

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO.372 OF 2022

Vijay Raju Pathare

... Petitioner

Versus

1. The State of Maharashtra
2. The Police Inspector
3. Akshay Rajendra Jadhav

... Respondents

...

Mr. A. U. Auti i/b Talekar and Associates, Advocate for petitioner.

Mr. A. M. Phule, APP for respondent Nos.1 and 2 – State.

Ms. Sangita Sambre, Advocate for respondent No.3.

...

CORAM : SMT. VIBHA KANKANWADI, J.

DATE : 01.07.2022

ORDER :-

1. Present petitioner (original accused) has invoked the constitutional powers of this Court under Article 226 of the Constitution of India to challenge the order passed by the learned Special Judge under Maharashtra Control of Organised Crime Act, 1999 (hereinafter referred to as the “MCOCA”), Ahmednagar; dated 05.10.2021, by which the application filed by petitioner under Section 167(2) of Code of Criminal Procedure came to be rejected.

2. The facts giving rise to the petition are that, the petitioner was arrayed as accused No.1 in Crime No. 228 of 2021 registered on

20.03.2021 with Tofkhana Police Station, Dist. Ahmednagar for the offence punishable under Section 395, 386, 452, 427, 323, 504 and 506 of Indian Penal Code as well as Section 142 of Maharashtra Police Act. However, offence under Section 3(1)(ii), 3(2), and 3(4) of MCOCA came to be added later. Petitioner came to be arrested on 31.05.2021. Proposal for addition of offences under MCOCA was submitted to Special Inspector General of Police, Nashik Range, Nashik on 14.06.2021 and 28.06.2021. Sanction was given by order dated 08.07.2021. Petitioner/accused gave application for default bail on 09.09.2021 before the learned Special Judge. After the say was filed by the prosecution, hearing was given to both sides and the said application came to be rejected on 05.10.2021. Hence, this writ petition.

3. Heard learned Advocate Mr. A. U. Auti for the petitioner, learned APP Mr. A. M. Phule for respondent Nos.1 and 2 – State and learned Advocate Ms. Sangita Sambre, who came to be appointed to represent the cause of respondent No. 3.

4. It has been vehemently submitted on behalf of the petitioner that the learned Special Judge has not considered vital aspects in this case. He did not consider the unusual haste by the sanctioning authority in according sanction for the offences under MCOCA. It was granted within

less than two weeks. It was not considered by both the authorities that there was no live link between the offences in which the petitioner has been shown as involved. The provisions of MCOCA could have been invoked in serious offences only. In ***State of Maharashtra Vs. Gopal Pandey, [2018) 1 AIR Bom R (Cri) 243]***, it has been held that offences such as robbery or criminal breach of trust cannot be brought under MCOCA. Petitioner has been wrongly involved in the said offences. The application for default bail was filed on 94th day and charge-sheet was also not filed by that time. In fact, it ought to have been seen that the application under Section 21 of the MCOCA was filed by the Public Prosecutor on 44th day only when time was still there till 90 days for the completion of investigation. It was the misuse of the said power by the Public Prosecutor. The extension was also mechanically granted. Petitioner is thus deprived of his right to get default bail. All these aspects ought to have been seen by the learned Special Judge and, therefore, the rejection of application by him deserves to be set aside and petitioner needs to be released on bail.

5. Learned Advocate for the petitioner has relied on the decision in ***Shaikh Moin Shaikh Mehmood Vs. State of Maharashtra, [MANU/MH/1375/2020]*** decided by the Division Bench of this Court wherein it has been held that :-

“22. In the light of the above, we deem it advantageous, for the benefit of the litigants and the lawyers, to observe that a report as understood under the above reproduced provisions of the various enactments, has to be an independent report comprising of (a) reasons evidencing the personal satisfaction of the public prosecutor as regards the progress in investigation made, (b) the reasons for which the investigation could not be completed and (c) the object to be achieved through investigation for which an extended period of time is necessary. These ingredients have to form a part of the report for the prosecutor and he has to tender the said report to the Special Court under his signature. It cannot be in the form of a miscellaneous application to be filed for seeking extension of time. In addition to his report, he should append the report of the Investigation Agency so as to convince the Special Court that extension needs to be granted.”

6. Per contra, the learned APP as well as learned Advocate for respondent No.3 have strongly objected to the petition. Learned APP vehemently submitted that the petitioner has not challenged the order of grant of extension of period to file charge-sheet, passed by the learned Special Judge. Now, he cannot make any comment on that order. Though the petitioner was arrested earlier on 31.05.2021, yet co-

accused came to be arrested 20.04.2021. Taking into consideration the investigation to be made, the application for extension of period to file charge-sheet was filed accordingly. In respect of said co-accused the period of 90 days would have ended by 20.07.2021. Application for extension of period was filed on 14.07.2021 i.e. only 6 days in advance. There is no illegality or haste committed anywhere. When the extension was granted as per law, the period for filing charge-sheet got extended till 180 days and, therefore, the application for bail filed under Section 167(2) of Code of Criminal Procedure on 94th day was not maintainable and, therefore, rightly rejected.

7. At the outset, it is to be noted that the prayer clause of the present petition does not indicate that petitioner is anyway challenging the order passed by the learned Special Judge, Ahmendnagar regarding extension to file charge-sheet. It is to be noted that the Special Prosecutor had given the said application under Section 21 of MCOCA on 14.07.2021. Say of the present petitioner was called and accordingly he had taken that objection. It appears that say was filed by co-accused also. After hearing all of them, the learned Special Judge had allowed the said application on 27.07.2021. It appears that thereafter, that order was never challenged by the present petitioner till he filed the application for grant of bail under Section 167(2) of the Code of

Criminal Procedure. Naturally, the same judge could not have gone into the aspect of challenge to the merits of extension of period to file charge-sheet, since he had already given extension. The effect of the grant of extension of time was the only factor to be considered. The effect was that the time to file charge-sheet was extended till 180 days. Under such circumstance, the application filed by present petitioner on 94th day was not maintainable at all. This Court also cannot go into the said aspect of challenge to the extension of time to file charge-sheet now, since there is no prayer. It was specifically asked to the learned Advocate for the petitioner as to whether petitioner challenges the said order and why it was not challenged earlier. He replied that he has no instructions on that count. Therefore, what remains is the effect of extension of time granted under Section 21 of the MCOCA and calculation of period. Therefore, at the cost of repetition, it can be said that the application for default bail was not maintainable on 94th day, when the period was extended till 180 days. There is no illegality or error committed by the learned Special Judge, Ahmednagar in rejecting the said application. No case is made out to exercise the constitutional powers of this Court under Article 226 of the Constitution of India, much less the rights guaranteed under it in favour of petitioner. Writ petition, therefore, stands dismissed.

8. The fees of the appointed Advocate is quantified at Rs.5000/- to be paid by the High Court Legal Services Sub Committee, Aurangabad.

[SMT. VIBHA KANKANWADI, J.]

scm