

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.392 OF 2022

Umesh Kumar Nanda, New Delhi

Applicant

versus

The CBI-EOW, Mumbai and another

Respondents

Mr.Saurabh Ghag and Ms.Divya Bhatia i/by Rajeev Sawant & Associates, Advocate for applicant.

Mr.Kuldeep Patil, Advocate for respondent no.1.

Mr.a.R.Patil, APP, for State.

CORAM : PRAKASH D. NAIK, J.

DATE : 29th June 2022

PC :

1. The applicant is aggrieved by order dated 30th March 2022 passed by the CBI Special Judge cancelling bail granted to the applicant vide order dated 17th August 2021 passed by Court of Metropolitan Magistrate, and directing him to appear before the Additional Chief Metropolitan Magistrate on 7th April 2022 with direction to the Magistrate to consider the request for police custody made by investigating officer.

2. The applicant was arrested on 13th August 2021 in connection with CC No.1134/PW/09. He was produced before the holiday Court of Metropolitan Magistrate, on 14th August 2021. Learned Magistrate perused the case diary and having gone through the record and hearing both sides at length observed that grounds for further PCR are not sufficient. Hence applicant was remanded to judicial custody till 27th August 2021. The applicant preferred

application for bail in CC No.1134/PW/2009 while he was in custody. Learned Additional Chief Metropolitan Magistrate, 19th Court, Esplanade, Mumbai vide order dated 17th August 2021 granted bail to the applicant. While granting bail it was observed that admittedly charge sheet was filed on 23rd December 2009 against accused nos.1 to 7 for the offence under Sections 420, 467, 468, 471 r/w 120-B of IPC. The charge was framed against accused nos.1 and 3 on 26th February 2013. The prosecution has examined four witnesses. Necessary documents were seized during investigation and filed along with charge sheet. Accused nos.1 and 3 were released on bail and other accused had absconded. Non-bailable warrant was issued against other accused. Considering the documents on record and progress in trial, it appears that required documents for investigation are available on record. The case is pending since 2009 and it will take some more time to conclude the trial. The accused no.2 has filed medical documents in support of his application. He is 56 years old. He is represented through his advocate and ensured that he will remain present in Court for trial. Considering the progress of trial, nature of offence and situation of Covid pandemic, no purpose would be served in keeping the accused behind bar. The application was allowed and applicant was directed to be released on bail on executing PR bond in the sum of Rs.2,00,000/- with two solvent sureties in the like amount. He was directed to attend trial regularly. He was directed not to tamper the prosecution witness and evidence and co-operate the investigating agency whenever it is required. He was directed to seek prior permission of Court to travel abroad.

3. The applicant was then taken into custody in CC No.1133/PW/

2008. He was formally arrested. He preferred application for bail which was allowed by order dated 28th August 2021.

4. The CBI had preferred revision application before Sessions Court challenging order dated 14th August 2021 and sought police custody for five days of applicant and cancellation of bail granted to the applicant by order dated 17th August 2021 and 28th August 2021. On 23rd October 2021 additional charges were framed in both the cases. The sessions Court vide order dated 30th March 2022 partly allowed the revision application and cancelled the bail granted to applicant in CC No.1134/PW/2009. From the tenor of the order it appears that Sessions Court was of opinion that before arrest the applicant was not available for investigation for a long period of time and learned Magistrate has not granted police custody on the first day itself to the applicant and remanded him judicial custody. The order dated 14th August 2021 of the Metropolitan Magistrate refusing to grant police custody remand and order dated 17th August 2021 granting regular bail to the applicant in CC No.1134/PW/2009 was set aside. The applicant was directed to remain present before Additional Chief Judicial Magistrate, 19th court, Esplanade, Mumbai on 7th April 2021 and Investigating Officer was permitted to make request to the said Court for police custody which was directed to be considered by the said Court. It was further directed that learned Magistrate shall pass appropriate orders after hearing both the sides. The police custody is granted after expiry of PCR. The accused was granted liberty to file fresh application for bail.

5. Learned advocate for applicant submitted that the order passed by learned Sessions Judge is erroneous. On the day of

passing order by Sessions Court, there was no question of granting police custody by the Court of learned Magistrate. The learned Magistrate has passed reasoned order while granting bail. The Investigating Officer has not pressed application on Exhibit-155.

6. Learned counsel for respondent no.2 CBI has submitted that applicant was absconding for 13 years. Custodial interrogation of applicant was necessary. The applicant is involved in serious offence. He was not available for interrogation. Learned Magistrate while granting bail did not assign proper reasons on merits of the case. On the very first day, the applicant was remanded to judicial custody by Holiday Court without giving opportunity to the investigating agency to interrogate him. He relied upon decision of Supreme Court in the case of **Puran Vs. Rambilas and another**¹.

7. It is pertinent to note that bail granted to the applicant in CC No.1133/PW/2009 vide order dated 28th August 2021 was confirmed and not disturbed by the Sessions Court. Apparently CBI did not oppose the application seeking cancellation of bail in CC No.1133/PW/2009.

8. CBI had made prayer for grant of police custody of the applicant. The applicant was produced before the Court of Magistrate on 14th August 2021 and on the first day the Court had granted judicial custody. On perusal of the order dated 14th August 2021 as referred to hereinabove it is apparent that learned Magistrate had considered the fact that further custody of the applicant was not necessary, all the documents are in custody of CBI, charge has been framed against co-accused and on conditions

¹ (2001)6-SCC-338

granted bail. It is pertinent to note that learned Sessions Judge has directed the applicant to appear before the Court of learned Magistrate and directed the investigating agency to move application for police custody with direction to the Magistrate to consider the same. It is further directed that in the event police custody is granted, the applicant will be at liberty to move application for bail after police custody is over.

9. In the case of **CBI, Special Investigation Cell-I, New Delhi Vs. Anupam J. Kulkarni²**, the important question for consideration was whether a person arrested and produced before the nearest Magistrate as required under Section 167(1) of Cr.PC can still be remanded to police custody after expiry of the initial period of 15 days. The Apex Court had observed that taking plain language into consideration particularly the words otherwise than in the custody of the police beyond the period of fifteen days in the proviso of section 167, it has to be held that the custody after the expiry of first fifteen days can only be judicial custody during the rest of the period of ninety or sixty days and that police custody if found necessary can be ordered only during the first period of fifteen days.

10. In the present case the applicant was arrested in CC No.1134/PW/09 on 13th August 2021. He was produced before the Court on 14th August 2021. He was remanded to judicial custody on 14th August 2021. The Sessions Court cancelled bail granted to applicant and vide order dated 30th March 2022 set aside order dated 14th August 2021 refusing to grant police custody remand and directed the applicant to remain present before Additional Chief Metropolitan Magistrate, 19th Court, Esplanade, Mumbai on 7th April

2 (1992)3-SCC-141

2022. The investigating officer was permitted to request for police custody. The learned Sessions Judge has committed an error in issuing such directions. On 7th April 2022, no police custody could be granted as period of 15 days from first remand is already over.

11. The order dated 14th August 2021 on first remand in CC No.1134/PW/2009 was passed by learned Magistrate after perusal of case diary, record and hearing both sides at length. The applicant was remanded to judicial custody till 27th August 2021. The order of remand to judicial custody was challenged after bail was granted. The order granting bail dated 14th August 2021 refers to the fact that applicant is suffering from various medical ailments. The Court considered objection of investigating officer. Say was filed by prosecution. The Court took note of objection that accused did not join investigation. He was declared absconder. The Court referred to allegations against the applicant. The Court then observed that charge sheet is filed against accused nos.1 to 7 for the offence punishable under Sections 420, 467, 468, 471 r/w 120B IPC. The record indicate that charge was framed against co-accused on 26th February 2013. Prosecution has examined five witnesses. Necessary documents are seized during investigation and filed along with the charge sheet. Accused nos.1 and 3 are released on bail. Required documents are available on record. On similar grounds the applicant was also granted bail in C.C No.1133/PW/2009 by order dated 28th August 2021. The applicant attended Trial Court after grant of bail. Charge was framed against the applicant on 23rd October 2021. Roznama annexed to this application relating to C.C No.1133/2009 dated 18th August 2021 shows Investigating Officer has not pressed application Exhibit-155 and order was passed on it viz "Application is

not pressed. Hence filed.” Accused is in judicial custody till 27th August 2021. According to applicant Exhibit-155 was an application seeking police custody of applicant. Thus, police custody was not pressed in second case. Applicant was granted bail in other case on 28th August 2021. The order dated 14th August 2021 referring PCR, bail order dated 17th August 2021 and 28th August 2021, were challenged by preferring Revision Application before Sessions Court. The refusal of police custody could be challenged under revisional jurisdiction. Bail granted on merits in the present case could be challenged under Section 439(2) of Cr.P.C. The learned Sessions Judge cancelled the bail by exercising powers of revisional Court. The order dated 28th August 2021 granting bail in CC No.1133/PW/2009 was not interfered. Bail was granted in that case on similar grounds. Time to appear stipulated in order dated 30th March 2022 was extended by Sessions Court by order dated 7th April 2022 upto 13th April 2022. This Court then extended time upto 27th April 2022, 10th June 2022 and 23rd June 2022. On 30th March 2022 itself the Magistrate was not empowered to grant police custody of applicant. The directions of learned Sessions Judge vide order dated 30th March 2022 could not have been implemented. The order dated 30th March 2022 was based on grant of police custody for investigation.

12. Considering the aforesaid factual aspects and law, the order dated 30th March 2022 deserves to be set aside.

13. Hence, I pass following order :

ORDER

(i) Criminal Application is allowed and disposed of;

(ii) The order dated 30th March 2022 passed by Special Judge (CBI), City Civil and Sessions Court, Greater Mumbai in Criminal Revision Application No.455 of 2021 is set aside;

(iii) Impugned order dated 17th August 2021 passed by Additional Chief Metropolitan Magistrate, 19th Court, Esplanade, Mumbai in CC No.1134/PW/2009 is restored and applicant is released on same terms and conditions.

(PRAKASH D. NAIK, J.)

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