

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

CRIMINAL WRIT PETITION NO.414 OF 2021

1. Dalya @ Dinesh s/o Madhukar Meshram,
Age 43 years, Occupation: Labour,
R/o Ambedkar Ward, Tumsar,
Tahsil Tumsar, Dist. Bhandara.
2. Zabbu @ Shubham Devendra Katakwar,
Age 26 years, Occupation: Labour,
R/o Kumbhare Nagar, Tumsar,
Tahsil Tumsar, Dist. Bhandara.
3. Manoj s/o Devidas Kanekar,
Age 36 years, Occupation: Labour,
R/o Kumbhare Nagar, Tumsar,
Tahsil Tumsar, Dist. Bhandara. **PETITIONERS**

...VERSUS...

1. State of Maharashtra through
Police Station Officer,
Police Station Tumsar, Dist. Bhandara.
2. Sub Divisional Police Officer,
Sakoli, Dist. Bhandara. **RESPONDENTS**

Mr. R.R. Vyas, Advocate for Petitioners.
Mrs. K.R. Deshpande, APP for Respondents/State.

CORAM: **ROHIT B. DEO, J.**
DATE: **14th JUNE, 2021.**

ORAL JUDGMENT:

Heard Mr. R.R. Vyas, the learned Counsel for the

petitioners and Mrs. K.R. Deshpande, the learned Additional Public Prosecutor for the respondents/State.

2. The petitioners, who are facing prosecution under Sections 120-B, 307, 143, 147, 148 and 149 of the Indian Penal Code and Section 3 read with Section 25 of the Arms Act and against whom the provisions of the Maharashtra Control of Organized Crime Act, 1999 (MCOC Act) are invoked, are assailing the order dated 04.06.2021 rendered by the learned Special Judge purporting to allow an application preferred by the Investigating Officer seeking extension by 90 days, of the period to complete the investigation.

3. Shown of unnecessary details, the facts are that the petitioner came to be arrested in Crime 11/2021 on 20.01.2021 and produced before the learned Special Judge. The petitioners, after the initial police custody, were remanded to judicial custody.

4. The Investigating Officer preferred an application Exh.24 dated 09.04.2021 seeking extension of period to complete the investigation. Considering the admitted position, that the mandate of Section 21 of the MCOC Act was not followed, it is not

necessary to reproduce the justification given by the Investigating Officer to seek the extension of period to complete the investigation by 90 days.

5. It is not in dispute that the application dated 09.04.2021 is signed only by the Investigating Officer and that there is no report of Public Prosecutor indicating the progress of the investigation and the specific reasons for the detention of the petitioners beyond the statutorily prescribed period of 90 days.

6. It appears that the learned Special Judge granted extension of 90 days to complete the investigation, vide order dated 19.04.2021.

7. Notwithstanding the extension, the petitioners preferred an application dated 03.06.2021 seeking compulsive bail, which the learned Special Judge allowed vide order dated 04.06.2021. However, at the request of the learned Prosecutor, the learned Special Judge stayed the order of compulsive bail till 14.06.2021.

8. The petitioner challenged the order dated

04.06.2021, to the extent the order which came to be stayed for 10 days, in Criminal Writ Petition 402/2021.

9. While hearing the Criminal Writ Petition 402/2021 this Court noticed that while granting compulsive bail the learned Special Judge virtually reviewed the earlier order dated 19.04.2021 whereby the period of completing the investigation was extended by 90 days. This Court, in exercise of inherent powers under Section 482 of the Criminal Procedure Code (Code) stayed the order of compulsive bail.

10. In view of the observations made by this Court in the order dated 10.06.2021 in Criminal Writ Petition 402/2021, the petitioners are assailing the order of extension dated 19.04.2021.

11. The short submission of the learned counsel Mr. R.R. Vyas is that the order of extension dated 19.04.2021 is manifestly illegal in view of the clear breach of the mandate of Section 21 of the MCOA Act. The extension is granted at the askance of the Investigating Officer. The learned Prosecutor has not applied his mind to the justification pleaded by the Investigating Officer and that there is no report of the learned Prosecutor on record.

The application preferred by the Investigating Officer is not even signed by the learned Prosecutor, is the submission.

12. The learned APP Mrs. K.R. Deshpande, in all fairness, does not dispute the factual position. On instructions, the learned APP states that the report of the learned Prosecutor, as mandated by Section 21 of the MCOC Act, was not submitted in support of the extension request.

13. In view of the undisputed position that the extension is granted contrary to the provisions of Section 21 of the MCOC Act and the settled position of law, the extension order impugned is quashed.

14. The logical consequence of the quashment of the extension order dated 19.04.2021 is that the petitioners become entitled to compulsive bail on the expiry of the initial period of 180 days.

15. Rule is made absolute in terms of prayer clause (i) which read thus:

(i) Quash and set aside Order dated 19/04/2021 passed

by Additional Sessions Judge, Bhandara, in Crime No. 11/2021 Registered with Respondent no.2, Tumsar Police Station, Dist. Bhandara, on such terms and conditions, in the interest of justice.

JUDGE

NSN