

1**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**
NAGPUR BENCH, NAGPUR.**CRIMINAL APPLICATION (APL) NO. 344/2020.**

Suchit Arunkumar Rahulkar.

-VERSUS-

The State of Maharashtra.

Office notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.

Court's or Judge's Orders

Shri H.P. Lingayat, Advocate for the Applicant.
Ms. M.A. Barabde, A.P.P. for the Non-applicant.

CORAM : VINAY JOSHI, J.**DATE : JULY 07, 2020.**

Hearing was conducted through Video Conferencing and the learned Counsel agreed that the audio and visual quality was proper.

2. The applicant, accused of Crime No. 49./2020, registered at Gondia City Police Station has invoked inherent jurisdiction of this Court under Section 482 of the Code of Criminal Procedure to agitate his right to be released on bail in default. The applicant/accused would contend that the investigating agency has not followed the mandatory procedure as prescribed under Section 167(2) of the Code of Criminal Procedure by filing charge sheet within the stipulated period of 90 days, and therefore, he is entitled to bail in default. The applicant has

2

accordingly moved before the Special Court, however, vide impugned order dated 04.05.2020, his application (Exh.25), came to be rejected.

3. The learned Counsel for the applicant would submit that on expiry of period of 90 days, an indefeasible right accrued in his favour for being released on bail on account of default by the investigating agency in filing charge sheet and therefore, he has right to be released on bail. It is submitted that no sooner the charge sheet was not forthcoming during statutory period of 90 days, the applicant has applied for grant of bail and was prepared to furnish bail, however, the Special Court has rejected the application by erroneously holding that due to pandemic situation of Covid-19, the period has been automatically extended. According to him, the Special Court erred in interpreting the orders passed by the Hon'ble Supreme Court in *Suo Motu Writ Petition No.3/2020* as well as circular of this Court dated 06.03.2020.

4. Per contra, the State resisted the application by filing reply dated 30.06.2020. It is not disputed that the charge sheet was not filed during the period of 90 days from the date of first remand of applicant/accused. However, the State contended that the investigating agency has timely completed the investigation and offered the charge sheet on 26.03.2020, 27.03.2020 and 01.04.2020, to the Special Court, however, the Court has refused to accept the charge sheet on account of pandemic

3

situation and certain directions issued through circular by this Court.

5. At the instance of report lodged by a minor victim aged 17 years and 4 months, dated 30.01.2020, a crime was registered against the applicant and two others for commission of offence punishable under Sections 376, 376 (2) of the Indian Penal Code as well as Sections 4 and 6 of the Protection of Children from Sexual Offences Act, 2012. In consequence, the applicant was arrested on the very same day i.e. 30.01.2020 and he was produced before the Special Court on 31.01.2020. Having regard to the facts, the applicant was remanded to police custody for three days and thereafter from time to time his further remand in judicial custody was extended. The statutory period of 90 days from the date of first remand i.e. 31.01.2020 stood expired on 30.04.2020. In other words the investigating agency was supposed to file charge sheet on or before 30.04.2020 to save the consequence of accused availing bail in default. Since charge sheet has not been filed within 90 days from the first date of remand, the applicant/accused has applied for default bail in terms of Section 167[2][a][i] of the Cr.P.C. on 02.05.2020. The learned Special Judge has obtained say of the prosecution on 03.05.2020, and the application was heard and decided on 04.05.2020 by way of rejection.

7. There is no dispute that charge sheet was not filed by the investigating agency till the date of filing of the bail application by the

4

applicant on 02.05.2020. It is informed that the charge sheet came to be filed on 04.05.2020, on which date the bail application was heard and rejected by the Special Judge. The Special Judge while rejecting the bail has assigned the reason that, in view of the directions of Hon'ble Supreme Court in Suo Motu Writ Petition No.3/2020 and the circular of this Court dated 16.03.2020, the period of limitation stands automatically extended. It was held that the charge sheet though filed after 90 days, it is within the period of limitation and accordingly the benefit of default bail was declined.

8. The learned A.P.P. straneously argued that the police have already completed the investigation during the stipulated period and offered the charge sheet in the Court within time, however, it was refused by the Court. Particularly the concerned officer went to the Court with charge sheet on 26.03.2020, 27.03.2020 and 01.04.2020 i.e. before completion of 90 days period, but, it was refused. Therefore, according to the learned A.P.P. there was no fault on the part of the prosecuting agency hence, benefit cannot be accorded to the accused.

9. This application involves two questions for its disposal – firstly, whether directions issued by the Hon'ble Supreme Court and circular of this Court has an effect of automatic extension of time in filing charge sheet. Secondly, whether the attempt of investigating agency to tender charge sheet in Court amounts to due compliance

within the meaning of Section 167[2] of the Cr.P.C.

10. To address the first issue, the learned counsel for the applicant has invited my attention to the decision of Hon'ble Supreme Court in case of **S. Kasi .vrs. State through the Inspector of Police Samaynallur (Criminal Appeal No. 452/2020, decided on 19.06.2020)**. In said case the very issue was answered by the Hon'ble Supreme Court in the background of two conflicting decisions rendered by the Madras High Court. The Hon'ble Supreme Court has extensively dealt with the issue and finally expressed that the order dated 23.03.2020 passed in Suo Motu Writ Petition No.3/2020 would not take away the indefeasible right of the accused to get default bail on non submission of the charge sheet within the time prescribed. The observations of the Hon'ble Supreme Court, particularly in paragraph no.26 are relevant, which are reproduced herein below :

“26. We, thus, are of the view that neither this Court in its order dated 23.03.2020 can be held to have eclipsed the time prescribed under Section 167(2) of Cr.P.C. nor the restrictions which have been imposed during the lockdown announced by the Government shall operate as any restriction on the rights of an accused as protected by Section 167(2) regarding his indefeasible right to get a default bail on non-

6

submission of charge sheet within the time prescribed. The learned Single Judge committed serious error in reading such restriction in the order of this Court dated 23.03.2020.”

11. It is made explicit clear that the provisions of Section 167[2] of the Code are for protection of personal liberty and in any event the accused is entitled for default bail in failure of filing of charge sheet within stipulated period. The Hon'ble Supreme Court has noted the observations of a Three Judge Bench in case of **Uday Mohanlal Acharya .vrs. State of Maharashtra – (2001) 5 SCC 453**, wherein it is ruled that the accused has indefeasible right for being released on bail when the charge sheet is not filed within stipulated period. In view of said decision, the Special Judge erred in interpreting the order of the Hon'ble Supreme Court passed in Suo Motu Writ Petition No.3/2020, by holding that the time for filing charge sheet has been automatically extended.

12. As regards to circular of this Court dated 16.03.2020 is concerned, the said circular issued on administrative side no where speaks about enlargement / extension of period prescribed under Section 167 [2] of the Code. Nor the circular has curtailed the statutory power of Magistrate/Special Court from exercising his duty mandated under Section 167[2] of the Cr.P.C. The circular is a sort of general

guidelines for streamlining the Court business in current pandemic situation. The Special Judge has misinterpreted the circular which is wholly erroneous approach.

13. Coming to the second issue, about the attempt of the investigating agency in filing charge sheet, and its refusal by the Special Court is concerned, the learned A.P.P. would submit that on 26.03.2020, 27.03.2020 and 01.04.2020 the charge sheet was refused by the Court. The concerned police officer took entry in the station diary about refusal of which copy is placed on record. As against this, the learned counsel for the applicant took me through the remand report dated 27.03.2020 and 23.04.2020 showing that the police got extended the remand under the premise that investigation is still going on. The said endeavor was made to show that charge sheet was not ready on these dates and therefore, for said reason remand was got extended. I do not wish to go into the facts whether on 26.03.2020, 27.03.2020 or on 01.04.2020 charge sheet was ready or not. The fact remained that admittedly till 04.05.2020, charge sheet was not filed in the Court. It is not necessary to probe the reasons as to why charge sheet was not filed or who was at fault. However, the result and consequence of non filing of the charge sheet has to be looked into.

14. The learned counsel for the applicant submitted that even if charge sheet is refused, it has effect of non filing of charge sheet and

8

therefore, the applicant's valuable indefeasible right cannot be curtailed. In this regard he relied on a decision of Hon'ble Supreme Court in case of **Achpal @ Ramswaroop and another .vrs. State of Rajasthan (Criminal Appeal No.1218/2018 decided on 24.09.2018)**. In said case, though the investigating agency has filed charge sheet within the stipulated period, however, it was returned back by the Magistrate for certain compliances to be made as per directions of the High Court. In these facts it was held that on 90th day there was no charge sheet in terms of Section 173 of the Code before the Magistrate, and therefore, the right of accused cannot be taken away though the papers were returned to the investigating officer. The Hon'ble Supreme Court further expressed that the provisions of Code do not empower any one to extend the period within which the investigation must be completed, nor does it admit of any such eventuality. In other words in absence of any provision enabling the court to extend the period, no Court can directly or indirectly extend such a period which would frustrate the valuable right of the accused.

15. In case at hand, charge sheet was not filed within stipulated period, may be for one or the other reason it was refused by the Court. However, the result is that on expiry of 90th day, the charge sheet was not before the Court. Moreover, undisputedly the applicant/accused has availed or exercised his right under Section 167[2] of the Code before

filing of the charge sheet, and therefore, under any guise the said right once accrued cannot be curtailed.

16. In short, the period prescribed by Section 167[2] of the Code, can not be extended in absence of any statutory provision. The applicant who had exercised his indefeasible right of bail after expiry of 90 days and before filing of the charge sheet is well entitled for getting himself released on bail which is called as “compulsive bail” or “bail in default”. In the result, the reasons assigned by the learned Special Judge for refusal of default bail are wholly unjustified, which required to be set aside. In view of that, present Criminal Application is allowed and following order is passed :

- (i) The order passed by the Special Judge on Exh.25 on 04.05.2020 in Crime No. 49/2020 of Gondia Police Station, stands quashed and set aside.
- (ii) The applicant/ accused Suchit Arunkumar Rahulkar is released on bail on his furnishing P.R. Bond in the sum of Rs.15,000/- (Rs. Fifteen Thousand), with one surety in the like amount.
- (iii) The applicant/accused shall report to the concerned police station on every Monday between 10 a.m. to 12 noon, for the period of six months from the date of this

10

order.

- (iv) The applicant/accused shall not tamper with the prosecution evidence in any manner.

17. This order be communicated to the counsel appearing for the parties, either on the e-mail address or on WhatsApp or by such other mode, as is permissible in law.

JUDGE

Rgd.

Rakesh
Dhuriya

Digitally signed
by Rakesh
Dhuriya
Date:
2020.07.08
14:25:51 +0530