

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL BAIL APPLICATION NO.19 OF 2022

Suraj Arun Pote Applicant

versus

State of Maharashtra Respondent

.....

- Mr.Nitin Sejpal, Advocate for Applicant.
- Smt. Aruna S. Pai (Chief PP) a/w Mr. P. H. Gaikwad, APP for the State/Respondent.

CORAM : SARANG V. KOTWAL, J.
DATE : 09th FEBRUARY, 2022
(through video conferencing)

P.C. :

1. The Applicant is seeking his release on bail under the provisions of section 167 of the Code of Criminal Procedure, 1973 (for short 'Cr.P.C.') r/w section 21(4) of the The Maharashtra Control of Organised Crime Act, 1999 (for short 'MCOCA Act') in respect of C.R.No.97 of 2021 registered with Meghwadi Police Station.

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2. Heard Mr.Nitin Sejpal, learned counsel for the Applicant and Smt. Aruna S. Pai, learned Chief PP for the State.

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3. It is not necessary to go into the merits of the matter because the Applicant is seeking bail for non filing of the charge-sheet within the stipulated period. The merit in this matter is not of much importance. However, the basic facts which are admitted by both the parties are necessary to be mentioned.
4. The FIR vide C.R.No.97/2021 was registered at Meghwadi police station on 18/04/2021 u/s 326, 188, 143, 144, 147, 148, 149, 120(B) r/w 34 of the Indian Penal Code and also under the provisions of Maharashtra Police Act. Subsequently section 307 of the IPC was also added. The Applicant came to be arrested on 20/05/2021 in this connection. The investigation was carried out and the charge-sheet was filed on 05/08/2021. The learned Magistrate took cognizance and committed the case to the Court of Sessions. On 18/08/2021, the approval u/s 23(1)(a) was granted to apply provisions of MCOC Act.
5. The appointed Investigating Officer under that approval sought custody of the Applicant by making application

before the learned Special Judge under MCOC. The permission was granted on 23/10/2021 and on that day the Applicant was shown arrested for commission of offence under the MCOC Act. The learned Special Judge for MCOC granted police custody to the Applicant. On 28/10/2021 jail custody was granted. On 17/11/2021 the Applicant moved an application for default bail under the provisions of 167(2) of Cr.PC. Learned Special Judge under MCOC rejected that application on 22/12/2021 and thereafter the Applicant has filed the present application before this Court on 30/12/2021. After filing of this application, the competent authority granted sanction u/s 23(2) of MCOC Act on 18/01/2022 and the charge-sheet showing MCOC offence was filed on 19/01/2022.

6. Learned counsel for the Applicant Mr.Sejpal submitted that the investigating agency was duty bound to file the charge-sheet within a period of 180 days from the first remand of the Applicant. For that purpose the date of first remand should have been taken as 20/05/2021. Therefore according to Mr.Sejpal

right accrued to him u/s 167 of Cr.PC for being released on default bail from 16/11/2021. The record produced by the learned APP shows that the application for default was filed on 17/11/2021.

7. According to Mr.Sejpal this was outside the outer limit for filing of the charge-sheet and therefore the Applicant deserves to be released on bail under the provisions of section 167 of Cr.PC. Mr.Sejpal relied on the judgment of the Hon'ble Supreme Court passed in the case of ***State of Maharashtra Vs. Bharati Chandmal Varma, as reported in 2002 Supreme Court Cases (Cri.) 299***. He submitted that this judgment supports the contention that the outer limit for filing the chargesheet has to be calculated from the date of first remand and not from the date when the MCOC provisions were applied or from the date when the accused is re-arrested under the provisions of MCOC.

8. Mr.Sejpal submitted that the reliance placed by the learned Judge on the order passed by this Court (Coram : Abhay

M. Thipsay, J.) in the case of ***Indrabahadur Lalbahadur Khatri & Ors. Vs. The State of Maharashtra, in Criminal Bail Application No.1046 of 2012 dated 05/09/2012*** is misplaced; and submits that the Applicant deserves to be released on bail.

9. Learned PP on the other hand strongly relied on the order passed by this Court passed in Khatri's case (supra). She submitted that in that case the charge-sheet for offences under IPC was already filed within time. The MCOC provisions were applied only during the further investigation carried out u/s 173(8) of Cr.PC. Therefore it was held that there was no right accrued to the Applicant.

10. The charge-sheet in the present case was filed on 05/08/2021 the Applicant did not have any right to be released u/s 167(2) of Cr.PC. She submitted that, even if it is taken that the Applicant was arrested for offence under MCOC on 23/10/2021 this supplementary charge-sheet was filed on 19/01/2022. Again there is no delay giving any statutory right

to the Applicant. She further submitted that Bharati Varma's case (supra) was referred to by the learned Single Judge of this Court in deciding Khatri's case.

11. I have considered these submissions. The rival submissions are within a narrow compass. Both the learned counsel are referring to the cases of Bharati Varma (supra) and Indrabahadur Khatri (supra) to further their arguments. Therefore it is necessary to refer to the ratio in these two cases. In Bharati Varma's case the accused Bharati was arrested on 01/04/2001 for offence punishable u/s 489-A, 489-B, 489-C, 120-B and 420 of IPC. She was produced before the Magistrate on 02/04/2001. Sanction for application of MCOC Act was granted on 21/04/2001. The investigation was conducted and the charge-sheet was filed on 12/07/2001.

12. In that case, the Hon'ble Supreme Court has held that if the investigation into the offence for which the accused was arrested initially had revealed other ramifications associated

therewith, any further investigation would continue to relate to the same arrest and hence the period envisaged in the proviso to Section 167(2) would remain unextendable.

13. In other words, the Supreme Court held that in that case the date of first remand i.e. 02/04/2001 was material and the charge-sheet should have been filed within the stipulated period which should be calculated from 02/04/2001. In that case the charge-sheet was filed on 12/07/2001 which was beyond the statutory period and the benefit was given to the accused.

14. In the case of Indrabahadur Khatri (supra), the accused were arrested on 17/05/2011, for offences punishable u/s 302 and 341 of IPC and the charge-sheet was filed on 12/08/2011. Thereafter on 15/09/2011 prior approval for applying MCOC was granted. The accused therein were re-arrested on the allegations of having committed offence under MCOC Act on 22/09/2011. They made an application for their release u/s 167 of Cr.PC. contending that the statutory period permitting their

maximum detention u/s 167 of Cr.P.C. was over. Reliance was placed on Bharati Varma's case (supra). However, the contention of the accused therein and reliance on Bharati's case were rejected by the learned Single Judge of this Court.

15. The observations made in the case of Khatri (supra) are squarely applicable to the present case. It was observed thus "the real question was whether after the filing of the charge-sheet, merely because further investigation was undertaken, the arrested person would be treated or taken as being under detention by virtue of section 167 of Cr.P.C.; and therefore entitled to claim release on bail on expiry of the maximum limit for detention, laid down in clause (a) of first proviso to section 167(2)". The Court went on to observe that the answer had to be 'no'. Sub-section 8 of section 173 specifically permits further investigation even after it has been completed by filing of a charge-sheet. It was further observed that when the accused were in custody by virtue of a remand under section 209 of the Code, the re-arrest was rather superfluous.

16. The case of Bharati Varma (supra) was also considered and it was observed that reliance placed on that decision was misconceived in the facts in Khatri's case.

17. In the present case also the facts are very similar to Indrabahadur Khatri's case (supra) and not to Bharati Varma's case (supra). In Bharati Varma's case, the charge-sheet for the first time was filed beyond statutory period from the date of first remand. However, in the present case the first charge-sheet was filed on 05/08/2021 and the date of first remand was 20/05/2021. The main offence at that point of time was section 307 of IPC. The charge-sheet was filed within the period of 90 days. The reason for enacting section 167 of Cr.P.C. and setting outer limit was to ensure that the investigation was carried out diligently and within the statutory period. Therefore outer limit was specified. In the present case the investigation was completed within the period of 90 days. Only subsequently after the further investigation was carried out, the provisions of

MCOC Act were applied. Those provisions could be applied to a registered offence for which the investigation could be going on. During investigation if further material is found then the provisions of MCOC can be applied; which was done in the present case. Therefore it cannot be said that the investigation was not completed within the statutory period of 90 days for offences under IPC though subsequently provisions of MCOC Act were applied. The Applicant was in custody pursuant to valid remand orders. The investigation carried from that point onwards was only the further investigation. It was not a new investigation. Because the investigation under the MCOC Act was continuation of the earlier investigation for IPC offence. Only subsequently the provisions of MCOC Act were invoked because the material under the MCOC Act was found against the Applicant. Therefore crucial aspect in this case is whether the investigation under MCOC was completely new investigation and therefore whether the charge-sheet should have been filed within 180 days from the date of first arrest i.e. 20/05/2021. This question in this case does not arise because the charge-

sheet was already filed on 05/08/2021. The charge-sheet filed on 19/01/2022 can only be described as a supplementary charge-sheet. The earlier charge-sheet and remand orders cannot be wiped out from the record. The cognizance was taken of the earlier charge-sheet and thereafter the case was committed to the Court of Sessions. Therefore the Magistrate Court and the Sessions Court had rightly remanded the Applicant under the provisions of Cr.P.C. In Bharati Verma's case (supra) the first charge-sheet itself was filed beyond the statutory period. Therefore facts in that case are not applicable to the present facts; whereas Khatri's case (supra) is based on similar facts. Therefore I am following the view expressed in the case of Indrabahadur Khatri (supra). No case for granting any relief under section 167 of Cr.P.C is made out by the Applicant. Hence the application is rejected.

(SARANG V. KOTWAL, J.)