

Vidya Amin.

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

CRIMINAL APPLICATION NO. 1448 OF 2018

Rahul Shedge	...	Applicant
VS.		
The Intelligence Officer & Anr.	...	Respondents

**WITH
CRIMINAL APPLICATION NO. 1459 OF 2018**

Ishrat Khan Parmar	...	Applicant
VS.		
Union of India & Anr.	...	Respondents

Mr. Taraq Sayed, Advocate for the applicant in APL/1448/2018.
Mr. Ayaz Khan a/w. Zehra Charania, Advocate for the applicant in APL/1459/2018.
Mrs. A.A. Mane, Advocate for respondent No. 1 in both the Applications.
Mrs. Veera Shinde, APP for respondent no. 2/State.

**CORAM: Mrs.MRIDULA BHATKAR, J.
DATED: 24th January, 2019.**

P.C. :

The applicant in Criminal Application No. 1448 of 2018 was arrested on 12th June, 2018 and the applicant in Criminal Application No. 1459 of 2018 was arrested on 13th June, 2018 and are prosecuted for the offences punishable under section 8(c) r/w. 22(c) punishable under sections 29 and 23 of N.D.P.S. Act at the instance of Intelligence Officer, DRI, Mumbai.

2. A short issue involved in these Applications is whether the extended period of 180 days, as contemplated under section 46(4) of N.D.P.S. Act for filing chargesheet can be passed without furnishing copies of such Application to the accused.

3. In the present case, the learned Special Judge, N.D.P.S. Court by order dated 7th December, 2018 has extended the time for filing chargesheet by 14 days, i.e., till 21st December, 2018. As per the chronology of the arrest, for filing chargesheet, 180 days got over on 9th December and 10th December, 2018 respectively. The prosecution moved an Application under sub-clause (4) of Section 36A of N.D.P.S. Act for extension of time to file chargesheet on 7th December, 2018, i.e., 2 to 3 days prior to the stipulated date of 180 days of arrest. On that day, the accused were produced before the Court and the counsel of respective accused were also present. The roznama of 7th December, 2018 is produced. It discloses the presence of the accused and their respective advocates. The counsel of the accused have moved the Application, which is marked at Exhibit 44 for supply of copies of the Application for extension which is marked at Exhibit 45. The copies of the Application Exhibit 45 praying extension of time for

filing chargesheet were not furnished to either the accused or the learned counsel of those accused. After receiving the Application Exhibit 44, the learned Judge has noted down in paragraph 7 of his order wherein he has stated that the advocate for the accused persons were directed to go through the contents of the remand report, however, they refused to do so and they contended that unless the copy was supplied, they would not make submissions. The learned Judge has noted down his observation that “it means the learned Advocate for the accused are not giving proper cooperation in the Court”.

4. It is informed to this Court that no order is passed on Exhibit 44 and the learned Judge, after hearing the submission of the prosecution and considering the merits of the Application, has passed the order giving extension of 14 days for filing chargesheet beyond 180 days, as contemplated under section 36A of N.D.P.S. Act.

5. The learned counsel for respondent no. 1 supported the order passed by the learned Judge of N.D.P.S. Court and has submitted that the learned Judge has gone into the merits of the

matter so also the counsel of the accused persons were asked to see the remand report where the reasons for extension of time were mentioned. She has submitted that the accused persons are hardcore criminals.

6. The issue is very short. I rely on the judgment of Single Judge of this Court in the case of **Bhagyesh @ Bablu Nitin Shah vs. The State of Maharashtra** in **Criminal Application No. 64 of 2009 decided on 28th January, 2009** wherein the learned Judge has relied on the ratio laid down in the case of **Hitendra Vishnu Thakur & Ors. vs. State of Maharashtra & Ors.**, reported in **1994 SCC (Cri) 1087** and has observed that the notice is required to be given to the accused. Similarly, in the case of **Criminal Appeal No. 732 of 2018 in Sachin Namdeo Rathod & Ors. vs. The State of Maharashtra**, decided on 27th November, 2018, the Division Bench of Bombay High Court, Aurangabad Bench has held that proper audience to be given to the accused while deciding the Application for extension of time for filing chargesheet. This case is under M.C.O.C. case, however, the extension was given under 21(2) of M.C.O.C. Act. The Division Bench has observed that fair opportunity is to be given to the accused persons.

7. In the case of seeking extension of time for filing chargesheet, if the learned Judge is going to extend the time, then the Judge is using his special powers to extend the period granted for filing the chargesheet.

8. The legislative object of putting limit to the period of investigation has to be borne in mind. No investigation can continue for a longer time. The accused, who is behind the bars should know what charges he is going to face, what allegations are made against him and that is to be made known to him within specific period mentioned under section 167(2) of Cr. P.C. The period of filing chargesheet generally of 90 days is extended in some special enactments like M.C.O.C., N.D.P.S., U.A.P. Act etc. Thus, the legislature has also considered the difficulties of the investigating agencies faced in some complicated and grave offences where the evidence is not easily available. Therefore the period of investigation which is limited to 90 days as per section 167(2) of Cr. P.C. can be extended for longer time, however, not extending the prescribed time under the special statute.

9. In the case of **Hitendra Vishnu Thakur** (*supra*), the Supreme Court has laid down the law that notice is to be given to the accused and the accused are to be heard while granting extension to the Investigating officer to file chargesheet. Under section 36A(4) of N.D.P.S. Act, 90 days period is to be construed as 180 days as a normal period given for investigation to file chargesheet under N.D.P.S. case. The proviso of sub-section (4) provides that if the investigation is not completed within the said period of 180 days, the Special Court may extend the said period upto one year on the report of the Public Prosecutor . Thus, the total period of investigation and filing of chargesheet can be extended for a period of maximum one year. However, the proviso lays down a specific procedure which states that the Judge has discretion to extend the period upto one year, however, for that purpose, the Public Prosecutor is required to file a report wherein he should indicate the progress of the investigation and specific reason for the detention of the accused beyond the said period of 180 days.

10. In the present case, in the roznama dated 7th December, 2018 the learned Sessions Judge has mentioned that remand report is taken on record and marked at Exhibit 43. Besides, remand report, there is an Application filed by the Prosecution for extension of time, which is marked at Exhibit 45 and the defence has filed the Application demanding the copy of Application for extension of time to file chargesheet, which is marked at Exhibit 44. The learned Judge has in fact in paragraph 7 has mentioned about the Application Exhibit 44 filed by the defence demanding copy of the remand report and the learned Judge has requested the advocates for the accused to go through the remand report and argue. However, the respective advocates of the accused refused to do so but they asked for copy of the Application seeking extension of time. The demand for furnishing the copy of Application for extension of time to file chargesheet (Exhibit 45) is correct, as the accused have right to get that Application. The accused has right to move the Application for bail in default, if the chargesheet is not filed within the stipulated period. If the extension is granted, then the accused is deprived of the said possible liberty. Under such circumstances, it is mandatory for the Court to give audience to the accused, as right made available to

the accused by the legislature is going to be taken away. It is the basic principle of fair trial and all the Courts are required to adhere to the rules of fair trial.

11. Paragraph 7 reflects the thought process of the learned Judge and it appears that the learned Judge holds notion that extension of period to file chargesheet is a matter between the Court and the prosecution. This is not the case like Section 173(8) where the investigating agency or the prosecution have to just inform the Court that they want to go for further investigation. The accused have no say in such case. However, when further time is sought or got extended for filing the chargesheet, then the audience to the accused becomes mandatory, as his certain rights are going to be curtailed. Many times the remand reports are not shown to the accused persons, as certain confidential communication is made to the Court. It is also to be noted that the Public Prosecutor while indicating the progress of the investigation and quoting specific reasons for the detention of the accused if thinks that the disclosure of certain statements or certain part of investigation is not essential in the interest of justice and is inexpedient in the public interest, then she shall indicate

accordingly in the said report and that confidentiality can always be maintained by the prosecution. However, the copy of the report filed by the Prosecutor indicating that certain portion cannot be disclosed is to be given to the accused person so that they can advance their submissions on the point of granting extension to file chargesheet.

12. Under the provision of sub-section (4) of Section 36A, Public Prosecutor is supposed to file report indicating the progress of the investigation and giving reasons for detention of the accused. Thus, the report filed by Prosecutor is necessarily a different document than the regular remand report. The remand report is filed by the Investigating officer and the report for seeking extension for filing chargesheet is another report under proviso of sub-section (4) of Section 36A. The requirement of said report given by the prosecutor under the said proviso is also specifically mentioned in the proviso. Thus, when such report is filed and audience is required to be given to the accused, then naturally the copy of the said application is to be furnished to the accused.

13. In some cases, Bail Application made by the accused person can be considered only after filing of the chargesheet. Under such circumstances, his period of filing the Bail Application is also extended and his period of detention is thus extended when there is extension granted to file chargesheet. Under such circumstances, the order dated 7th December, 2018 passed by the learned N.D.P.S. Judge, City Civil and Sessions Court, Greater Mumbai of granting 14 days extension is hereby set aside. Only on this issue, the order is set aside. This Court has not gone into the merits of the case.

14. Both the Criminal Applications are allowed.

(MRIDULA BHATKAR, J.)