

Santosh

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
BAIL APPLICATION NO. 1429 OF 2022**

Sanjay Shankarrao Telnade	...Applicant
Versus	
State of Maharashtra	...Respondent

Mr. Kedar Patil, a/w Sachin Mane, Pratik Tare, Sakshi Kadam,
Jitesh Mudhwa and Gargi Joshi, for the Applicant.
Mrs. A. S. Pai, Special PP a/w Mr. A. A. Palkar, for the State.
Mr. B. B. Mahamuni, Dy.S.P., Ichalkaranji Division,
Ichalkaranji, Kolhapur, present.

CORAM: N. J. JAMADAR, J.
DATED : 11th JULY, 2022

ORDER:-

1. This is an application for bail under Section 167 of the Code of Criminal Procedure, 1973, ("the Code").
2. The applicant is arraigned in CR No.132/2019, registered with Shahapur Police Station, District Kolhapur, along with co-accused, for the offences punishable under Sections 120B, 395, 392, 386, 387, 452, 326, 504, 506, 427 read with Section 34 of the Indian Penal Code, 1860 ("the Penal Code") and Sections 3(1)(ii), 3(2), 3(4) and 3(5) of the Maharashtra Control of Organized Crime Act, 1999 ("the MCOCA, 1999").
3. The gravamen of indictment against the applicant – accused no.1 is that the applicant in pursuance of a conspiracy with accused nos.2 to 13 has formed an organized crime

syndicate styled as, "ST Sarkar". The applicant is the leader of the said organized crime syndicate. The applicant is indulging in continuing unlawful activities by use of violence or threat of violence or intimidation or coercion with the objective of gaining pecuniary benefit or undue economic or other advantage.

4. FIR No.132/2019 came to be registered on the report lodged by Mr. Narendra Bhore, the first informant to the effect that on 6th July, 2017, in front of his house, the applicant and his hirelings assaulted him and his friend Sanjay Devmore by iron rod and sticks on his refusal to pay a sum of Rs.25,00,000/- to settle the matrimonial dispute, which the first informant had with his wife. The said amount was demanded by way of extortion. Allegations were also made that in order to coerce the first informant to meet the said demand, in the year 2019, two of the co-accused entered into his shop and forcibly took away the articles kept for sale and threatened the first informant to first meet the demand of the amount of Rs.25,00,000/-.

5. The investigation commenced. During the course of investigation, a proposal for invocation of the offences punishable under MCOCA was moved and, post approval under Section 23(1)(a), the offences punishable under MCOCA, 1999

have been invoked. The applicant came to be arrested on 1st January, 2022. 90 days period expired on 31st March, 2022. On 28th March, 2022. An application for extension of period of detention under Section 21(2) read with Section 167 of the Code of Criminal Procedure, 1973 ("the Code") was filed by the Investigating Officer. The learned Special Judge extended the period of detention by 30 days, without giving any notice to the applicant. The applicant preferred an application for bail on 4th April, 2022. The learned Special Judge rejected the application by order dated 18th April, 2022. Hence, this application.

6. The substance of the application is that the order extending the period of detention is legally infirm on twin counts. First, there was no report by the Public Prosecutor indicating progress of the investigation and the specific reasons for detention of the accused beyond the period of 90 days. Second, no notice of the application for extension of period of detention was given to the applicant and the period came to be extended without providing any opportunity of hearing to the applicant and sans any justifiable reason.

7. An affidavit-in-reply is filed on behalf of the respondent. The claim for bail on account of the alleged default in lodging the charge-sheet within the stipulated period is contested. The

respondent contends that the applicant was arrested on 1st January, 2022 and produced before the Court on 2nd February, 2022. Thus, the investigating agency could have filed the charge-sheet on or before 1st April, 2022. The application for extension of period for investigation beyond 90 days was filed on 28th March, 2022 by the Investigating Officer. It was supported by an affidavit, deponent to which was identified by the Public Prosecutor. It was, thus, denied that the Public Prosecutor had not applied his mind to the proposal seeking extension of time for investigation. A reference is made to the antecedents of the applicant so as to draw home the point that the antecedents are such that the Court may not exercise the discretion in favour of the applicant.

8. Section 21 of the MCOCA provides for modified application of certain provisions of the Code. Sub-section (2) of Section 21, which governs the controversy at hand, reads as under:

“21.

(2) Section 167 of the Code shall apply in relation to a case involving an offence punishable under this Act subject to the modifications that, in sub-section (2),-

(a) the reference to “fifteen days” and “sixty days”, wherever they occur, shall be construed as references to “thirty days” and “ninety days”, respectively;

(b) after the proviso, the following proviso shall be inserted, namely:-

“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.”

9. From the text of the main part of Sub-section (2) it becomes evident that the period of detention permissible under Section 167 of the Code stands extended to 90 days, wherever Sub-section (2) of Section 167 authorizes the detention upto 60 days. The proviso further empowers the Special Court to authorize the detention up to 180 days subject to fulfillment of certain conditions. The legislature has made provision for detention of the accused arraigned for the offences punishable under MCOCA beyond the period of 90 days to address the necessity of a larger period for investigation into such offences which have wide ramifications. The power to extend the period of investigation is, however, not unregulated and uncanalized.

10. The Special Court is enjoined to satisfy itself about the necessity of detention of the accused beyond the said period of 90 days on the basis of the report of the Public Prosecutor, which indicates the progress of the investigation and the specific reasons for such detention beyond 90 days. These conditions are required to be strictly satisfied before the period of detention is extended as the exercise of the power impinges upon the

personal liberty of the accused. The period of detention can neither be extended as a matter of course nor for the mere asking. The Special Court must be satisfied that the Public Prosecutor has applied his mind and, in turn, be further satisfied with the progress of the investigation and genuineness of the reason for grant of extension for detention of the accused beyond 90 days.

11. A useful reference, in this context, can be made to the judgment of the Supreme Court in the case of *Hitendra Vishnu Thakur and others vs. State of Maharashtra and others*¹, wherein an identical provision contained in Clause (bb) of Sub-section (4) of Section 20 of the Terrorist and Disruptive Activities (Prevention) Act, 1987 (TADA), which provided for seeking extension of time for completion of investigation came up for consideration. The Supreme Court expounded the object of the said provision, the nature of the duty cast on the Public Prosecutor, and the considerations which should weigh with the Court in granting or refusing extension of period for investigation in the following words:

“23. We may at this stage, also on a plain reading of clause (bb) of sub-section (4) of Section 20, point out that the Legislature has provided for seeking extension of time for completion of investigation on a report of the public prosecutor. The Legislature did not purposely leave it to an

1 (1994) 4 Supreme Court Cases 602.

investigating officer to make an application for seeking extension of time from the court. This provision is in tune with the legislative intent to have the investigations completed expeditiously and not to allow an accused to be kept in continued detention during unnecessary prolonged investigation at the whims of the police. The Legislature expects that the investigation must be completed with utmost promptitude but where it becomes necessary to seek some more time for completion of the investigation, the investigating agency must submit itself to the scrutiny of the public prosecutor in the first instance and satisfy him about the progress of the investigation and furnish reasons for seeking further custody of an accused. A public prosecutor is an important officer of the State Government and is appointed by the State under the Code of Criminal Procedure. He is not a part of the investigating agency. He is an independent statutory authority. The public prosecutor is expected to independently apply his mind to the request of the investigating agency before Submitting a report to the court for extension of time with a view to enable the investigating agency to complete the investigation. He is not merely a post office or a forwarding agency. A public prosecutor may or may not agree with the reasons given by the investigating officer for seeking extension of time and may find that the investigation had not progressed in the proper manner or that there has been unnecessary, deliberate or avoidable delay in completing the investigation. In that event, he may not submit any report to the court under clause (bb) to seek extension of time. Thus, for seeking extension of time under clause (bb), the public prosecutor after an independent application of his mind to the request of the investigating agency is required to make a report to the Designated Court indicating therein the progress of the investigation and disclosing justification for keeping the accused in further custody to enable the investigating agency to complete the investigation. The public prosecutor may attach the request of the investigating officer along with his request or application and report, but his report, as envisaged under clause (bb), must disclose on the face of it that he has applied his mind and was satisfied with the progress of the investigation and considered grant of further time to complete the investigation necessary. The use of the expression "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" as occurring in clause (bb) in sub-section (2) of Section 167 as amended by Section 20(4) are important and indicative of the legislative intent not to keep an accused in custody unreasonably and to grant extension only on the report of the public prosecutor. The report of the public prosecutor, therefore, is not merely a formality but a very vital report, because the consequence

of its acceptance affects the liberty of an accused and it must, therefore, strictly comply with the requirements as contained in clause (bb). The request of an investigating officer for extension of time is no substitute for the report of the public prosecutor. Where either no report as is envisaged by clause (bb) is filed or the report filed by the public prosecutor is not accepted by the Designated Court, since the grant of extension of time under clause (bb) is neither a formality nor automatic, the necessary corollary would be that an accused would be entitled to seek bail and the court 'shall' release hi on bail if he furnishes bail as required by the Designated Court. It is not merely the question of form in which the request for extension under clause (bb) is made but one of substance. The contents of the report to be submitted by the public prosecutor, after proper application of his mind, are designed to assist the Designated Court to independently decide whether or not extension should be granted in a given case. Keeping in view the consequences of the grant of extension i.e. keeping an accused in further custody, the Designated Court must be satisfied for the Justification, from the report of the public prosecutor, to grant extension of time to complete the investigation.”

12. In the said case, the Supreme Court also enunciated that when a report is submitted by the Public Prosecutor to the designated Court for granting extension under Clause (bb) of Sub-section (4) of Section 20, notice should be issued to the accused before granting such an extension so that the accused may have an opportunity to oppose the extension on all legitimate and legal grounds available to him.

13. In the case of *Sanjay Kumar Kedia alias Sanjy Kedia vs. Intelligence Officer, Narcotics Control Bureau and Another*², in the context of the provisions contained in Section 36-A(4) of the Narcotics Drugs and Psychotropic Substances Act, 1985

2 (2009) 17 Supreme Court Cases 631.

(“the NDPS Act”), the Supreme Court enumerated the conditions which are required to be fulfilled before the period of detention can be extended under proviso to Sub-section (4) of Section 36-A of the NDPS Act as under:

“12. The conditions provided are:

- (1) a report of the Public Prosecutor.
- (2) which indicates the progress of the investigation, and
- (3) specifies the compelling reasons for seeking the detention of the accused beyond the period 180 days, and
- (4) after notice to the accused.”

14. On the aforesaid touchstone, reverting to the facts of the case, it is incontrovertible that the application for extension of time for investigation (Exhibit-B to the application) was filed by Mr. B. B. Mahamuni, the Sub-Divisional Police Officer, Ichalkaranji Division, Ichalkaranji, on 28th March, 2022. The said application is supported by an affidavit sworn by Mr. Mahamuni (pages 106 to 117 of the application). The deponent to the said affidavit is identified by the Special Public Prosecutor, MCOCA Court, Ichalkaranji.

15. Evidently, a report envisaged by the proviso to Sub-section (2) of Section 21 of the MCOCA, 1999 was not filed by the Public Prosecutor. It even does not appear that the Public Prosecutor had signed the said report. Mrs. Pai, the learned Special Public

Prosecutor attempted to salvage the position by banking upon the fact that the Special Public Prosecutor has identified the deponent of the affidavit, which was filed in support of the report of the Investigating Officer. I am afraid the said thread is too fragile to cling to.

16. It is an indubitable fact that the Public Prosecutor had not filed the report within the meaning of the proviso to Sub-section (2) of Section 21. Filing of a report is not an empty formality. The Public Prosecutor is statutorily enjoined to file a report seeking the extension by spelling out the progress in the investigation and the reasons which warrant the detention of the accused beyond the initial period of 90 days. The report of the Investigating Officer and an affidavit in support thereof are not even poor substitutes for the report of the Public Prosecutor.

17. The learned Special Judge also seems to have fallen in an error in allowing the extension by simply recording that '30 days time is granted to file charge-sheet', on the very day the application was submitted by the Investigating Officer. No notice of the application seeking extension of time was given to the applicant. Resultantly, the applicant was deprived of an opportunity to raise legitimate objections to the application for

extension of time for investigation. The order of extension of time thus suffers from a legal infirmity.

18. Mr. Kedar Patil, the learned Counsel for the applicant, placed reliance on a judgment of the Division Bench of this Court in the case of *Shiakh Moin Shaikh Mehmood vs. State of Maharashtra*³, wherein this Court after referring to the previous pronouncements observed, *inter alia*, as under:

“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 of 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.

23. It is settled by a judgment of this Court in the matter of Sachin Namdeo Rathod (*supra*) that the accused has to be served with a notice and has to be heard before the court passes an order of granting extension. So also, considering the law laid down in Nirala Yadav (*supra*), the request for extension of time has to be filed before the Special Court on or before the last day of the time frame available in law for investigation since the moment the time frame expires, the right to the accused under Section 167(2) of the Cr.P.C. is born and that right accrues to him instantaneously. Such right in law is an indefeasible right.”

3 Criminal Appeal No.502/2022, dated 24/9/2020.

19. In the said case, the Division Bench also noted that the order passed by the Special Court extending the period of investigation ought not be unreasoned. On that count also, the order impugned therein was set aside.

20. In the case at hand, the extension of period of investigation and consequently detention of the applicant is unsustainable on three counts. One, the Public Prosecutor had not filed the report seeking such extension indicating the progress of the investigation and spelling out the reasons for detention beyond the period of 90 days. Two, no notice of the application for extension of period was given to the applicant. Three, the order of extension passed by the learned Special Judge does not indicate application of mind by the learned Special Judge.

21. Once the order of extension of period of investigation is found to be legally unsustainable, the infeasible right of the accused to be released on the completion of the 90 days period gets crystallized. In the case at hand, the applicant filed an application for default bail on 4th April, 2022. Charge-sheet came to be lodged subsequently on 11th April, 2022. It implies that on the day, the applicant availed the right to be released on bail i.e. 4th April, 2022, the investigation was not complete.

Thus, the rejection of the application by the learned Special Judge, by order dated 18th April, 2022 also becomes legally unsustainable.

22. The endeavour of Mrs. Pai, the learned Special Public Prosecutor, to persuade the Court to delve into the nature and gravity of the accusation against the applicant and the antecedents of the applicant does not deserve countenance as those considerations are not at all germane while considering an application for default bail. I am, therefore, persuaded to release the applicant on bail.

23. Hence, the following order:

: O R D E R :

- (i) The application stands allowed.
- (ii) The applicant – Sanjay Shankarrao Telnade be released on bail in CR No.132/2019, registered with Shahapur Police Station, District Kolhapur, on furnishing a P. R. Bond in the sum of Rs.30,000/-, with one or two sureties in the like amount to the satisfaction of the learned Special Judge, Ichalkaranji.
- (iii) The applicant shall not tamper with the prosecution evidence and/or give threat or inducement to any of the prosecution witnesses.

(iv) The applicant shall mark his presence at the Ichalkaranji Police Station, on the first Monday of every alternate month in between 10.00 am. to 1.00 pm., for the period of one year or till the framing of charge, whichever is earlier.

(v) The applicant shall furnish his permanent residential address and contact number to the Inspector of Police, Ichalkarnaji Police Station, and intimate the change, if any.

19. At this stage, the learned Special Public Prosecutor seeks stay to the execution and operation of this order.

Having regard to the nature of the default on the part of the prosecution, I am not inclined to stay this order.

Hence, the oral application for stay stands rejected.

All concerned to act on an authenticated copy of this order.

[N. J. JAMADAR, J.]