

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL WRIT PETITION NO.988 OF 2022

Indrajit S/o Ramesh Kasar
Age : 33 years, Occu.: Agri.,
R/o. : Walki, Ahmednagar,
Dist. Ahmednagar. ... Petitioner

Versus

The State of Maharashtra
Through Investigation Officer,
Nagar Taluka Police Station,
Tq. Nagar, Dist. Ahmednagar ... Respondent

AND

CRIMINAL WRIT PETITION NO.989 OF 2022

Vishwajit S/o Ramesh Kasar
Age : 33 years, Occu.: Agri.,
R/o. : Walki, Ahmednagar,
Dist. Ahmednagar. ... Petitioner

Versus

The State of Maharashtra
Through Investigation Officer,
Nagar Taluka Police Station,
Tq. Nagar, Dist. Ahmednagar ... Respondent

....

Mr. R.R. Karpe, Advocate for the Petitioners in Cri. WP/988/2022
Mr. N.S. Ghanekar, Advocate for the Petitioner in Cri.
WP/989/2022
Mr. G.O. Wattamwar, APP for the Respondent/State in both Cri.
WPs.

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CORAM : SHRIKANT D. KULKARNI, J.

RESERVED ON : 01 AUGUST, 2022

PRONOUNCED ON : 06 OCTOBER 2022

JUDGMENT :

. Heard finally with consent of both the sides at admission stage.

2. These petitions are identically placed and hence being disposed of by common order.

3. The petitioners in respective petitions sought following substantial reliefs.

“(B) By an order of this Hon’ble Court, kindly quash and set aside impugned order dated 27.05.2021 (Exhibit-M and Exhibit-H in respective petition) passed by the Special Judge, Ahmednagar on application filed by prosecution for extension of period for investigation in CR No.1123/2020 and consequently the said application filed by the prosecution/State may kindly be rejected.

(C) By an order of this Hon’ble Court, kindly quash and set aside impugned order dated 27.05.2021 (Exhibit-M and Exhibit-H in respective petition) passed by the Special Judge, Ahmednagar on application filed by prosecution for extension of period for investigation in CR No.1123/2020 and

consequently the said application filed by the prosecution/State may kindly be rejected and consequently the application under Section 167 (2) of Criminal Procedure Code filed by the petitioner for “default bail” may kindly be allowed.”

4. It is necessary to have a glance on important relevant facts of the petitions.

Facts of Cri. Writ Petition No.988 of 2022

Sr. No.	Date	Particulars
1.	18.11.2020	Crime No.1123 of 2020 came to be registered with Taluka Police Station Ahmednagar on the basis of F.I.R. lodged by Mr. Onkar Babasaheb Bhalsing, resident of Walki against the petitioner and others under Sections 143, 147, 148, 149, 365, 324, 323, 504 and 506 of the Indian Penal Code. Section 302 of the IPC came to be added subsequently.
2.	14.12.2020	Petitioner Indrajit came to be arrested in connection with above said crime.
3.	15.12.2020	He was produced before the J.M.F.C.
4.	15.03.2021	The petitioner filed an application for default bail under Section 167(2) of Criminal Procedure Code before the learned Magistrate, Ahmednagar.
5.	15.03.2021	The learned Magistrate was pleased to reject that application by making observations that provisions of the Maharashtra control of organised crime Act, 1999 (hereinafter referred to as ‘the MCOC Act, 1999’ for the sake of convenience) are applied in the case.

6.	15.03.2021	The prosecution submitted an application for extension of time to submit the charge-sheet in view of provisions of MCOC Act, 1999.
7.	19.03.2021	The petitioner moved an application before the Special Judge under MCOC Act, 1999 under Section 167 (2) (1) of the Cr. P.C. for default bail.
8.	27.05.2021	The learned Special Judge after taking into consideration the say filed by the prosecution and argument advanced on behalf of both the sides and perusing the report submitted by the Investigating Officer and the Special Public Prosecutor was pleased to grant extension to complete the investigation in view of Section 21(2) of the MCOC Act, 1999. Resultantly, rejecting the application for default bail.

Facts of Cri. Writ Petition No.989 of 2022

Sr. No.	Date	Particulars
1.	18.11.2020	Crime No.1123 of 2020 came to be registered with Taluka Police Station Ahmednagar on the basis of F.I.R. lodged by Mr. Onkar Babasaheb Bhalsing, resident of Walki against the petitioner and others under Sections 143, 147, 148, 149, 365, 324, 323, 504 and 506 of the Indian Penal Code. Section 302 of the IPC came to be added subsequently.
2.	17.01.2021	Petitioner Vishwajit came to be arrested in connection with above said crime.
3.	18.01.2021	He was produced before the J.M.F.C.
4.	18.01.2021	He was remanded to P.C.R. till 25.01.2021
5.	25.01.2021	He was in judicial custody from 25.01.2021.

6.	19.04.2021	The petitioner moved an application before the Special Judge under MCOC Act, 1999 under Section 167 (2) (1) of the Cri. P.C. for default bail.
7.	–	Remaining facts are identical which are narrated above.

5. Heard Mr. R.R. Karpe, learned counsel for the petitioner in Cri. writ petition No.988 of 2022, Mr. N.S. Ghanekar, learned counsel for the petitioner in Cri. writ petition No.989 of 2022 and Mr. G.O. Wattamwar, learned APP for respondent/State in both the petitions.

6. Mr. Karpe, learned counsel for the petition submitted that it is indispensable right of accused to get bail under Section 167 (2) of the Code of Criminal Procedure if the investigation agency failed to file the charge-sheet on the expiry of 60 days or 90 days as the case may be. The right once accrued to get default bail cannot be taken away by subsequent filing of charge-sheet, it does not extinguish such indispensable right of accused. The report cannot be submitted by the prosecution in piecemeal manner. The learned APP/Special Public Prosecutor has submitted the report in a piecemeal manner, which is not permissible. A

duty is cast upon the Court to decide default bail along with an application for extension of time submitted by the Investigating Officer through APP/Special Public Prosecutor. It is also incumbent on the part of the Special Judge to appreciate whether the MCOC Act, 1999 can be applied to the facts of the case.

7. The petitioner Indrajit filed an application for default bail on 14.03.2021, and the learned Special Judge, Ahmednagar was pleased to decide the same vide order dated 27.05.2021.

8. Following is the calculation relied upon by the learned counsel for the petitioners while seeking default bail under Section 167 (2) of the Code of Criminal Procedure.

5/12/2020 to 31.12.2020	17 Days
01/01/2021 to 31/01/2021	31 Days
01/02/2021 to 28/02/2021	28 Days
01/03/2021 to 15/03/2021	15 Days

Total days	91 days

9. On the above said calculation, Mr. Karpe, learned counsel for the petitioner sought default bail.

10. Mr. Karpe, learned counsel for the petitioner submitted that extension of time under the MCOC Act, 1999 is not an empty formality. The prayer has to be made by the Public Prosecutor and not by the investigation agency. He submitted that in the present case, it is failure on the part of the prosecution to comply the mandatory requirement for extension of time. Mr. Karpe, learned counsel has placed his reliance in case of ***Jigar @ Jimmy Pravinchandra Adatiya Vs. State of Gujrat*** reported in ***2022 LiveLaw (SC) 794***.

11. Mr. Karpe, learned counsel has further placed his reliance in case ***Shaikh Moin Shaikh Mehmood Vs. State of Maharashtra*** reported in ***2020 (4) BCR (Cri.) 357*** on the point of requirement of mandatory provisions of the MCOC Act, 1999 and extension of time to complete the charge-sheet. By placing reliance in ***Shaikh Moin Shaikh Mehmood Vs. State of Maharashtra*** (supra) Mr. Karpe submitted that it is a fit case to grant default bail since the Special Public Prosecutor did not file his independent report for extension of time.

12. Mr. Karpe, learned counsel has also placed his reliance in case of *Sachin Namdeo Rathod and others Vs. The State of Maharashtra* reported in *2019 ALL M.R. (Cri.) 801*, and submitted if the period is extended by the Special Court to complete the investigation without following the procedure as laid down under the MCOC Act, 1999, the order is liable to be quashed and set aside.

13. Mr. Karpe, learned counsel has also placed his reliance in case of *Ratan Mandal Vs. State of Jharkhand* reported in *2006 Cri.L.J. 781*.

14. Mr. Ghanekar, learned counsel for the petitioner – Vishwajit argued on similar lines and mixed his tone in the submissions of Mr. Karpe, learned counsel. He has also relied upon the above said stock of citations and sought default bail for the petitioner – Vishwajit.

15. Per contra, Mr. Wattamwar, learned APP for the Respondent/State opposed to grant default bail to both the petitioners mainly on the ground that period of 90 days was not completed when the petitioner – Indrajit moved an application for default bail under Section 167 (2) of the Code

of Criminal Procedure. He submitted that the accused has committed a mistake while making calculation. He pointed out that the learned counsel for the petitioners have calculated the period of 90 days from the date of arrest of accused, which is incorrect in view of decision in ***Ravi Prakash Singh @ Arvind Singh Vs. State of Bihar*** reported in ***2015 AIR (SC) 1294***. He submitted that as per the legal position made clear by the Hon'ble Supreme Court in the said decision, 90 days under Section 167(2) of the Code of Criminal Procedure shall be computed from the date of remand of the accused and not from his date of arrest. As such, the respective petitioner had not accrued right to get default bail. Mr. Wattamwar, learned APP has given the following calculation for computing period of 90 days in respect of petitioner - Indrajit.

15/12/2020 to 31.12.2020	16 Days
01/01/2021 to 31/01/2021	31 Days
01/02/2021 to 28/02/2021	28 Days
01/03/2021 to 15/03/2021	15 Days

Total days	90 days

16. Mr. Wattamwar, learned APP submitted that in view of decision of the Hon'ble Supreme Court in case of ***Sanjay Dutt Vs.State through CBI*** reported in ***(1994) 5 SCC 410*** and in view of decision in case of ***Rambeer Shokeein Vs. State of NCT Delhi*** reported in ***2018(1) Bom. CR (Cri.) 630***, the indispensable right of the accused does not survive or remain enforceable on the challan / charge-sheet being filed, if already not availed. He submitted that once the challan / charge-sheet is filed, the question of grant of bail has to be considered and decided only with reference to the merits of the case, not by way of default bail.

17. Mr. Wattamwar, learned APP has also referred the decision in ***Union of India through C.B.I. Vs. Nirala Yadav @ Raja Ram Yadav @ Deepak Yadav*** reported in ***(2014) 9 SCC 457***. The prayer for extension of time for filing of charge-sheet was moved by the APP before the statutory period had lapsed. As such, there was no scope for respective accused to claim default bail.

18. Mr. Wattamwar, learned APP for the Respondent/State submitted that the order under challenge fulfills all requirements as laid down under Section 21 of the MCOC Act, 1999. He submitted that the citations of ***Rambeer Shokeein Vs. State of NCT Delhi*** (supra), ***Ravi Prakash Singh @ Arvind Singh Vs.State of Bihar*** (supra) and the Constitution Bench decision of the Hon'ble Supreme Court in case of ***Sanjay Dutt Vs.State through CBI*** (supra) are applicable to the present case, and in view of legal position made clear by the Hon'ble Supreme Court, the impugned order passed by the Special Judge (MCOC) is not defective in the eye of law.

19. I have considered the submissions of both the sides. Perused the order passed by the learned J.M.F.C. dated 15.03.2021, whereby the application for default bail came to be rejected as it is not maintainable in view of application of provisions of MCOC Act, 1999. I have also perused the report submitted by the Investigating Officer with report of the Special Public Prosecutor and order passed by the Special Judge, Ahmednagr, on the report submitted by the Special Public Prosecutor for extension of period to complete investigation in connection with crime No.1123 of 2020 registered with Nagar Taluka Police Station.

20. The factual scenario referred above is not in dispute. The whole controversy is centered around about computation of 90 days period. The crucial point is from which date computation should be made. The answer finds place in ***Ravi Prakash Singh @ Arvind Singh Vs.State of Bihar*** (supra), wherein the Hon'ble Supreme Court has held that while computation of period of 90 days, the date on which the accused was remanded to judicial custody is to be excluded in view of Section 167 (2) of the Code of Criminal Procedure.

21. In writ petition No.988 pf 2022, the petitioner - Indrajit came to be arrested in connection with Crime No.1123 of 2020 on 14.12.2020. He was produced before the J.M.F.C. for remand on 15.12.2020. This being so, in my opinion, in the present case, the day of first remand on 15.03.2021 needs to be excluded while computing period of 90 days in view of decision in ***Ravi Prakash Singh @ Arvind Singh Vs.State of Bihar*** (supra) is as under:

Computation of 90 days

16/12/2020 to 31.12.2020	16 Days
01/01/2021 to 31/01/2021	31 Days
01/02/2021 to 28/02/2021	28 Days
01/03/2021 to 15/03/2021	15 Days

Total days	90 days

22. In view of the above calculation, in the present case, 90 days were completed on 15.03.2021. Petitioner – Indrajit has given an application for default bail before the learned J.M.F.C. Ahmednagar on 15.03.2021, when right to get default bail did not accrue. The right to get default bail would accrue on 16.03.2021.

23. It is evident from the record that on 14.03.2021, the Investigating Officer through the Special Public Prosecution submitted a detail report to the Special Judge (MCOC) for extension of further 90 days to complete the investigation in view of application of provisions of the MCOC Act, 1999. The report submitted by the S.D.P.O. Ahmednagar (Rural) clearly indicates the date as 14.03.2021 and the report is addressed to the Special Judge (MCOC), Ahmednagar with short report of the APP. On very day i.e. on 15.03.2021, the Special Public Prosecutor, Ahmednagar submitted the report to the Special Judge (MCOC), Ahmednagar under Section 21 of the MCOC Act, 1999. On the said report, the learned Special Judge (MCOC), Ahmednagar was pleased to issue notice to the accused vide order dated 15.03.2021 i.e. on same day when the right to get default bail did not accrue to the accused. It

is, therefore, clear that before completion of 90 days, provisions of MCOC Act are applied to this case, more precisely on 90th day. The Special Public Prosecutor in his detail report with the report of Investigating Officer has sought for extension of time to complete the investigation under Section 21 of the MCOC Act, 1999.

24. According to the decision of the Division Bench of this Court in *Sachin Namdeo Rathod and others Vs. The State of Maharashtra* (supra) the Investigating Officer has taken immediate steps for invocation of provisions of MCOC Act, 1999 before completion of 90 days and the learned Special Public Prosecutor submitted his in detail report with the report of Investigating Officer / S.D.P.O. before the Special Judge (MCOC) for extension of time. The learned Special Public Prosecutor has submitted in detail report by applying his independent mind referring to the facts of the case. As per the decision of the Division Bench of this Court in *Shaikh Moin Shaikh Mehmood Vs. State of Maharashtra* (supra), the report submitted by the Special Public Prosecutor for extension of time is found with reasons and enlightening about seriousness and the gravity of the offences and *prima facie* case against the accused. The Special Public Prosecutor

has also opined in his report, in para 4, that he has submitted his report after applying his mind to the facts of the case and found that there is *prima facie* case against the accused for applying the provisions of the MCOC Act, 1999. The Special Public Prosecutor has submitted his independent report after applying his independent mind to the facts of the case for the extension of time to complete the investigation.

25. So far as writ petition No.989 of 2022 filed by the petitioner – Vishwajit is concerned, he was arrested in the same crime on 17.01.2021. He was produced before the J.M.F.C. on 18.01.2021. Before completion of period of 90 days from the date of his first remand, the Investigating Officer/S.D.P.O. has applied the provisions of MCOC Act, 1999 on 14.03.2021. The Special Public Prosecutor has submitted his in detail report along with the report of Investigating Officer for extension of time in the said crime on 15.03.2021, when the petitioner – Vishwajit did not accrue the right to get default bail under Section 167 (2) of the Code of Criminal Procedure.

26. In case of *Jigar @ Jimmy Pravinchandra Adatiya Vs. State of Gujrat* (supra), the Hon'ble Supreme Court has observed in para Nos.30 and 31 as under:

“30. The logical and legal consequence of the grant of extension of time is the deprivation of the indefeasible right available to the accused to claim a default bail. If we accept the argument that the failure of the prosecution to produce the accused before the Court and to inform him that the application of extension is being considered by the Court is a mere procedural irregularity, it will negate the proviso added by subsection (2) of Section 20 of the 2015 Act and that may amount to violation of rights conferred by Article 21 of the Constitution. The reason is the grant of the extension of time takes away the right of the accused to get default bail which is intrinsically connected with the fundamental rights guaranteed under Article 21 of the Constitution. The procedure contemplated by Article 21 of the Constitution which is required to be followed before the liberty of a person is taken away has to be a fair and reasonable procedure. In fact, procedural safeguards play an important role in protecting the liberty guaranteed by Article 21. The failure to procure the presence of the accused either physically or virtually before the Court and the failure to inform him that the application

made by the Public Prosecutor for the extension of time is being considered, is not a mere procedural irregularity. It is gross illegality that violates the rights of the accused under Article 21.

31. An attempt was made to argue that the failure to produce the accused will not cause any prejudice to him. As noted earlier, the grant of extension of time to complete the investigation takes away the indefeasible right of the accused to apply for default bail. It takes away the right of the accused to raise a limited objection to the prayer for the extension. The failure to produce the accused before the Court at the time of consideration of the application for extension of time will amount to a violation of the right guaranteed under Article 21 of the Constitution. Thus, prejudice is inherent and need not be established by the accused.”

27. In the cited case the prayer for extension of time up to 180 days was allowed by the Special Court on the very day on which the applications for default bail were filed . The facts of the cited case and the facts of the case in hand are distinguishable. In the present case, before completion of 90 days period, the Investigating Officer through the Special

Public Prosecutor forwarded the report to the Special Court for extension of time after complying the provisions of MCOC Act, 1999. On 15.03.2021 (on 90th day), the report was placed before the Special Judge (MCOC) and on the very day notice was issued to the accused, thereby informing him/them that Special Public Prosecutor has filed in detail report regarding extension of time in view of progress of investigation as contemplated under Section 21 of the MCOC Act, 1999. Accordingly, the present petitioners/accused No.1 - Vishwajit and accused No.4 Indrajit and others have submitted their say, thereby opposing to grant extension of time to complete the investigation.

28. The learned Special Judge after considering the report submitted by the Special Public Prosecutor along with report of the Investigating Officer, say filed by the petitioners/accused as well as say filed on behalf of the prosecution was pleased to grant extension of time to complete the investigation in view of the provisions of Section 21(2) of the MCOC Act, 1999. Since the application/report for extension of time was submitted before the Court, the said fact was brought to the notice of accused/

petitioners on the very day, and petitioners/accused seem to have filed their say on 19.04.2021, and vide order dated 27.05.2021, the learned Special Judge was pleased to extend the time. It is, therefore, clear that there was no prejudice to the rights and interest of the accused/petitioners.

29. It is evident from the record that first report on behalf of the Special Public Prosecutor under Section 21 of the MCOC Act, 1999 came to be filed on 15.03.2021 along with report of Investigating Officer for extension of time. The additional report seems to have been filed on behalf of the Special Public Prosecutor on 26.03.2021. It is not anyway fatal to the prosecution even keeping the said additional report in cold storage. The first report submitted by the Special Public Prosecutor on 15.03.2021 with the report of Investigating Officer for extension of time is found in tune with Section 21 of the MCOC Act, 1999, it cannot be termed as piecemeal report.

30. It is further evident from the record that prior approval for invocation of provisions of MCOC Act, 1999 was sought on 11.03.2021, and the local crime branch, Aurangabad received the said approval in its office on

13.03.2021. It was handed over to the S.D.P.O. (Rural Division) Ahmednagar on 14.03.2021. The charge-sheet came to be filed in this case on 11.06.2021.

31. Having regard to the factual scenario, and in view of computation period of 90 days, none of the petitioner accrued right to get default bail. Their application for default bail was premature. Secondly, within a period of 90 days, the Special Public Prosecutor has submitted his report along with the report of Investigating Officer for extension of time under Section 21 of the MCOC Act, 1999, giving progress of the investigation.

32. The decisions in case of *Shaikh Moin Shaikh Mehmood Vs. State of Maharashtra* (supra) and *Sachin Namdeo Rathod and others Vs. The State of Maharashtra* (supra) are not anyway helpful to the case of the petitioners. Both the petitions devoid of merit and liable to be dismissed.

ORDER

(i) Criminal Writ Petition No.988 of 2022 and Criminal Writ petition No.989 of 2022 filed by the respective petitioners stand dismissed.

21

(ii) No order as to costs.

(iii) Both the Criminal Writ Petitions are accordingly disposed of.

[SHRIKANT D. KULKARNI]
JUDGE

S.P Rane