

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

BAIL APPLICATION NO. 1182 OF 2021

Aniket Viju Kuchekar

Applicants

Versus

The State of Maharashtra

Respondent

Mr. S.S. Jadhav, Advocate for the applicant.

Mr. V.M.Kagne, APP for respondent/State.

WITH
BAIL APPLICATION NO. 1187 OF 2021

1. Bandu @ Suraj Sahebrao Sathe

2. Akshay Govind Shirsath

Applicants

Versus

The State of Maharashtra

Respondent

Mr. S.S. Jadhav, Advocate for the applicants.

Mr. V.M. Kagne, APP for respondent/State.

WITH
BAIL APPLICATION NO. 664 OF 2021

1. Akshay s/o Govind Shirsath

2. Aniket s/o Viju Kuchekar

Applicants

Versus

The State of Maharashtra

Respondent

Mr. V.M. Kagne, APP for the respondent/State.

CORAM : M.G. SEWLIKAR, J.

RESERVED ON : 4th December, 2021.
PRONOUNCED ON : 20th December, 2021.

PER COURT :

1. These applications can be disposed of by common order as they arise out of the same crime.
2. These are the applications under Section 439 of the Code of Criminal Procedure for releasing the applicants on bail in connection with Crime No. 228/2021 registered with Topkhana Police Station, Dist. Ahmednagar for the offences punishable under Sections 395, 386, 452, 427, 323, 504, 506 of the Indian Penal Code, Section 142 of Bombay Police Act and under Section 3(1)(ii), 3(2), 3(4) of Maharashtra Control of Organised Crimes Act, 1999 (MCOC Act).
3. Facts in brief are that on 20th March, 2021, the applicants along with other accused committed criminal trespass in “Rubbab”, the Perfect Men Shop and Sunil Cycle Mart and committed dacoity. Upon the lodging of the First Information Report, offence as aforesaid came to be registered against the applicants and other accused.

4. It is the further case of prosecution that applicant No. 1 Bandu @ Suraj and application No. 2 Akshay Govind Shirsath in Bail Application No. 1187/2021 were arrested on 20th April, 2021 and 23rd April, 2021 respectively. On 30th April, 2021, they came to be remanded to the Magisterial Custody. Applicant Aniket Viju Kuchekar in Bail Application No. 1182/2021 was arrested on 23rd April, 2021 and was remanded to Magisterial Custody on 30th April, 2021.

5. On 12th July, 2021, the Investigating Officer in the present crime intimated the Court about invocation of provisions of MCOC Act. The period of 90 days in case of applicant No. 1 in Bail Application No. 1187/2021 was to expire on 20th July, 2021. On 13th July, 2021, the Investigating Officer moved an application before the Special Court for extension of time for filing of the charge-sheet. On 14th July, 2021, Public Prosecutor filed a report justifying the grounds for extension of period for filing of the charge-sheet. On 22nd July, 2021, applicants in Bail Application No. 1187/2021 filed application for default bail as charge-sheet was not filed and time was not extended for filing of the charge-sheet. The learned Special Judge, decided both the applications on 27th July, 2021. The learned Special

Court extended the time for filing of the charge-sheet and rejected the application for default bail. So far as applicant in Bail Application No. 1182/2021 is concerned, he filed application for default bail on 5th August, 2021 which came to be rejected by the learned Special Judge vide order dated 26th August, 2021.

6. I have heard Shri Jadhav, learned counsel for the applicants and Shri Kagne, learned APP for the State.

7. Learned counsel Shri Jadhav submitted that the application for extension of time has to be on good grounds. The grounds alleged in the application are not at all sufficient for extension of period for filing of the charge-sheet. Learned Prosecutor has to apply his mind for filing application for extension of period of limitation. Therefore, extension of time itself was illegal. Since charge-sheet was not filed within a period of 90 days from the date of arrest of the applicants, the applicants are entitled to be released on statutory bail. He further submitted that since on the date of filing of the application for statutory bail charge-sheet was not filed, indefeasible right to be released on bail accrued. He placed reliance on the following cases :-

- i) Sachin s/o Namdeo Rathod & others vs. The State of Maharashtra
2019 ALL MR (Cri) 801
- ii) Shaikh Moin Shaikh Mehmood vs. State of Maharashtra
Criminal Appeal No. 502/2020
decided on 24th September, 2020.
- iii) Bikramjit Singh vs. State of Punjab
(2020)10 Supreme Court Cases 616.

8. Learned APP Shri Kagne submitted that the application for extension of time was filed before expiry of period of 90 days. After a period of 90 days, application for statutory bail was filed. He further submitted that application for extension of time was under consideration when application for statutory bail was tendered. He submitted that when application for extension of time is under consideration, application for statutory bail cannot be decided. He placed reliance on the case of Rambeer Shokeen vs. State of NCT of Delhi reported in 2018 DGLS(SC) 50.

9. Admitted facts are that applicants are accused of offences punishable under Sections 395, 386, 452, 427, 323, 504, 506 of Indian Penal Code and Section 142 of Bombay Police Act. Subsequently, offence under Section 3 of MCOC Act, 1999 came to be added on 12th July, 2021. the date of incident is 20th March, 2021.

Applicants in Bail Application No. 1187/2021 were arrested on 20th April, 2021 and 23rd April, 2021 respectively whereas applicant in Bail Application No. 1182/2021 was arrested on 23rd April, 2021. Period of 90 days expired on 19th July, 2021 so far as applicant No. 1 in Bail Application no. 1187/2021 is concerned. In case of Applicant No. 2 in Bail Application No. 1187/2021 and applicant in Bail Application No. 1182/2021, it expired on 22nd July, 2021. Under Section 167(2) of the Code of Criminal Procedure, the Investigating Officer has to file charge-sheet within 90 days or 60 days as the case may be. In terms of Section 21 of MCOC Act, charge-sheet has to be filed within 90 days from the date of arrest of the accused. In case, Investigating Officer cannot file charge-sheet within 90 days, he has to seek extension of time till 180 days. Proviso to Section 21 of MCOC Act reads as under :-

“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.”

10. Thus, when charge-sheet is not filed after expiry of 90 days, accused gets indefeasible right to be released on bail. In the

case of Aslam Babalal Desai vs. State of Maharashtra, (1992) 4 SCC 272, it has been observed thus :-

‘9..... 13..... The right to bail under Section 167(2) proviso (a) thereto is absolute. It is a legislative command and not court's discretion. If the investigating agency fails to file charge-sheet before the expiry of 90/60 days, as the case may be, the accused in custody should be released on bail. But at that stage, merits of the case are not to be examined. Not at all. In fact, the Magistrate has no power to remand a person beyond the stipulated period of 90/60 days. He must pass an order of bail and communicate the same to the accused to furnish the requisite bail bonds.”

11. Thus, once the period of filing charge-sheet has expired and either no extension under proviso to Section 21 of MCOC Act has been granted by the designated Court or the period of extension has also expired, the accused would be entitled to move an application for default bail. However, before expiry of 90 days, if Public Prosecutor files application for extending period for filing charge-sheet, in that case, application under Section 167(2) of Code of Criminal Procedure for default bail cannot be considered. In the case at hand, admittedly, period of 90 days expired on 22nd July, 2021 and prior to that, application for extension of time for filing charge-sheet came to be filed. Thus, application for extension of time was filed before expiry of 90 days and after expiry of 90 days the application for

default bail under Section 21 of MCOCA read with Section 167(2) of the Code of Criminal Procedure came to be filed. In such situation, the judgment of the Honourable Supreme Court in the case of Rambeer Shokeen vs. State of NCT of Delhi (supra) gives complete answer. In paragraph No. 24, it has been held thus :-

24. As held by the Constitution Bench of this Court, the consideration of application for grant of statutory bail in a situation, as in the present case, was dependent on rejection of prayer of the Additional Public Prosecutor for extension of time. When such prayer is made, it is the duty of the Court to consider the report/application for extension of period for filing of the charge-sheet in the first instance; only if it was to be rejected could the prayer for grant of statutory bail be taken forward. In no case, the hearing on statutory bail application precede the consideration of prayer for extension of the period for filing of the charge-sheet made by the Additional Public Prosecutor.

Thus, where application for extension of time for filing charge-sheet is filed and application for default bail is filed, the Court has to ensure that application for extension of time has to be decided first. In the case at hand, both the applications were decided by one and the same order.

12. In the case of Rambeer Shokeen vs. State of NCT of Delhi (supra) the Honourable Supreme Court has held thus :-

26. The appellant, however, relies on the observations in Uday Mohanlal Acharya (supra) rendered by a three-Judge Bench of this Court. In the said case, the accused had himself surrendered in Court and was remanded to judicial custody. The period of filing of charge-sheet (60 days in that case) expired on 16th August, 2000. The accused moved an application on 17th August, 2000, for grant of statutory bail on the ground of default in filing of charge-sheet within the statutory period of 60 days. That bail application was rejected by the Magistrate on the same day, holding that the provisions of Section 167(2) of Cr.P.C. had no application to the cases pertaining to the special enactment i.e. Maharashtra Protection of Interest of Depositors (in Financial Establishments) Act, 1999. The accused then approached the High Court. When the matter was pending before the High Court, charge-sheet was filed before the Trial Judge on 30th August, 2000. The High Court refused to grant relief on the ground that by the time the High Court could consider the correctness of the order on the statutory bail application passed by the competent Court, a charge-sheet was filed against the accused before the Magistrate and, therefore, the so called enforceable right did not survive or remained enforceable. In this backdrop, this Court considered the matter and answered the issue in favour of the accused on the finding that before the charge-sheet was filed, the accused had invoked the remedy of statutory bail. Thus, the factum of filing of charge-sheet subsequently cannot defeat the right accrued to him. In the present case, before the appellant instituted the subject application for grant of statutory bail on 2nd March, 2017, the Additional Public Prosecutor had already filed his report/application for extending the period for filing of charge-sheet against the appellant until 15th March, 2017, but decision thereon was deferred. As held by the Constitution Bench in the case of Sanjay Dutt (supra), unless the report/application filed by the Additional Public

Prosecutor for extension of time was rejected, no right would accrue in favour of the accused much less to consider his application for grant of statutory bail. Further, in such cases it is the duty of the concerned Court to first deal with the prayer of extension of period to file charge-sheet made by the Additional Public Prosecutor. The High Court, in the impugned judgment, thus answered the issue against the appellant and additionally considered the justness of the prayer made by the Additional Public prosecutor for extension of period for filing charge-sheet. It recorded an express finding that the said request was genuine and appropriate and thus extended the time for that purpose till 8th March, 2017.

27. Reverting to the decision in the case of Nirala Yadav (supra) rendered by two-Judge Bench, the accused in that case was arrested and sent to judicial custody on 5th December, 2006. After lapse of the statutory period of 90 days on 14th March, 2007, the accused filed application for grant of statutory bail on the ground of default. The prosecution (CBI), however, on 15th March, 2007, moved an application for extension of time for a period of 30 days. Since the application for grant of statutory bail filed by the accused preceded the filing of application for extension of time, the issue was answered in favour of the accused. In the present case, however, the prayer for extension of period for filing charge-sheet was moved by the Additional Public Prosecutor before the statutory period had lapsed, but the same remained pending until 8th March, 2017, when charge-sheet was filed in Court. Until the said request was formally and expressly rejected by the competent Court, in view of the exposition in the case of Sanjay Dutt (supra), the concerned Court could not have assumed jurisdiction to consider the prayer for grant of statutory bail of the appellant. The request made by the Additional Public Prosecutor was formally

disposed of as infructuous on 8th March, 2017, after filing of the charge-sheet against the appellant. That was not an order of rejection of the request of the Additional Public Prosecutor as such. The High Court has examined this aspect and, in our opinion, rightly answered the issue against the appellant for the reasons recorded in paragraphs 75 to 77 of the impugned judgment, including by explicitly extending the time to file charge-sheet till 8th March, 2017. we affirm the said view of the High Court. Therefore, even this decision relied upon by the appellant will be of no avail in the fact situation of the present case.

In the case at hand also, application for extension of time for filing charge-sheet was filed before expiry of 90 days. The learned Trial Court extended the period for filing charge-sheet by 90 days and rejected the application under Section 167(2) of the Code of Criminal Procedure for default bail. Once the time is extended, application under Section 167(2) of the Code of Criminal Procedure loses its efficacy. Indefeasible right to be released on bail on account of non-filing of charge-sheet does not accrue as application for extension of time was filed before application for default bail could be filed. Indefeasible right to be released on bail would have been accrued if time was not extended for filing charge-sheet. In this view of the matter, it cannot be said that the learned Trial Court committed any error in rejecting the application for default bail.

13. In the case of Sachin s/o Namdeo Rathod vs. The State of Maharashtra (supra) the question involved was whether extension of time of remand made under the provisions of Section 21 MCOC Act was justified. Another question was the orders of rejection of application filed for bail under Section 167(2) of the Code of Criminal Procedure. Learned counsel Shri Jadhav submitted that extension of time ought not to have been granted as extension was sought on flimsy grounds. Learned APP submitted that this question cannot be raised under Section 439 of the Code of Criminal Procedure. I find substance in his argument. Under Section 439 of the Code of Criminal Procedure, applicant cannot raise question of propriety of granting extension of time for filing of charge-sheet.

14. In the case of Shaikh Moin Shaikh Mehmood vs. State of Maharashtra (supra), the same question had fallen for consideration. In that case, on 31st August, 2020, period of 90 days had expired and on 2nd September, 2020, application by Investigating Officer was filed. Learned Trial Court allowed the application dated 2nd September, 2020 and extended time for filing charge-sheet till 30th September, 2020. The appellant had moved an application on 10th September,

2020, praying for default bail under Section 167(2) of the Code of Criminal Procedure. In that case, after getting sanction, application for default bail was filed. The question before the Division Bench of this Court was whether extension was properly granted or not. This is not the question before this Court. Therefore, this decision is not applicable to the facts of the instant case.

15. In the case of Bikramjit Singh vs. State of Punjab (supra), the date of remand was 22nd November, 2018. On 13th February, 2019, time was extended and on 25th February, 2019, application for default bail was filed. In this case, extension was given by the Magistrate who had no jurisdiction. This order of extension granted by the Magistrate was set aside on 25th March, 2019 by the Sessions Court in revision. On 26th March, 2019, charge-sheet was filed. Since extension was without jurisdiction, it was held that applicant was entitled to be released on default bail. This is not the factual situation in the case at hand.

16. Thus, from the discussion made above, it is clear that the Trial Court was justified in rejecting the application for default bail filed under Proviso to Section 21 of MCOC Act read with Section

167(2) of the Code of Criminal Procedure. In view of this, Bail Application Nos. 1182/2021 and 1187/2021 being devoid of any substance, stand rejected.

17. None appeared for applicants in Bail Application No. 664/2021. In view of this, application stands dismissed.

(M. G. SEWLIKAR)
Judge

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