

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

CRIMINAL APPLICATION NO.481 OF 2019

Shri Hari Sankaran

... Applicant

Vs.

Union of India & Ors.

... Respondents

Mr.Aabad Ponda with S. Rustomjee, Senior Advocate with Aniket Nikam, Vikrant Singh, Negi, P.M. Thakkar, Ekta Tyagi, Nausher Kohli, Harsh Gokhale i/b DSK Legal for the Applicant

Mr.Vinod Chate, APP, for the Respondent – State

Mr.H.S. Venegaonkar with A.L. Bhise for Respondent Nos.1 & 2

CORAM: Mrs.MRIDULA BHATKAR, J.

DATED: APRIL 16, 2019

P.C.:

1. The applicant/accused, who is facing prosecution under section 447 of the Companies Act, challenges the order dated 4.4.2019 passed by the learned Metropolitan Magistrate, 71st Court, Bandra, Mumbai of remanding him for more 15 days in the Magisterial Custody as it is in breach of section 436(1)(b) of the Companies Act, 2013. The applicant/accused was arrested on 1.4.2019 by respondent No.2 investigating agency i.e., Serious Fraud Investigation Office (SFIO) for the offence punishable under

section 447 of the Companies Act i.e., fraud. He was produced on the same day before the learned Magistrate, who granted police custody upto 4.4.2019. He was produced before the learned Metropolitan Magistrate, on 4.4.2019 with a prayer by the prosecution of granting it 15 days' Magisterial Custody. The learned Magistrate allowed the said application and transferred the accused to Magisterial Custody on the same day and granted Magisterial Custody till 18.4.2019. The applicant/accused had challenged the said order before the Supreme Court in Writ Petition (Cri.) No.108 of 2019. In the said petition, the applicant challenged the order of first remand i.e., 1.4.2019 alongwith the second order of remand dated 4.4.2019 passed by the learned Metropolitan Magistrate, 71st Court, Bandra, Mumbai. The said petition was dismissed. Thereafter, the applicant/accused moved this Court by filing the present application yesterday i.e., 15.4.2019.

2. This application is filed challenging the order dated 4.4.2019 passed by the learned Metropolitan Magistrate and prayed that the said order be quashed and set aside and he be released pending this application.

3. Notice was given to the respondents and the learned Counsel for both sides are heard.

4. Mr.Ponda, the learned Counsel appearing for the applicant, submitted that at the outset, he is restricting his submissions only to the point of applicability of section 436(1)(b) of the Companies Act, 2013. The learned Counsel has submitted that the learned Magistrate has no authority and power to detain a person in police custody or Magisterial Custody for more than 15 days. He submitted that before or upon 15th day, the learned Magistrate is required to forward the applicant/accused to the Special Court as stated in the proviso to section 436(1)(b). In the present case, the total period of detention got over on 15.4.2019 in the afternoon as the applicant/accused was arrested on 1.4.2019, at around 3.20pm. Therefore, the detention of the applicant/accused by virtue of the order dated 4.4.2019 which is extended upto 18.4.2019 is illegal.

5. The learned Counsel in support of his submissions relied on the judgment of the learned Single Judge of this Court in the case of **Suryakant Ramdas More vs. State of Maharashtra**¹. He

¹ 1990 Mh.L.J. 124

further submitted while pressing his submissions on the point of immediate release of the applicant/accused that this High Court under section 482 cannot pass any order which is against the express bar of law engrafted in any other provision of the Code of Criminal Procedure. The learned Counsel relied on section 438 of the Companies Act in which the applicability of Code of Criminal Procedure to the proceedings before the Special Court is mentioned. He submitted that section 436(1)(b) is like section 167 of Code of Criminal Procedure where the custody can be given only for 15 days and the learned Magistrate has no power to extend the Magisterial Custody time to time or beyond 15 days unlike the powers given under section 167 (2) of the Code of Criminal Procedure. He relied on the ratio laid down by the Supreme Court in the case of Madhu Limaye vs. The State of Maharashtra². He prays that if the Court is holding that it is an illegal detention, then, he has right to be released with or without any condition which is found appropriate by the Court.

6. Mr.Venegaonkar, appearing for the Respondent Nos.1 and 2, while vehemently opposing this revision application, has defended the order passed by the learned Magistrate. He has submitted that

² (1977) 4 SCC 551

he opposes the prayer for release of the applicant/accused temporarily mainly on the ground of illegal detention.

7. Considering the submissions of the learned counsel, the matters require interpretation of section 436(1)(b) of the Companies Act, 2013. The submissions of the learned Prosecutor are not available as he needs time and it is granted because of the short notice given to him. However, this issue is required to be gone into in view of the critical gap of period of legal and illegal detention.

8. Section 436 (1)(b) is useful to be reproduced as under:

“436. Offences triable by Special Courts. -

(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), -

(a);

(b) where a person accused of, or suspected of the commission of, an offence under this Act is forwarded to a Magistrate under sub-section (2) or sub-section (2-A) of section 167 of the Code of Criminal Procedure, 1973 (2 of 1974), such Magistrate may authorise the detention of such person in such custody as he thinks fit for a period not exceeding fifteen days in the whole where such Magistrate is a Judicial Magistrate and seven days in the whole where such Magistrate is an Executive Magistrate:

Provided that where such Magistrate considers that the detention of such person upon or before the expiry of the period of detention is unnecessary, he shall order such

person to be forwarded to the Special Court having jurisdiction;

(c) ...

(d) ...”

The Magistrate entertaining the offences under the Companies Act does not enjoy identical powers available to him under section 167(2) or section 167(2)(a) of Code of Criminal Procedure. The proviso to section 167(2) reads thus:

S. 167. Procedure when investigation cannot be completed in twenty-four hours. -

(1) ...

(2) The Magistrate to whom an accused person is forwarded under this section may, whether he has or has not jurisdiction to try the case, from time to time, authorise the detention of the accused in such custody as such Magistrate thinks fit, for a term not exceeding fifteen days in the whole; and if he has no jurisdiction to try the case or commit it for trial, and considers further detention unnecessary, he may order the accused to be forwarded to a Magistrate having such jurisdiction:

Provided that,-

(a) the Magistrate may authorise the detention of the accused person, otherwise than in the custody of the police, beyond the period of fifteen days; if he is satisfied that adequate grounds exist for doing so, but no Magistrate shall authorise the detention of the accused person in custody under this paragraph for a total period exceeding,-

(i) ninety days, where the investigation relates to an offence punishable with death, imprisonment for life or imprisonment

for a term of not less than ten years;

(ii) sixty days, where the investigation relates to any other offence, and, on the expiry of the said period of ninety days, or sixty days, as the case may be, the accused person shall be released on bail if he is prepared to and does furnish bail, and every person released on bail under this sub- section shall be deemed to be so released under the provisions of Chapter XXXIII for the purposes of that Chapter;

(b) no Magistrate shall authorise detention in any custody under this section unless the accused is produced before him;

(c) no Magistrate of the second class, not specially empowered in this behalf by the High Court, shall authorise detention in the custody of the police. ¹ Explanation I.- For the avoidance of doubts, it is hereby declared that, notwithstanding the expiry of the period specified in paragraph (a), the accused shall be detained in custody so long as he does not furnish bail;]. ² Explanation II.- If any question arises whether an accused person was produced before the Magistrate as required under paragraph (b), the production of the accused person may be proved by his signature on the order authorising detention.”

The proviso of section 436 states that if the Magistrate thinks the detention is not necessary upon or before the expiry of the period, then, he should forward the accused to the Special Court having jurisdiction. The word “expiry” of the period necessarily indicates a period of 15 days mentioned in section 436(1)(b). Thus, unlike powers vested u/s 167(2), the powers of the Magistrate to grant Magisterial Custody or police custody of the

accused at the time of remand till filing of the chargesheet is completely curtailed by putting a bar on expiry of 15 days as a whole.

9. It is the mandate of the proviso that the Magistrate cannot keep the accused in his custody after 15 days. Thus, forwarding the accused upon or before 15 days to the said Court is a must. The ratio laid down in the cases of **Suryakant Ramdas More vs. State of Maharashtra (supra)** and **Madhu Limaye vs. The State of Maharashtra (supra)** is binding on this Court. Thus, the submissions of Mr.Ponda are correct in view of the order of remand dated 4.4.2019 passed by the learned Metropolitan Magistrate. The date of arrest is the first point of detention. Thus, from 1.4.2019 till 15.4.2019, police custody or Magisterial Custody of the petitioner/accused under section 436 is justifiable. Thus, today i.e., 16.4.2019, the accused cannot remain in the custody of the Magistrate. He is required to be produced before the Special Court today itself in compliance with the proviso to section 436(1) (b) of the Companies Act.

10. Hence, the Application is disposed of with the following order:

i) The learned Magistrate is authorised and empowered to detain a person either in police custody or Magisterial Custody, however, only for a period of 15 days from the date of his remand and in the present case from 1.4.2019 and as the applicant/accused was produced on 1.4.2019, the period of detention got over on 15.4.2019 and, therefore, the order of further remand i.e., upto 18.4.2019 passed by the learned Magistrate from today is illegal and hence, the applicant/accused is required to be produced immediately today itself before the Special Court.

ii) The submission of Mr.Venegaonkar, the learned Counsel for Respondent Nos.1 and 2, that production of the applicant/accused be allowed either physically or through video conferencing is accepted.

11. All concerned to act on authenticated copy of this order.

(MRIDULA BHATKAR, J.)