

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

BAIL APPLICATION. NO. 3364 OF 2019

1 Rohan Mahendra Ghogare
2 Monesh Sanjay Ghogare
3 Pratik Sham Sonawane
4 Rahul Shahdev Mane

.. Applicants

Vs.

The State Of Maharashtra

.. Respondent

.....
Mr. Priyal G. Sarda, Advocate for Applicants.

Mr. H. J. Dedhia, A.P.P. for the State-Respondent.

.....

CORAM : PRAKASH D. NAIK, J.

DATE : 02nd MARCH, 2020

PC.

1 The Applicants were arrested on 28th May 2019 in connection with C. R. No. 842 of 2019 registered with Chakan Police Station, Pune, for offence punishable under Sections 307, 143, 147, 148, 149 of Indian Penal Code (for short "IPC") and Sections 3 (25) and 4 (25) of the Arms Act and Section 37 (1) (3) read with 135 of the Maharashtra Police Act.

2 The First Information Report (for short "FIR") was lodged on 28th May 2019 alleging that, on 28th May 2019, accused No.1 Sonya Agarkar caused damage to the rickshaw of first informant. The accused also threatened him that he would

be assaulted with sickle. Since then Sonya Agarkar and his associates had grudge against him. On 27th May 2019, at about 10:00 p.m., the first informant Sanket Gadekar and his friends Shakur @ Salman Shaikh and Saurabh Rathod were chit-chatting behind Abu Bakar Masjid at Khandoba Mal, Chakan. At about 10:45 p.m., Sonya Aavtade, Sonya Agarkar, Rohan Ghogare, Monesh Ghogare, Pratik Sonawane, Vivek Kurhade, Rahul Mane, Ravi Kalaskar, Swapnil @ Sonya Shinde, Prashant Datar and four to five unknown persons came with sticks and sickles. Rahul Mane tried to assault first informant by sickle. The complainant tried to evade the blow but he sustained injury on left shoulder. He started running. He was chased by accused Sonya Avtade. He was armed with pistol. He fired towards first informant. He sustained injury to his right leg. The accused created terror. People started running helter-skelter. Shopkeepers closed the shops. The complainant went to the house of Iliyas Shaikh and managed to hide himself. The victim was taken to hospital for treatment.

3 The Applicants were produced before the Court of learned Judicial Magistrate, First Class, Khed-Rajgurunagar from time to time and they were remanded to custody. Accused No. 10

Swapnil Sanjay Shinde preferred an Application for bail under Section 167 (2) of the Code of Criminal Procedure (for short 'Cr.P.C.'). It was contended that, he was produced before the Court on 29th May 2019. He was remanded to police custody till 03rd June 2019 and then Magisterial custody for total period of 91 days. The Investigating Officer ought to have filed charge-sheet within 90 days from the date of production before the Court. If the charge-sheet is not filed, then the right to enlarge on bail has accrued in favour of the accused on 91st day. The aforesaid application was preferred on 28th August 2019. The Learned Judicial Magistrate, First Class, on the same day granted bail to the said accused in sum of Rs.30,000/-, with one or two surety in the like amount and on certain conditions. The Court also issued notice to the Investigating Officer to explain within seven days with special reason in support of the affidavit as to why he could not file charge-sheet within prescribed time.

4 The Applicants preferred an application on 29th August 2019 for bail on account of default in filing charge-sheet in accordance with Section 167 (2) of the Cr.P.C. before the Court of Judicial Magistrate First Class, Khed-Rajgurunagar. It was

contended that, the Applicants were arrested on 28th May 2019 and were produced before the Court for remand on 29th May 2019. They have completed 90 days in custody from the date of their production before the Court on 27th August 2019. On the day of filing the application, the 92nd day of custody was in progress. However, till filing of the Application, no charge-sheet is filed. Hence, they are entitled for bail. Report of Nazar was called on the same day and it was reported that no charge-sheet is filed in C.R. No. 842 of 2019. The Judicial Magistrate First Class directed learned APP to file say. The learned Magistrate by order dated 29th August 2019 called explanation from the Investigating Officer as to whether he has complied with Section 21 of Maharashtra Control of Organised Crime Act, 1999 (for short "MCOC" Act) by moving appropriate application before the Special Court for extension of custody of the accused. In order dated 29th August 2019, it was observed that, it was pointed that sanction to prosecute the accused is granted by Appropriate Authority and that letter dated 23rd August 2019 was brought to the notice of the Court. The court further observed that for not pointing out above letter in the loose and scattered remand papers, bail was granted to accused No. 10 Swapnil @

Sopya Sanjay Shinde in view of Section 167 (2) of the Cr.P.C. The Application of the Applicants is liable to be considered under Section 167 (2) of the Cr.P.C., in view of sanction to prosecute the accused under the M.C.O.C. Act, Section 21 of the said Act is liable to be complied by Investigating Officer. The sanction referred to by learned Magistrate was in fact, approval under Section 23 (1) (a) of M.C.O.C. Act.

5 Learned APP filed say on behalf of the prosecution on 30th August 2019 before the Court of Judicial Magistrate First Class stating that, on perusal of record and say of the Superintendent of Court, charge-sheet is not filed till today i.e. (not in stipulated period) but thereafter, Section 3(ii), 3(4) of M.C.O.C. Act is added by Investigating Officer and for the extension of stipulated period, application / report is filed before the Special Court at Pune, on 30th August 2019 and copy of the same is filed in this Court. Under such circumstance, application of default bail is not tenable in law. Accused will temper with the prosecution evidence and will abscond if released on bail and the application be rejected. The Assistant Commissioner of Police, Chakan Division, Pimpri Chinchwad filed say dated 30th August

2019 before the Court of learned Judicial Magistrate First Class stating that, the provisions of M.C.O.C. Act are applied and intimated to the Court of Judicial Magistrate First Class vide intimation dated 24th August 2019. The report is also sent to the Special Court under the M.C.O.C. Act on 26th August 2019. It was also stated that, the application is forwarded for filing before the Special Court, on 29th August 2019 for seeking extension of time to file charge-sheet hence, application for default bail may be rejected. The record indicates that, the application for extension of time for investigation is filed on 31st August 2019, before the Special Court under the M.C.O.C. Act at Pune. The prosecution had prayed for extension of 85 days.

6 The Assistant Commissioner of Police preferred an application dated 29th August 2019 before the Special Court under the M.C.O.C. Act for Production Warrant against the Applicant-accused for seeking extension of remand. The said application filed on 31st August 2019. The learned Special Judge issued Production Warrant against the accused Nos. 1 to 5 and 7 on 31st August 2019.

7 Learned Judicial Magistrate First Class, Khed-Rajgurunagar by order dated 31st August 2019 directed that remand papers be sent to the Special Court. It was observed that the provisions of M.C.O.C. Act were invoked. In view of Section 21 of the M.C.O.C. Act, the Investigating Officer sought extension of time for investigation and custody of accused before the Court. In view of other documents were forwarded to the Special Court along with the communication dated 31st August 2019 issued by learned Judicial Magistrate First Class stating that the Magistrate has lost its jurisdiction to deal with the matter in view of Section 9 of M.C.O.C. Act. Hence, the remand papers were submitted to the Special Court. In view of orders, all the documents including the remand papers and the application for default bail were forwarded to the Special Court under the M.C.O.C. Act.

8 The Special Public Prosecutor filed application on 31st August 2019 before the Special Judge under the M.C.O.C. Act and prayed that the Special Court may grant extension of period of custody of accused No. 1 and 2 for 90 days, accused Nos. 3 to 5 for 85 days and accused No.7 for 86 days from 31st August

2019 for further investigation and filing charge-sheet in the said offence. The Applicants were produced before the Special Court on 03rd September 2019. The custody of the accused were extended to 04th September 2019 without affecting any right accrued in favour of the accused. While passing the said order it was observed that, the accused had filed separate application for bail with submissions that if the Court is deciding the application before the Judicial Magistrate First Class, then the accused would not press the bail application filed before the said Court. A fresh application was filed seeking bail under Section 167 (2) of Cr.P.C. On 03rd September 2019, learned Special Public Prosecutor sought extension of time till the next date and the Advocate for the accused also agreed for arguing the matter on the next date. Hence, the proceeding were adjourned to 04th September 2019. The learned Special Judge by order dated 04th September 2019, allowed the application for extension of time for investigation filed by the learned Special Public Prosecutor on behalf of Investigating Officer and period for investigation and filing charge-sheet was extended by 45 days in connection with accused Sonya @ Nitin Agarkar, Rohan Ghogare, Monesh Ghogare, Pratik Sonawane, Rahul Mane, Sonya @ Samadhan

Avtade. Both applications for default bail under Section 167 (2) of Cr.P.C. by accused were rejected.

9 Learned Advocate for the Applicants made following submissions:-

(i) Co-accused Swapnil @ Sopya Shinde was arrested on 28th May 2019 and he was directed to be released on bail under Section 167 (2) of Cr.P.C. vide order dated 28th August 2019 since, the charge-sheet was not filed within 90 days. The Applicants are entitled to be released on bail on the ground of parity as on the date of filing of application by Applicants i.e. 29th August 2019 charge-sheet was not filed against them.

(ii) Period of 90 days of arrest of Applicants was completed on 27th August 2019. The application for extension was preferred by the Special Public Prosecutor on 31st August 2019. The Applicants were in jail without any legal order sanctioning their detention from 27th August 2019 till 31st August 2019.

(iii) Although, application for extension filed by Special Public Prosecutor was allowed by M.C.O.C. Court on 03rd September 2019, the Applicants were behind bar without any extension and order of Court from 27th August 2019.

(iv) On the date of filing of bail application by the Applicants under Section 167 (2) of Cr.P.C. i.e. 29th August 2019, there was no extension application filed before the M.C.O.C. Court and undisputedly, on the date of filing the application no extension was granted in accordance with Section 21 by M.C.O.C. Court.

(v) Reply was filed by A.C.P. to the application for bail preferred by the Applicants to frustrate the application for bail. The prosecution had failed to get an order from the Court for extension of custody of the Applicants.

(vi) Approval under Section 23(1) (a) of M.C.O.C. Act was granted on 22nd August 2019. However, the investigating agency and the Special Public Prosecutor failed to file an application within 90 days of custody of Applicants and without getting any extension after 90 days, extension application preferred belatedly, which was not tenable in law.

(vii) As per Section 167 (2) (a) of the Cr.P.C., no Magistrate shall authorize the detention of accused in custody for total period exceeding 90 days and after expiry of 90 days, the accused shall release on bail. After 27th August 2019, there was no order of any Court about detention of Applicants and thus, the

liberty of the Applicants has been violated and hence, they are entitled to be released on bail.

(viii) The Learned Judicial Magistrate First Class failed to consider that on 29th August 2019 charge-sheet was not filed. However, instead of granting bail to the Applicants, the Court directed the prosecution to file say. Once the Court had received report from the Nazar about non filing of charge-sheet and the period of 90 days was over, the Court had no option but to grant bail to Applicants under Section 167 (2) of Cr.P.C.

10 Learned Advocate for the Applicants relied upon above following decisions:-

- (1) Mohanlala Acharya V/s State of Maharashtra
2001 5 SCC 452.**
- (2) Union of India V/s. Nirala Yadav Alias Raja Ram
Yadav Alias Deepak Yadav (supra) 2014 9 SCC
457.**
- (3) Order dated 08th May 2013 passed by this Court
in Bail Application No. 517 of 2013 in the case of
Ankush Mane V.s State of Maharashtra.**

11 The prosecution has filed affidavit in reply opposing the application for bail. Learned APP submitted that, the Applicants are not entitled for bail. The provisions of M.C.O.C. Act were applied to the case vide Approval dated 22nd August 2019. A report was submitted to the Special Court and the Court of Judicial Magistrate First Class. In view of application of the provisions of M.C.O.C. Act, the application under Section 167 (2) of the Cr.P.C. was not maintainable before the Court of Judicial Magistrate First Class. Thus, the said Court had rightly transferred the papers including the remand applications to the Special Court without granting bail. The Applicants have preferred an application under Section 167 (2) of Cr.P.C. before the Special Court on 03rd September 2019. However, before that the application seeking extension of time for investigation and filing charge-sheet was filed before the Special Court on 31st August 2019. The said application was allowed by the Special Court by order dated 04th September 2019. The application before the Court of Judicial Magistrate First Class was not proper as soon as the application for extension as envisaged under Section 21 of M.C.O.C. Act is preferred before the Special Court, the right under Section 167 (2) of the Cr.P.C. do not exist.

In this case the application was allowed. The application before the Special Court for default bail was preferred by the Applicants on 03rd September 2019. Learned APP relied upon decisions of the Supreme Court in the case of ***Rambeer Shokeen V/s State/ NCT Delhi 2018 4 SCC 405.***

12 Perused documents on record. The First Information Report was registered on 28th May 2019 for the offence punishable under Sections 143, 147, 148, 149, 307 of the Indian Penal Code. The Applicants were arrested on 28th May 2019. They were produced before the Court for remand on 29th May 2019 and were remanded to custody. The co-accused Swapnil @ Sopya Shinde preferred an application for bail in accordance with Section 167 (2) of Cr.P.C. on 91st day of his first production before Court on 28th August 2019. The Learned Judicial Magistrate First Class by order dated 28th August 2019 granted bail to him, on the ground that, the right to enlarge on bail has accrued in favour of accused on 91st day as per referred proviso. Bail was granted in accordance with Section 167 (2) of Cr.P.C. The Applicants preferred application for bail on 29th August 2019 i.e. day after bail was granted to co-accused Swapnil @ Sopya

Shinde. The said application was preferred on 92nd day. No charge-sheet was filed before the Court on that day. Approval was granted for invoking the provisions of M.C.O.C. Act on 22nd August 2019. The Applicants were not aware about grant of such approval. On 29th August 2019 in pursuant to the application for bail preferred by Applicant, learned Magistrate called for Nazar's report which was received on the same day stating that, charge-sheet is not filed against the Applicants. The Learned Magistrate did not grant bail on that day. It was pointed out to the Court by the prosecution that the approval to prosecute the accused is invoked in this crime under the provisions of M.C.O.C. Act. Letter dated 23rd August 2019 was pointed out stating that approval was granted on 22nd August 2019 to apply provisions of M.C.O.C. Act. The Learned Magistrate by order dated 29th August 2019 called for explanation from the Investigating Officer as to whether there is compliance of Section 21 of M.C.O.C. Act by moving appropriate application before the Special Court for extension of custody of the accused. Undisputedly, on 29th August 2019 there was no application seeking extension of time to complete investigation in accordance with Section 21 of the M.C.O.C. Act. The prosecution had not taken any steps to prefer

such application before the Special Court. The application for bail was adjourned to 30th August 2019. The Learned Magistrate called for report on 28th August 2019. ACP and APP for State filed say before the Court of learned Magistrate stating that, as per report and say of Superintendent of Court, charge-sheet is not filed till today but thereafter, Sections 3(ii), 3(4) of M.C.O.C. Act are added by Investigating Officer and for the extension of stipulated period, application/report is filed before the Special Court at Pune on 30th August 2019 and copy of the same is filed in this Court. Hence, application for default bail is not tenable in law. The say dated 30th August 2019 was forwarded to the Court of learned Magistrate stating that, the prosecution is in process of seeking extension of 85 days for investigation before the Special Court. Hence, application for default bail may be rejected. Pertinently, on 28th August 2019 no application was preferred before the Special Court seeking extension of time for investigation. Thus, on completion of 90 days of custody, the Applicants had preferred an application before the Court of Judicial Magistrate First Class for bail under Section 167 (2) of Code of Criminal Procedure. On that day, there was no application by the prosecution for extension in accordance with

Section 21 of M.C.O.C. Act. The application for extension of time in accordance with Section 21 was preferred on 31st August 2019 before the Special Court. It is pertinent to note that extension of time in accordance with Section 21 of M.C.O.C. Act was sought from 31st August 2019 for further investigation and filing charge-sheet. Thus, from 27th August 2019 till 31st August 2019 no extension was sought. It is only when Applicant filed application for bail before Magistrate in accordance with Section 167 (2) Cr.P.C. The respondents preferred application before Special Court on 31st August 2019. Application was preferred for issuance of production warrant before the Special Court on 31st August 2019. The Learned Magistrate by order dated 31st August 2019 directed that the remand papers be sent to the Special Court. The remand papers and the application of the Applicants were forwarded to the Special Court. The Applicants preferred one more application as a matter of precaution before the Special Court seeking bail under Section 167 (2) of Cr.P.C., on 03rd September 2019 stating that till then there is no extension by the Special Court for investigation and time to file charge-sheet.

13 Learned Special Judge by order dated 04th September 2019 rejected the application for bail and granted extension of time for investigation by 45 days.

14 Co-accused Swapnil @ Sopya Shinde was also arrested on 28th May 2019. He preferred an application for bail in accordance with Section 167 (2) of Cr.P.C. on 91st day. He was granted bail by the learned Magistrate. The Applicants have preferred an application for bail under Section 167 (2) of Cr.P.C. on 92nd day. Undisputedly, on that day charge-sheet was not filed before the Court of learned Judicial Magistrate First Class. The case of the prosecution is however, that the approval under Section 23(1) (a) of the M.C.O.C. Act was granted on 22nd August 2019. Apparently, as observed by the learned Magistrate fact that, approval has been granted for proceeding against the accused for offence under M.C.O.C. Act was not brought to the notice of the Court, while granting bail under Section 167 (2) of Cr.P.C. to accused Swapnil Shinde. It is pertinent to note that, in spite of approval being granted on 22nd August 2019, the respondent failed to take steps in accordance with Section 21 of the M.C.O.C. Act immediately on grant of approval. In pursuant

to application preferred by the Applicants before the learned Magistrate on 29th August 2019, the respondent filed say on 30th August 2019 stating that the proceedings for extension of time to investigate and file charge-sheet are in process. Thus, even on 28th August 2019 no application for extension as required under Section 21 of M.C.O.C. Act was preferred by the investigating agency. Such application was preferred on 31st August 2019. The Learned Magistrate thereafter, transferred the remand papers to the Special Court. The Applicants had no information/knowledge that approval under Section 23 of M.C.O.C. Act has been granted. On the day when the application for bail under Section 167 (2) of Cr.P.C. was filed before the Court of Judicial Magistrate First Class assuming that, the approval is granted on 22nd August 2019, the respondents had not complied the provisions of the M.C.O.C. Act. It was contended by Applicant before Special Court that, in the event the application dated 29th August 2019 under Section 167 (2) of Cr.P.C. is decided that, subsequent application be disposed of. The Special Court however, proceeded to reject both applications by observing that the Judicial Magistrate First Class could not have dealt with the application for default bail and the proper Court for moving the

application is Special Court. It would be relevant to note that the respondent had not taken any steps before the Special Court pursuant to the grant of approval dated 22nd August 2019 by initiating any proceedings contemplated under Section 21 of M.C.O.C. Act. The Applicants continued to be in custody from 27th August 2019 till 31st August 2019. There was no extension from the Court for investigation or filing charge-sheet and that detention was not sanctioned by order of any Court and accused remained in custody without extension of time to conduct investigation or file charge-sheet.

15 The Relevant portion of Section 21 of the M.C.O.C. Act reads as follows:-

21. Modified application of certain provisions of the code.

(1) Notwithstanding anything contained in the Code or in any other law, every offence punishable under this Act, shall be deemed to be a cognizable offence within the meaning of clause (c) of section 2 of the Code and "cognizable case" as defined in that clause shall be construed accordingly.

(2) Section 167 of the Code shall apply in relation to a case involving an offence punishable under this Act

subject to the modifications that, in sub-section (2),--

(a) the reference to "fifteen days", and "sixty days" wherever they occur, shall be construed as references to "thirty days" and "ninety days" respectively;

(b) after the proviso, the following proviso shall be inserted, namely:-

"Provided further that if it is not possible to complete the investigation within the said period of ninety days, the Special Court

shall extend the said period upto one hundred and eighty days, on the report of the Public Prosecutor indicating the progress of the investigation and the specific reasons for the detention of the accused beyond the said period of ninety days"

16 In the Case of ***Uday Mohanlal Acharya V/s. State of Maharashtra*** (*supra*) the Hon'ble Supreme Court has observed that, accused had an indefeasible right to be released on bail when the investigation is not completed within the specified period and that for availing such right, accused is only required to file an application before the Magistrate seeking release on bail alleging that no challan has been filed within the period prescribed and is prepared to offer bail on being directed by the Magistrate, "expression if any already availed of" used by

the Supreme Court in *Sanjay Dutt's* case has to be understood in the manner that the Magistrate has to dispose of application forthwith and on being specified that the accused has been in custody for specified period, that no charge-sheet has been filed and that accused has preferred application to furnish bail. The Magistrate is obliged to grant bail even after filing of the application by the accused. Charge-sheet is filed. It is also observed that the application of the accused is erroneously rejected by the Magistrate and accused then moves the higher forum but during pendency of the matter before that forum a charge-sheet is filed, indefeasible right of accused is not affected.

17 The prosecution heavily relied upon by the decisions of the Hon'ble Supreme Court in the case of ***Rambeer Shokeen V/s State / NCT of Delhi*** (*supra*). In the said decisions it was observed that, no right had accrued to the accused before filing of the charge-sheet; at best, it was an inchoate right until 08th March 2017. Resultantly, the question of granting statutory bail after filing of charge-sheet against the accused and more so during the pendency of application/ report for extension of time to file charge-sheet was impermissible. The application for grant

of statutory bail filed by accused on 02nd March 2017, even if pending, could have been taken forwarded only if the prayer for extension of time was to be formally and expressly rejected by the Court. It was also observed that, on 28th February 2017, the Additional Public Prosecutor has filed report for extension of time to file charge-sheet against the accused until 15th March 2017. The same was filed within time, before the expiry of 90 days from the date of initial arrest of the accused in connection with subject FIR. Realizing this position, the accused did not pursue his first application for statutory bail dated 28th February 2017, instead he was advised to file a fresh statutory bail application on 02nd March 2017. Admittedly, on 02nd March 2017, the report submitted by the Additional Public Prosecutor dated 28th February 2017 was still undecided. Therefore, no right can be said to have accrued to the accused for grant of bail on the ground of default. In law, only upon rejection of the prayer for extension of time sought by Additional Public Prosecutor, right in favour of the Applicant for grant of statutory bail could have ignited. The mere fact that 90 days' period from the date of initial arrest of the Applicant in connection with subject FIR had lapsed on 02nd March 2017, could not entail in grant of statutory bail to

the Applicant. More so, when no decision was taken by the Court on the report / application submitted by the Additional Public Prosecutor until 08th March 2017, on which date the supplementary charge-sheet against the Appellant was filed in Court. Considering the effect of filing supplementary charge-sheet against the accused, coupled with the fact that his judicial custody was extended by the Court of competent jurisdiction until the pendency of consideration of the report / application for extension of time to file the charge-sheet, in law, it is unfathomable as to how the accused could claim to have any accrued right to be released on bail on the ground of default or for that matter, such a right having become infeasible.

18 Thus on the factual aspects of the aforesaid decision, it is apparent that, before the expiry on 90 days' period, the Additional Public Prosecutor on 28th February 2017 moved an application for extension of time to file charge-sheet up to 15th March 2017. The said application was pending for its decision. The application was filed within time before expiry of the statutory period from the date of initial arrest of the accused. It is also apparent that the accused did not pursue his statutory bail

application on 28th February 2017 and he preferred another application on 02nd March 2017. The application for extension was pending till 02nd March 2017. Hence, it was observed that on the day when the second application was filed by the accused, the right was not accrued to the accused. The application for extension was decided on 08th March 2017. In the present case on the day when Applicants filed an application before the Magistrate i.e. on 29th August 2019, the record indicates that no charge-sheet was filed against the accused. The Learned Magistrate however, adjourned the application till the next day. Subsequently, on 31st August 2019, the application was preferred for extension of time in accordance with Section 21 before the Special Court. The Applicants had also preferred another application for statutory bail as a matter of precaution on 03rd September 2018, however, on 03rd September 2018 it was made clear that, the Court shall decide the application dated 29th August 2019 and if that is to be decided, the application made on subsequent date may be disposed of. The Learned Magistrate on 29th August 2019 transferred the papers relating to the proceeding to the Special Court including the remand papers. Subsequently, the accused was produced before the Special

Court. Thus, from 27th August 2019 till 31st August 2019 no application for extension of time was preferred. It is also not disputed that, no charge-sheet has been filed till the decision of the application preferred by the Applicants before the concerned Court in similar situation. Although the second application was preferred on 03rd September 2019, when the application for extension was pending. The accused had preferred application on 29th August 2019 before Magistrate which was adjourned by Court for say. Apart from that the extension application was also preferred after period of filing charge-sheet was over unlike the situation in Rambeer's case. The Hon'ble Supreme Court in the case of ***Union of India V/s. Nirala Yadav Alias Raja Ram Yadav Alias Deepak Yadav (supra)*** has considered the grant of bail in accordance with Section 167 (2) of the Cr.P.C. It could be relevant to note the observations of the Hon'ble Supreme Court in the aforesaid decision in paragraph 47 which is as follows:-

"47. Coming to the facts of the instant case, we find that prior to the date of expiry of 90 days which is the initial period for filing the charge-sheet, the prosecution neither had filed the charge-sheet nor had it filed an application for extension. Had an

application for extension been filed, then the matter would have been totally different. After the respondent-accused filed the application, the prosecution submitted an application seeking extension of time for filing of the charge-sheet. Mr. P.K.Dey, learned counsel for the appellant would submit that the same is permissible in view of the decision in Bipin Shantilal Panchal but on a studied scrutiny of the same we find that the said decision only dealt with whether extension could be sought from time to time till the completion of period as provided in the statute i.e. 180 days. It did not address the issue what could be the effect of not filing an application for extension prior to expiry of the period because in the factual matrix it was not necessary to do so. In the instant case, the day the accused filed the application for benefit of the default provision as engrafted under proviso to sub-section (2) of Section 167 CrPC the Court required the accused to file a rejoinder-affidavit by the time the initial period provided under the statute had expired. There was no question of any contest as if the application for extension had expired. There was no question of any contest as if the application for extension had been filed prior to the expiry of time. The adjournment by the learned Magistrate was misconceived. He was obliged on that day to deal with the application filed by the accused as required under

Section 167 (2) CrPC. We have no hesitation in saying that such procrastination frustrates the legislative mandate. A court cannot act to extinguish the right of an accused if the law so confers on him. Law has to prevail. The prosecution cannot avail such subterfuges to frustrate or destroy the legal right of the accused. Such an act is not permissible. If we permit ourselves to say so, the prosecution exhibited sheer negligence in not filing the application within the time which it was entitled to do so in law but made all adroit attempts to redeem the cause by its conduct.”

19 Thus, in the facts of this case and in the light of the decision of the Hon’ble Apex Court in the case of ***Union of India V/s. Nirala Yadav Alias Raja Ram Yadav Alias Deepak Yadav*** (*supra*) the Applicants would be entitled for bail in accordance with Section 167 (2) of the Cr.P.C. On the day when the application was preferred, there was no application before the Special Court for extension of time and no charge-sheet was filed. The Applicants have therefore, indefeasible right under Section 167 (2) of the Cr.P.C.

Hence, I pass the following order.

ORDER

- i) Bail Application No. 3364 of 2019, is allowed;
- ii) The Applicants are directed to be released on bail in connection with C. R. No. 842 of 2019 registered with Chakan Police Station, Pune vide Section 167 (2) of Cr.P.C. by executing P.R. bond in the sum of Rs. 30,000/- each with one or two sureties in the like amount;
- iii) The Applicants shall not tamper with evidence.
- iv) The Applicants shall attend Chakan Police Station once in a month on first Saturday of the month between 11:00 am to 01:00 pm. till further orders;
- v) Bail Application stands disposed of accordingly.

(PRAKASH D. NAIK, J.)