

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**BENCH AT AURANGABAD****CRIMINAL WRIT PETITION NO. 1820 OF 2019**

1. Dnyaneshwar S/o Pandurang Jadhav,
Age : 24 Years, Occ. Labour,
R/o. Vadgaon Tq. Kopargaon,
Dist. Ahmednagar

2. Karan S/o Balu Mohite,
Age : 27 Years, Occ. Labour,
R/o. Dhulgaon Tq. Yeola,
Dist. Nashik

...PETITIONERS

VERSUS

1. The State of Maharashtra,
Through The Secretary,
Home Department (Special),
2nd Floor, Main Building,
Mantralaya, Mumbai.

2. The Additional Director,
General of Police,
Home Department [Special],
2nd Floor, Main Building,
Mantralaya, Mumbai.

3. The Superintendent of Police,
Ahmednagar, District Ahmadnagar

4. The Police Inspector,
Kopargaon (Gramin), Police Station,
Kopargaon, District Ahmadnagar.

..RESPONDENTS

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Advocate for Petitioners : Mr. V.B. Jogdand Patil
APP for Respondents: Mrs. D. S. Jape

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**CORAM :T.V. NALAWADE AND
S. M. GAVHANE,JJ.**

DATE : 22.11.2019.

ORDER :-

The proceeding is filed for relief of setting-aside order dated 08.10.2019, passed by Inspector General of Police Nashik and also for setting-aside the order dated 14.10.2019, passed by the learned Special Court Nashik for allowing the arrest of the petitioner under the provision of The Maharashtra Control Of Organized Crime Act, 1999 herein-after referred to as (M.C.O.C. Act) 1999.

2. Both the sides are heard.

3. In C.R. No. 104 of 2019 registered with Kopergaon Rural Police Station, District Ahmednagar, the appellants, petitioners were arrested. The crime was registered for the offences punishable under Sections 395, 420, 120-B and 412 of the Indian Penal Code. They were arrested on 15.07.2019. Before invoking provision of M.C.O.C Act,1999 application was made for bail in Sessions Court and then in High Court by the appellant. In Bail Application No. 1057 of 2019 the appellants were granted bail by this Court by the order dated 03.10.2019. As the appellant could not give the surety, they were kept in Jail and then the provisions of M.C.O.C. Act, 1999 were invoked. They were produced before the Special Court created

under the Special Enactment and then aforesaid order came to be passed and even PCR came to be granted against them.

4. The submission made and record show that on the basis of record of the charge sheet filed against the appellants and others, the sanction for prosecuting the appellants and others under the provision of M.C.O.C Act 1999 came to be given. During the argument the tenability of the provisions of M.C.O.C Act, 1999 was not questioned and the argument was advanced by the learned counsel for the petitioners on other technical points. It was submitted that when bail was granted by this Court in C.R. No. 104/ 2018 prior to invoking the provision of M.C.O.C Act 1999, they could not have been taken in custody after invoking the provisions of M.C.O.C Act and the investigating agency ought to have taken permission from the High Court for the arrest of the present appellants. In support of this contentions, the learned counsel for the appellants placed reliance on some observations made by the Apex Court in case reported (**Pradeep Ram Vs. The State of Jharkhand and Another**) 2019 DGLS (Supreme Court) 890. This Court has carefully gone through the facts of this case. The facts of reported case shows that initially the crime was registered for the offences punishable under Section 414, 384,

386, 387, 120-B of the Indian Penal Code, few sections of Arms Act and few sections of Criminal Law Amendment Act. The crime was registered against as many as 11 accused persons. The bail was granted to them by the High Court in that crime and charge sheet was filed against them on 10.03. 2016 for these offences. The cognizance of the offences was also taken by the learned Chief Judicial Magistrate. Then the proceeding was filed for quashing of the entire case under Section 482 of the Code of Criminal procedure by the accused. Then on 09.04.2017, Sections 16, 17 and 20 and 23 of unlawful activities (Prevention) Act 1967 were added against the accused. Central Government then issued order dated 13.02.2018, in exercise of the power conferred upon it under the National Investigation Agency Act 2008 and direction was given to National Investigation Agency (NIA) to take up the investigation of CR No. 02 of 2016 in which charge sheet was already filed as mentioned above. In view of the subsequent development NIA re-registered the FIR No. 6/2018 under the aforesaid provision of unlawful activities (Prevention) Act 1967 also. At that time the appellant accused was in custody in some other cases and request was made on behalf of National Investigating Agency before Special Judge National Investigating Agency on 22.06.2018 for issuance of production

warrant. The learned Special Judge allowed the prayer and appellant was produced from Jail before learned Special Judge and he was remanded to judicial custody. Then Writ Petition was filed by the appellant for quashing of entire criminal proceeding in connection with special National Investigating Agency case No.3/18 including the FIR 6/2018. Further prayer was made for quashing of order dated 25.10.2018 by which the appellants, accused were remanded to judicial custody by special Judge. The High Court dismissed that proceeding and then the matter was taken to the Supreme Court. Supreme Court considered following points

“From the submissions of the learned counsel for the parties and the pleadings on the record, following are the issues, which arise for consideration in these appeals :-

(i) Whether in a case where an accused has been bailed out in a criminal case, in which case, subsequently new offences are added, it is necessary that bail earlier granted should be cancelled for taking the accused in custody ?

(ii) Whether re-registration of F.I.R No. RC-06/2018/NIA/DLI is a second F.I.R and is not permissible there being already a First

Information Report No. 02/2016 registered at P.S.

Tandwa arising out of same incident ?

(iii) Whether N.I.A. could conduct any further investigation in the matter when investigating in the P.S. Case No. 02/2016 having already been completed and charge sheet has been submitted on 10.03.2016 with regard to which cognizance has already been taken by Chief Judicial Magistrate, Chatra on 11.03.2016 ?

(iv) Whether the order dated 25.06.2018 passed by Judicial Commissioner-cum- Special judge, NIA, Ranchi remanding the appellant to judicial custody is in accordance with law ?

(v) Whether the power under Section 167 Cr.P.C 1973 can be exercised in the present case, where the cognizance has already been taken by Chief Judicial Magistrate on 11.03.2016 or the accused could have been remanded only under Section 309(2) Code of Criminal Procedure, 1973 ?

The Apex Court has answered the aforesaid points at para graph No. 29 and the answer are as under :-

“ In view of the foregoing discussions, we arrive

at following conclusions in respect of a circumstance where after grant of bail to an accused, further cognizable and on-bailable offences are added :-

(i) The accused can surrender and apply for bail for newly added cognizable and on-bailable offences. In event of refusal of bail, the accused can certainly be arrested.

(ii) The investigating agency can seek order from the Court under Section 437(5) or 439(2) of Code of Criminal Procedure, 1973 for arrest of the accused and his custody.

(iii) The Court, in exercise of power under Section 437(5) or 439(2) of Code of Criminal Procedure, 1973 can direct for taking into custody the accused who has already been granted bail after cancellation of his bail. The Court in exercise of power under Section 437(5) as well as Section 439(2) can direct the person who has already been granted bail to be arrested and commit him to custody on addition of graver and non-cognizable offences which may not be necessary always with order of cancelling of earlier bail.

(iv) In a case where an accused has already been

granted bail, the investigating authority on addition of an offence or offences may not proceed to arrest the accused, but for arresting the accused on such addition of offence or offences it need to obtain an order to arrest the accused from the Court which had granted the bail”.

5. The learned counsel for the petitioner submitted that answer No. IV quoted above help the petitioner. He submitted that order ought to have been obtained of arrest from the High Court as High Court has granted bail in the past. This submission is not at all acceptable. This observations has connection with answers given to the other points and so they cannot be ignored. In the present matter, though the bail was granted appellants were not released from Jail and as they failed to give surety. Notice was given to them to inform them that provisions of M.C.O.C Act were invoked. Application was moved before learned Special Court created under M.C.O.C Act and in that proceeding present appellant appointed counsel and they were heard when the permission was sought for making arrest. In view of this circumstances and the observations made by the Apex Court, it cannot be said that they ought to have approached this Court either for

cancellation of bail granted by this Court or for permission to arrest them. It is new offence and so the procedure like giving of notice to them and giving hearing to them on the new development was sufficient. No charge sheet was filed against them and the investigation was still in progress. The answer given by the Apex Court to the points raised also show that it is open to the investigating agency to seek order under Section 437 (5) or Section 439(2) of the Code of Criminal procedure for arrest of the accused and the custody. Though such procedure is available, it is also open for the accused to apply for bail in respect of newly added cognizable and non bailable offences if such bail can be obtained. In the case cited supra also the remand order was upheld by the Apex Court by holding that such remand order can be treated as order made under Section 309(2) of the Code of Criminal Procedure. The present case is on better footing as already observed. In view of this circumstances, this Court holds that there are no merit in the present proceeding and the learned Judge of the Special Court has not committed any error in passing the order of remand against the appellants. One of the accused like Dnyenshwar, who had furnished bail subsequently did not apply for bail and by giving excuse that he was in need of medical treatment, he did not surrender.

So the order was made against him also. In the result the proceeding stands dismissed.

(S.M. Gavhane, J.)

(T.V. NALAWADE, J.)

YSK/