** and **Hitendra Thakur (supra)** is squarely applicable to the present case. Hence, it is not a case where Certificate under Article 134A can be issued.

6. The applications are rejected accordingly.

(MRIDULA BHATKAR, J.)