IN THE HIGH COURT OF JUDICATURE AT BOMBAY :
NAGPUR BENCH : NAGPUR.

CRIMINAL APPLICATION [APL] NO. 894/2022.

1.Shehzada Khan s/o Aziz Khan,
Aged about 60years, Occupation
Service;

2.Amjad Khan s/o Aziz Khan,
Aged about 42 years, Occupation
Self Employed;

3.Iqbal Khan @ Igga s/o Aziz Khan,
Aged about 44 years, Occupation
Self Emloyed;

All residents of Mota Tajbagh,
Near Dali Walli Amma Dargah,
Tajbagh, Umred Road, Nagpur. ... **APPLICANTS.**

VERSUS

1.State of Maharashtra,
through Assistant Commissioner of Police,
Ajni, Nagur.
Crime No.437/2021 registered with
Police Station Sakkardara. ... **NON-APPLICANT.**

Mr.D.N. Mehta, Advocate for Applicants.
Mr.S.M. Ukey, Addl.P.P. for the Respondent.

CORAM : VINAY JOSHI, J.

JUDGMENT RESERVED ON : SEPTEMBER 27, 2022.
JUDGMENT PRONOUNCED ON : OCTOBER 11, 2022.

JUDGMENT :

Heard finally by consent of the learned Counsel appearing for the parties.

Admit.

2. This is an application of accused in Crime No.437/2021 registered with Sakkardara Police Station, Nagpur seeking quashing and setting aside the order passed by the District Judge-1 and A.S.J. (MCOC Act), Nagpur dated 10.06.2022, whereby the learned Special Judge has extended the time of 45 days for filing charge-sheet in terms of Section 21[2][b] of the Maharashtra Control of Organized Crime Act, 1999 (hereinafter referred to as "**the MCOC Act**" for short), and has further prayed for grant of default bail.

3. A crime was registered against applicants on 31.08.2021

for the offence punishable under Sections 384, 386, 420, 467, 471, 447, 504, 506 and 120(B) of the Indian Penal Code and Sections 3[1][ii], 3[2], 3[4] and 4 of the MCOC Act. Challenge in this application is to the order dated 10.06.2022, passed by the Special Judge, by which the judicial custody remand of applicants came to be extended for a further period of 45 days, thereby granting extension for filing charge-sheet.

4. For the purpose of deciding the challenge it is necessary to make brief reference of the necessary facts. A crime was registered on 31.08.2021 with Sakkardara Police Station for the aforesaid offences. Pre-arrest interim protection was granted to applicants by this Court, which was later on came to be rejected. In the meantime, police have invoked the provisions of MCOC Act, by obtaining prior sanction. Applicant no.1 was arrested on 12.03.2021; applicant no.2 was arrested on 13.03.2021, whilst applicant no.3 came to be arrested on 16.03.2021 and were produced before the Special Court on respective following day. The stipulated period of 90 days for filing of charge-sheet would come to an end on 10.06.2022, and on later dates. Since it was not possible

to complete the investigation within the stipulated period of 90 days for filing charge-sheet, an application seeking extension of period for further 90 days was filed before the Special Court as permissible under Section 21[2][b] of the MCOC Act. The applicants/accused have resisted said application by filing reply, however, vide order dated 10.06.2022 the Special Court has granted extension for 45 days, which is impugned herein.

5. The challenge is raised on various grounds. It is submitted that the application seeking extension was not in accordance with the provisions of Section 21[2][b] of the MCOC Act, for the reason that the same was not filed by the Public Prosecutor but, was filed by the investigating officer under his affirmation. It is submitted that the personal satisfaction of the public prosecutor is prerequisite for extension, which was totally absent. The application for extension was prepared and verified by the Assistant Commissioner of Police, on which the Special Public Prosecutor has merely signed without application of mind. The application seeking extension of time did not indicate progress of investigation and the reasons for extension. The Special Court utterly failed to consider

the legal requirement of Section 21[2][b] of the MCOC Act, while granting extension for a period of 45 days. It is submitted that while the applicants were on interim pre-arrest bail, they have attended the police station, as well as their house search was taken twice. According to applicants, the investigation was practically complete and thus, there was no reason for extension of time.

6. The learned Addl.P.P. has strongly resisted the application by filing reply in detail. Initially he has objected the very tenability of the application on the ground of suppression of material facts, with which I will deal in the later part of this order. The learned Addl.P.P. would submit that the application for extension was filed by the Special Public Prosecutor after verifying the report submitted by the investigating officer on his personal satisfaction regarding need of extension. He would submit that merely because the application for extension was signed by the investigating officer, it does not mean that it was an application of the investigating officer. He took me through various paragraphs of the application with specific emphasis on paragraph no.24 to impress that the public prosecutor has applied his mind and on satisfaction requested for

extension of time.

7. The first ground of opposition is about suppression of facts. The learned Addl.P.P. would submit that the accused have filed an application (Apl No.174/2021) to this Court challenging the registration of crime No.437/2021. The Division Bench of this Court vide order dated 08.03.2022, has precluded the investigating agency to file charge-sheet which has been suppressed. Moreover, it is submitted that later on this Court vide order dated 22.07.2022 has permitted the investigating officer to file charge sheet, which has also been suppressed. There is no substance in said contention, because applicants have specifically pleaded [paragraph no.8] about filing of Criminal Application No.174/2022 and the interim order passed therein dated 08.03.2022. Not only that, copy of the interim order has been produced on record at page 42. When this fact was brought to the notice of the learned Addl.P.P., he has extended his submission by stating that the subsequent order of this Court dated 22.07.2022 was not filed on record. As a matter of fact the present application has been filed on 06.07.2022, and therefore, there cannot be any suppression regarding the subsequent order dated

22.07.2022. The learned Addl.P.P. after realizing that the order permitting to file charge-sheet was post filing this application, stated that the said order ought to have brought to the notice of this Court and thus, still there is suppression.

So far as the first two contentions are concerned, there is no question of suppression since applicants have specifically pleaded about filing of criminal application and interim order dated 08.03.2022. So far as the second order dated 22.07.2022 is concerned, it was post filing of the application and thus, cannot be expected to be pleaded. By virtue of the interim order dated 08.03.2022, the Division Bench of this Court has permitted the investigating agency to continue with the investigation, however, directed not to file charge sheet against applicants without leave of the Court. It appears that the investigating agency took out Criminal Application No.1192/2022 seeking permission of the Court to file charge-sheet. In that context, this Court vide order dated 22.07.2022, has permitted the investigating agency to file charge-sheet. Thus, said order was passed at the instance of an application moved by the investigating agency before the Division Bench of this

Court, therefore, it was for the State to produce the order. By any stretch of imagination it cannot be held that applicants failed in their duty to produce copy of said order. Therefore, the submission about suppression is wholly misconceived and untenable.

8. Catching the thread of relevancy, I deem it appropriate to deal with one more submission made by the learned Addl.P.P. relating to the orders passed by the Division Bench of this Court. It is submitted that since the Division Bench of this Court has precluded the investigating agency from filing charge-sheet for the period from 08.03.2022 to 22.07.2022, the said period requires to be excluded. The learned Counsel appearing for applicants strongly resisted the said submission by contending that in no eventuality the period can be extended in terms of Section 167[2] of the Code. Particularly reliance is placed on the decision of Supreme Court in case of **S. Kasi .vrs. State through the Inspector of Police – 2020 SCC Online SC 529**, wherein it is clarified that no Court either directly or indirectly can extend the period of filing of charge-sheet. Besides that, it is to be remembered that the Division Bench of this Court has not precluded the investigating agency from filing charge sheet, but,

simply directed to seek prior leave of the Court for filing charge-sheet. Thus, it is for the investigating agency to seek leave which they did on 22.07.2022. Therefore, the submission in that regard is untenable.

9. Coming to the core issue, it is submitted that the application for extension was not in tune with Section 21[2][b] of the MCOC Act. The said application has to be filed by the public prosecutor indicating progress of the investigation, however, the said application was filed by the investigating officer along with the signature of public prosecutor, which is against the statutory requirement. It is submitted that the entire application/report was prepared by the Additional Commissioner of Police along with his verification on which the special public prosecutor has simply put his signature. Thus, according to applicants, the application does not reflect application of mind by the public prosecutor while making request for extension of time. In order to substantiate this contention, heavy reliance is placed on the decision of this Court in case of **Shaikh Moin Shaikh Mehmood .vrs. State of Maharashtra – 2020 SCC Online Bom 968,** with particular reference to paragraph

no.22 of the decision, which is reproduced herein below :

> "*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.*"

10. There can be no dispute that the intent and object of the legislature is to protect the personal liberty, while extending time by incorporating specific requirement of the report of public prosecutor indicating the progress of investigation and the special reasons for detention. Obviously the role of public prosecutor is of very much importance, as the extension can be granted on his request only, meaning thereby not on the request of the investigating officer. In

above referred decision, this Court after scrutinizing the issue in detail, has observed that the report for extension must comprise reasons demonstrating personal satisfaction of the public prosecutor, the reasons for which the investigation could not be completed and the object to be achieved through extending the period.

11. The learned Counsel for applicants further has relied on the decision of this Court in case of **Sheikh Kasam Sheikhji and others .vrs. State of Maharashtra – Criminal Application (APL) No.774/2016 dated 23.12.2016**, wherein this Court has set aside the order of extension. However, the said case is distinguishable on facts, as a joint application was filed by the investigating officer and prosecutor, particularly this Court has noted that the prosecutor has simply put his signature on the police report prepared by the investigating officer without applying his mind. It was noted that the learned Judge has also not applied his mind while considering the request and on such factual aspect the order was tuned down. Similarly applicants have relied on the another decision of this Court in case of **Pahadiya Tulshiram Champala and others .vrs. State of Maharashtra - Criminal Writ Petition No.831/2017 dated**

21.09.2017, which is also distinguishable on facts. It was weighed to this Court that the application was filed by the investigating officer with rubber stamp of Assistant Government Pleader, and thus, it was condemned.

12. Essentially it is a factual aspect to see whether the application for extension is in accordance with law. This being crucial issue I have revisited the application for extension filed in terms of Section 21[2][b] of the MCOC Act. No doubt, the application is signed and verified by the Assistant Commissioner of Police, Crime Branch, Nagpur along with signature of the Special Pubic Prosecutor. One has to read the entire application as a whole, as it is impermissible to draw conclusion only on the basis of signatures put on the application. The entire application is scrutinized with a view to find out whether it was filed by the public prosecutor with application of mind and for adequate reasons. The first line of the application itself speaks that it has been filed by the Special Public Prosecutor. The said line speaks as "*The Special Public Prosecutor most humbly and respectfully submits as under.*"

No doubt, I am not influenced by the title of the application, but, this is one of the aspect for consideration. The application contains 25 paragraphs stating the nature of accusation, arrest of accused, antecedents of accused, investigation carried out and about the necessity for extension.

13. It was the prosecution case that the accused were members of a gang formed by the team leader Firoz Khan, who was indulging into illegal activities in an organized manner. It was alleged that the gang members have forcibly occupied 6 shops of the informant and are collecting rent therefrom. They have extorted money, as well as forged the documents regarding immovable property. Report indicates that the accused have committed pre-planned offences and some facts needs to be ascertained by collecting mere material. Paragraph no.7 of the application speaks about several offences registered against the team leader and gang members. It is stated that the investigating officer has so far recorded statements of total 26 witnesses. Some of the accused were absconding for long period. One of the witness has received a

threatening phone call of which police has collected CDR and for detail investigation time is required. It is stated that Bank statements of accused have been obtained showing monetary transaction in crores of rupees. The investigating officer requires forensic audit report of all bank accounts. It is stated that the immovable property worth Rs.4 crores have been accumulated by illegal means. The accused are possessing huge unaccountable wealth of which documents are to be collected and investigation is to be made. Besides that it is contended that the investigating officer has made correspondence with the bank and government authorities seeking information regarding bank and property details, which is yet to be received. One another reason is canvassed that the accused remained absconding for long period, and had created terror by their illegal activities. The police want to investigate as to who has harbored them, and thereby facilitated the commission of crime.

14. Pertinent to note that paragraph no.24 speaks that the application is filed by the public prosecutor. For the sake of convenience, paragraph no.24 of the application is reproduced herein below :

> "*24. It is submitted that I personally seen the case diary of this crime and found that investigating officer conducted the investigation in properly and diligently. Looking to the huge seizure of the documents of the immovable properties and huge wealth of the accused seized by the investigating agency for that more time to be required for investigation. So in my opinion it not possible to complete the investigation and filing of chargesheet upto 10.6.2022, as such period of 90 days' time to be granted for filing of the charge sheet."*

The said recital unequivocally conveys that the prosecutor has personally seen the case diary and found that the investigating officer has properly investigated the matter and for the reasons stated in the application, more time is required. The said paragraph indicates that it was an application by the public prosecutor about his personal satisfaction, meaning thereby the application of mind. Moreover, while assigning reasons for extension, it has been stated that the investigating officer has made correspondence with the Bank, investigating officer has requested for conducting forensic audit. Investigating officer is required to investigate with the relatives and friends of accused about their financial transactions etc.

Thus, reading of entire application reveals that it was a report of the public prosecutor on his satisfaction about need for extension of time.

15. The learned Trial Court has considered all these aspects while granting extension. The impugned order reflects the aspect about application of mind by the public prosecutor and the reasons for extension. Pertinent to note that though the extension of 90 days was sought, however, the trial Court has granted extension of 45 days only, which also reflects due application of mind. Therefore, on the basis of facts, it cannot be said that the application for extension was filed by the investigating officer on which the public prosecutor has mechanically signed, without application of mind.

16. The learned counsel appearing for applicants made one more submission that in view of the decision in case of Shaikh Moin [supra], in addition to report of public prosecutor, report of investigating officer has to be filed in the Special Court while seeking extension. He would submit that in this regards there was no compliance as the application for extension was not accompanied

with any report of police officer.

17. True, Division Bench of this Court in paragraph no.22 of judgment made reference that in addition to the report of public prosecutor, it should be accompanied by a report of the investigating agency. However, those observations are passing remarks which cannot be construed as a binding ratio. Essentially the Division Bench has ruled that the requirement is of filing report by the public prosecutor along with reasons containing personal satisfaction of the prosecutor about progress of investigation and reasons for extension. In said case, it was not the issue for adjudication whether the report of public prosecutor shall be accompanied with the report of the police officer, and therefore, any passing observations cannot be treated as binding precedent. Particularly when Section 21[2][b] of the MCOC Act never contemplates that the report of the public prosecution shall accompany the report of the investigating officer, and therefore the submission in this regard is unacceptable.

18. The learned Counsel for applicants has submitted that though extension was sought on the ground of conducting forensic

audit, however, that cannot preclude applicants from claiming bail in default. In this regard he has relied on the decision of this Court in case of **Navinkumar Pandu Jatot .vrs. State of Maharashtra – Bail Application No.301/2020 dated 31.01.2022**. In the said case, this Court has observed that charge-sheet without serological report can be held to be a complete charge sheet. The submission is that, for obtaining forensic audit report, the investigating officer is not required to wait, but, he could have filed charge sheet, since it is complete without such report. There can be no dispute that there can be complete charge-sheet without such experts report, however, the extension has not been sought only on the isolated ground of obtaining forensic audit report, but, there are several reasons/grounds which have been detailed herein before.

19. In view of above discussion, the application/report for extension has been filed by the prosecutor after due application of mind in compliance with Section 21[2][b] of the MCOC Act. The application reflects the progress of investigation and reasons for extension. The learned trial Court has rightly considered all these aspects and therefore, no case for interference is made out. In the

result, Criminal Application stands dismissed and the urge for grant of bail in default also stands rejected.

JUDGE

Signed By:RAKESH GANESHLAL
DHURIYA
Private Secretary
High Court of Bombay, at Nagpur
Signing Date:15.10.2022 10:14

Rgd.