

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

**CRIMINAL APPEAL NO.434 OF 2022**

KIRAN MADHAV HAZARE AND OTHERS  
VERSUS  
THE STATE OF MAHARASHTRA

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Advocate for Appellants : Ms. Sonawane Sunita G.  
APP for Respondent : Mr. P K Lakhotiya

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CORAM: SARANG V. KOTWAL & BHARAT P. DESHPANDE, JJ.  
Dated: June 21, 2022

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**PER COURT :-**

1. This appeal is preferred under section 12 of the Maharashtra Control of Organised Crime Act, 1999 (hereinafter referred to as 'MCOCA') challenging the order dated 9.5.2022 passed by the learned Special Judge, Kopergaon, thereby rejecting the bail applications filed by the appellants for grant of bail under section 167 (2) of the Criminal Procedure Code. By the same prayer, challenge is also made to the extension of period granted by the same Court to the Respondent-Investigating Agency to file charge-sheet in FIR bearing C.R.No.I-394 of 2021 registered with Shirdi Police Station, District Ahmednagar originally for the

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offences punishable under sections 307, 109 r/w 34 of the Indian Penal Code, read with Sections 3, 25 of the Indian Arms Act.

2. At the outset, we asked the learned counsel for the appellant as to how the appeal was maintainable. She submitted that, in the past, a Division Bench of this Court in Criminal appeal no.502 of 2020 had entertained the appeal against similar order and, therefore, the appeal would be maintainable.

3. Learned APP submitted that, the order is purely interlocutory and, therefore, appeal would not be maintainable.

4. We have considered these submissions. Section 12 of MCOCA Act reads thus :-

“12. (1) Notwithstanding anything contained in the Code, an appeal shall lie from any judgement, sentence or order, not being an interlocutory order, of a Special Court to the High Court.

(2) Every appeal under this section shall be preferred within thirty days from the date of the judgement, sentence or order.”

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5. Therefore, if challenge is to an interlocutory order, appeal would not lie. Question here is '*Whether the impugned order was in the nature of interlocutory or not*'. From that angle, We have considered these submissions. In this connection certain Judgments of the Hon'ble Supreme Court and of this Court throw some light on the issue. The order of another Division Bench referred to by the learned counsel for the appellant has not specifically addressed this issue.

6. In the case of **State of Maharashtra Vs. Rajendra Shantilal Nahar as reported in 2004 (2) Mh.L.J. 555**, a learned Single Judge of this Court had observed in paragraph no.8 that "it is well established that an order allowing or rejecting the application of bail in a pending case for trial is an interlocutory order."

7. The Hon'ble Supreme Court in the Case of **State of Andhra Pradesh through Inspector General, National Investigation Agency Versus Mohd. Hussain alias Saleem** as reported in **(2014) 1 SCC 258** had

observed in paragraph no.7 that “an order of grant or refusal of bail is an interlocutory order. In that case, the Hon’ble Supreme Court was considering the scope of appeal provided under NIA Act. In that Act, special provision for appeal is made for challenging an order of grant or refusal of bail under sub-section (4) of Section 21 of the NIA Act. In MCOCA, no such special provision for Appeal against an order of grant or refusal of bail is made.

8. Another judgment in this context is of Three Judge Bench of the Hon’ble Supreme Court in the case of **State Represented by Inspector of Police and others Vs. N.M.T. Joy Immaculate** as reported in **(2004) 5 Supreme Court Cases 729**. The Hon’ble Supreme Court had considered this issue. Paragraph no.13 in that context is important, which reads thus :-

“13. Section 167 CrPC empowers a Judicial Magistrate to authorize the detention of an accused in the custody of police. Section 209 CrPC confers power upon a Magistrate to remand an accused to custody until the case has been committed to the Court of Session and also until the conclusion of the trial. Section 309 CrPC confers power upon a court to remand an accused to custody after

taking cognizance of an offence or during commencement of trial when it finds it necessary to adjourn the enquiry or trial. The order of remand has no bearing on the proceedings of the trial itself nor can it have any effect on the ultimate decision of the case. If an order of remand is found to be illegal, it cannot result in acquittal of the accused or in termination of proceedings. A remand order cannot affect the progress of the trial or its decision in any manner. Therefore, applying the test laid down in Madhu Limaye case it cannot be categorized even as an "intermediate order". The order is, therefore, a pure and simple interlocutory order and in view of the bar created by sub-section (2) of Section 397 CrPC, a revision against the said order is not maintainable. The High Court, therefore, erred in entertaining the revision against the order dated 6-11-2001 of the Metropolitan Magistrate granting police custody of the accused Joy Immaculate for one day."

9. The order granting bail or granting remand under the provision of Section 167 of the Criminal Procedure Code depends on whether the charge-sheet is filed within time. Once the charge-sheet is filed and cognizance is taken, then provisions for grant of further judicial remand are governed by section 209 and then section 309 of Criminal Procedure Code. Thus, ultimately, the power to grant remand is the main consideration to decide whether such order in exercise of such power is interlocutory or not. Paragraph no.13

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of the Judgment in State Represented by Inspector of Police and others Vs. N.M.T. Joy Immaculate (supra) discusses this issue in clear terms. It is observed that, the order of remand had no bearing on the proceedings of the trial itself nor can it have any effect on the ultimate decision of the case. If an order of remand is found to be illegal, it cannot result in acquittal of the accused or in termination of proceedings. A remand order cannot affect the progress of the trial or its decision in any manner. Thus, relying on this observation, it is held that the impugned order is interlocutory in nature and, therefore, Appeal under section 12 of the MCOCA Act would not lie.

10. The Appellant is, therefore, permitted to withdraw this Appeal and prefer appropriate proceeding in accordance with law. The appeal is disposed off with such liberty.

**(BHARAT P. DESHPANDE, J.)      (SARANG V. KOTWAL , J.)**

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