

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL WRIT PETITION NO. 1076 OF 2022

1. Kiran Madhav Hazare
Aged about 37 years,
Residing at Tinchari,
Kokanmthan, Taluka – Kopargaon
District – Ahmednagar.
 2. Ravindra Uttam Gondkar (withdrawn on 10.11.2022)
Aged about 38 years,
Residing at Mauli Nagar,
Shirdi, Taluka – Rahata,
District – Ahmednagar.
 3. Deepak Uttam Gondkar (withdrawn on 18.10.2022)
Aged about 38 years,
Residing at Mauli Nagar,
Shirdi, Taluka – Rahata,
District – Ahmednagar.
 4. Tanvir Yusuf Rangrej (withdrawn on 10.11.2022)
Aged about 38 years,
Residing at Kopargaon,
Taluka – Rahata,
District – Ahmednagar.
 5. Akshay @ Aakash Rangnath Lokhande
Aged about 26 years,
Residing at Kopargaon,
Taluka – Rahata,
District – Ahmednagar.
- .. Petitioners

Versus

The State of Maharashtra
(At the instance of thereafter
Sub-Divisional Police Officer,
Shirdi Police Station
F.I.R. No. I-394 of 2021)

.. Respondent

Mr. Nitin Sejjal, Advocate h/f Smt. S. G. Sonawane, Advocate for the Petitioners.

Mr. P. N. Kutti, APP for Respondent.

Mr. R. R. Karpe, Advocate for Assist to APP.

CORAM : KISHORE C. SANT, J.

Date on which reserved for judgment : 25th January, 2023.

Date on which judgment pronounced : 03rd March, 2023.

JUDGMENT :-

. Rule. Rule made returnable forthwith by consent of parties.

2. This petition is by accused in jail for their release on bail under Section 167 (2) of the Code of Criminal Procedure (for short “Cr.P.C.”) r/w Section 12 of the Maharashtra Control of Organised Crime Act, 1999 (for short “M.C.O.C. Act”). The challenge is raised to an order dated 09.05.2022 passed by the learned Special Judge, Ahmednagar under M.C.O.C. Act whereby, the bail applications filed by the petitioners for grant of bail are rejected. Further challenge is to an order dated 09.05.2022 passed by the said Court for granting extension of period to file charge-sheet.

3. Petition is already withdrawn by petitioner Nos. 2 to 4. Thus, now this Court is considering petition only in respect of petitioner Nos. 1 and 5.

4. The facts giving rise to the present petition in short are as

below :

5. The petitioners are the accused in a crime registered for the offences punishable under Sections 307, 109 r/w Section 34 of the Indian Penal Code and Sections 3 and 25 of the Arms Act. The FIR was lodged by one Sachin Thakur on 10.12.2021 alleging that, on 10.12.2021 the informant along with his friend at 12.30 a.m. went to Gate No. 1 of Saibaba temple, Shirdi and from there they went to meet their friend Nilesh Jadhav as he had lost his uncle. From there, after about one and half hour, accused Deepak called Suraj Thakur and asked him to come to a spot near Mathura Hotel. The informant and Suraj went at the spot. At 3.30 a.m. petitioner No. 1 – Kiran Hazare came in a vehicle with accused Tanvir and petitioner No. 5 and other accused persons. There Kiran Hazare called accused - Ravindra Gondkar by keeping the mobile on speaker mode and asked as to what should be done of Suraj Thakur. On that, Ravi Gondkar told to finish Suraj. By cutting the mobile call Kiran asked Akshay Lokhande to take out the 'material' on which Akshay Lokhande gave two pistols to Kiran. Kiran took those pistols and fired at Suraj Thakur. Suraj received injuries and started running away. Kiran followed by firing at him. On that, the informant and his friend Nilesh immediately took Suraj Thakur on a scooty to the Hospital and got him admitted. After

admitting Suraj to hospital, he thereafter lodged FIR with Shirdi Police Station.

6. All the petitioners were taken in custody and since then they are in custody. Since the offence was registered under M.C.O.C. Act, the prosecution lodged an application for extension of time to file a charge-sheet. It is alleged that, when the application was filed, no notice was given. The petitioner No. 1 -Kiran came to be arrested on 13.12.2021 and Petitioner No. 5 – Akshay came to be arrested on 17.12.2021. They were remanded to police custody and thereafter to the judicial custody. The prosecution sent the communication dated 28.02.2022 through Deputy Inspector General of Police, Nashik seeking prior approval under Section 23 (1) (a) of the M.C.O.C. Act. On receiving approval provisions of M.C.O.C. Act came to be applied. By letter dated 09.03.2022 extension was sought for filing charge-sheet to the Court. The S.D.P.O., Shirdi by letter dated 10.03.2022 addressed to the jail authorities requested to inform the accused that the Sections under M.C.O.C. are added and the said information be given to the accused persons and further that they will be taken into custody. By another communication the S.D.P.O. requested jail authorities to hand over custody of the accused persons as the sections of M.C.O.C. are added. The jail authority by letter dated 11.03.2022 informed the S.D.P.O. and

handed over the custody of the accused. The accused persons were produced before the Court on 11.03.2022. There the accused prayed for default bail. The learned Court on 11.03.2022 granted extension for further investigation from 11.03.2022 and rejected the prayer of default bail. This is allegedly done without notice to the accused persons. Only their signature was taken on the application for extension.

7. The prosecution thereafter again filed an application for extension on 07.04.2022. The prosecution filed say on the application of default bail on 25.03.2022. The Special Court again granted extension of time. This time say was filed by the accused persons. The application dated 07.04.2022 came to be allowed by order dated 09.05.2022 extending the time for investigation till 04.06.2022. Thus, the application for extension was pending from 11.04.2022 till 09.05.2022 when same was allowed. On 09.05.2022 the applications filed by the accused persons dated 19.03.2022 and 11.04.2022 came to be rejected. Thus, all these orders are now under challenge in this petition.

8. In the background of these facts and the dates, the petitioners main contention is that the petitioners had filed application seeking default bail since the charge-sheet was not filed by the prosecution in

time and therefore that should have been allowed. The I.O. straightway sent letter to the jail authorities on 09.03.2022 asking for the custody of the petitioners without following procedure. It is further contended that, it was necessary for the Special Court to decide the application filed by the petitioners immediately, so also application filed by the prosecution seeking extension of time. Application seeking bail cannot be kept pending. The Court by passing order on 09.05.2022, that is almost a month after the application was received by the Court, is in gross violation of the fundamental rights. The petitioners further challenges handing over of custody by the jail authorities to the S.D.P.O. without Court's order. It is further contended that the Court could not have allowed the application seeking extension without offering sufficient opportunity to the accused. On 11.03.2022 when the accused were produced before the Court, no notice was given of an application seeking extension of time and the order was passed on that day itself. Mere obtaining signatures of the accused cannot be said to be sufficient compliance of a requirement of giving notice. Nor only calling say of the accused would amount to giving notice to the accused persons. Further it is contended that the application dated 25.03.2022 was kept pending. The Court on the application dated 07.04.2022 seeking extension had called say of the accused. Though the petitioners had filed say immediately on 08.04.2022, the application

was decided after a month. Further contention of the petitioners is that from 11.04.2022 till 09.05.2022 the detention of the accused persons is totally illegal. No retrospective effect can be given to such orders granting extension of time. Further reliance is placed on General Clauses Act to show time is to be counted. It is submitted that, 10.04.2022 was the outer limit on which period of 30 days came to be over of the first extension. Thus, immediately on 11.04.2022 the application was filed that was clearly after completion of 30 days and the accused were entitled for bail as till that time no extension was granted.

9. Thus, learned advocate for the petitioners criticizes both the orders saying that those are totally illegal. By applying analogy under the Terrorist and Disruptive Activities (Prevention) Act (for short “TADA Act”), he submits that, the notice to the accused was must. In support of his contention, learned advocate relied upon various judgments which are discussed herein below.

10. By relying upon the judgment of the Hon’ble Apex Court in a case of Sanjay Kumar Kedia Alias Sanjay Kedia Vs. Intelligence Officer, Narcotics Control Bureau and another reported in (2009) 17 SCC 631, learned advocate submits that only in special circumstances the extension of time to file charge-sheet can be granted. It is to be

granted only when report of the public prosecutor indicating the progress of the investigation and giving specific reasons which compelled the prosecution to seek detention of the accused beyond period of 180 days and that too only after notice to the accused. He submits that, in the present case no sufficient notice to the accused persons is given. He submits that, the applications for extension of time cannot be said to be report of the public prosecutor.

11. In the next judgment of the Hon'ble Apex Court in the case of **Hitendra Vishnu Thakur and others Vs. State of Maharashtra and others** reported in **1994 SCC (Cri) 1087**, a landmark judgment on this point wherein, it is held that, notice to the accused is must. It is necessary to indicate the progress in the investigation. The report must be a detailed report conveying to the Court as to why the investigation could not be completed.

12. Learned advocate further relied upon the judgment of this Court in the case of **Shaikh Moin Shaikh Mehmood Vs. State of Maharashtra** in Criminal Appeal No. 502/2020 dated 24.09.2020 wherein, this Court has held that, the report understood under the provisions of the TADA Act has to be an independent report comprising of reasons evidencing the personal satisfaction of the public prosecutor as regards progress in investigation. Thereafter, the reasons for which the investigation could

not be completed and the object for which an extension is necessary are to be stated. It is submitted that, in the case in hand there is nothing to indicate in the application which satisfy the above criteria.

13. Thereafter, learned advocate relied upon the judgment of the this Court in the case of **Bhavik Vijay Thakkar Vs. State of Maharashtra** in Criminal Bail Application No. 4400/2021 wherein, the provisions of Section 167 (2) of Cr. P. C. r/w 36A(4) of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short 'NDPS Act') were considered. This Court in the said case had considered the judgment in the case of **Hitendra Thakur** (supra) and had discussed the ingredients necessary for such application of extension of time.

14. In the judgment of this Court at Principal Seat in a case of **Junaid Hussain Shaikh Vs. The State of Maharashtra** reported in **MANU/MH/0837/2020** wherein, it is held that, the extension of time to file charge-sheet cannot be granted merely for asking by the prosecution. The similar view is taken in the Judgment in a case of **Asif Abdul Memon Vs. The State of Maharashtra** reported in **2022 ALL MR (Cri) 3748**. In those cases no extension was given.

15. Learned A.P.P. on the other hand opposes the petition. He submits that, the calculation given by the petitioners itself is wrong.

The date of remand needs to be excluded. He relied upon the judgment in the case of Ravi Prakash Singh @ Arvind Singh Vs. State of Bihar reported in 2015 AIR (SC) 1294.

16. Learned A.P.P further submits that, the application for extension was filed well within 90 days that is on 86th day by excluding the date of remand. From the record, he submits that, on the application dated 08.03.2022 it is clearly seen that the Court had granted permission on the same day and granted extension of time. He further pointed out that the I.O. was directed to produce the accused persons before the Court on 09.03.2022. Thus, clearly there is compliance of giving sufficient notice to the accused. He submits that, mere production of the accused and informing them about the application for extension of time is sufficient compliance of the provision. He further submits that on 10.03.2022, notice was given to the accused which is apparent from the endorsement. The accused were having idea that the sections of M.C.O.C. Act are added. The application by the petitioners was filed on 11.03.2022 on which say was called from I.O. The application was perused by the learned Court. The order on application was passed and the same came to be filed which clearly shows that application of the petitioners was rejected by the Court. So far as the report dated 11.03.2022, he submits that, it was totally as per law on which it is

seen that, there is already an endorsement calling for say of the accused. On the same application accused had prayed for time to file say of two days. Thus, he submits, when the time was extended by order dated 11.03.2022, there was sufficient notice given to the accused. He submits that, first time extension is not at all challenged by the accused persons. So their custody till 10.04.2022 was not objected even by the accused persons.

17. Learned A.P.P. relies upon the judgment of the Hon'ble Apex Court in a case of **Rambeer Shokeen Vs. State of NCT of Delhi** reported in **2018 (1) Bom. C. R. (Cri.) 630**. It is specifically on the point of default bail in offence under M.C.O.C. Act. By specifically relying upon paragraph No. 23, he submits that, it is held by the Full Bench of the Hon'ble Apex Court that no right accrued to the appellant before filing of a charge-sheet. The question of grant of statutory bail after filing of the charge-sheet against the appellant and during the pendency of the report/application for extension of time to file charge-sheet does not arise. He submits that, in this case also since the application seeking extension of time was already filed before the expiry of earlier period, there was no question of petitioners getting any right to file an application for default bail. He further submits that, the application filed on 11.04.2022 was thus premature as by that time the application

seeking extension of time was already decided. He further submits that, no written notice is required to be given to the accused persons in view of the same judgment. In our case, he submits that, after filing of a charge-sheet on 03.06.2022 the only course open to the petitioners was to apply for regular bail.

18. Learned A.P.P. further relied upon the judgment of the Hon'ble Apex Court in a case of Ravi Prakash Singh @ Arvind Singh Vs. State of Bihar (supra). This judgment is already relied upon by this Court in a case of Jagjitsingh @ Jaggi Dilibagsingh Sandhu Vs. The State of Maharashtra in Criminal Writ Petition No. 1156/2022. The Hon'ble Apex Court has clearly held that, on the basis of the case in the State of M.P. Vs. Rustam and others that, while computing period of 90 days, the day on which the accused was remanded to the judicial custody should be excluded and the day on which challan is filed in the Court, should be included. Thus, he submits that, in the case in hand, excluding the date on which the accused were taken in the custody, the application for default bail was filed before completion of 90 days and thus was premature. He further submits that, unless the notice is issued by the Court, the P.I. or I.O. cannot give notice to the accused and therefore, submission of the petitioners that I.O. had not given sufficient notice has no substance. He submits that, from the

application itself it is clear that, learned A.P.P. had applied its mind. The learned Court has also rightly considered the said application.

19. Learned A.P.P. further relied upon the judgment of the Hon'ble Apex Court in a case of Sanjay Dutt Vs. State Through C.B.I., Bombay reported in 1994 AIR (SCW) 3857. He relied upon paragraph No. 48 of the said judgment to submit that the indefeasible right accrued to the accused is enforceable only prior to the filing of the challan and it does not survive or remain enforceable after the challan is filed and if it is not already availed of. It is further held that, once the challan is filed, the question of grant of bail has to be considered and decided only with reference to the merits of the case under the provisions relating to grant of bail by holding that the custody of the accused after the challan is filed is not governed by Section 167 of the Cr.P.C., but different provisions of the Code. Thus, the right must be enforced before filing of the challan. In this view of the matter, learned A.P.P. submits that the present petition deserves to be dismissed.

20. Learned advocate for the petitioners in rebuttal submits that, on 11.04.2022 there was no application for extension of time. The time to file an application for extension was over on 10.04.2022 itself. He further submits that, no order on the application filed by the I.O. or the accused was passed by the learned Trial Court. The order was passed

directly on 09.05.2022. He maintains the submission that, therefore, on 10.04.2022 the right had accrued in favour of the petitioners. He submits that, the judgment in a case of Chaganti Satyanarayana and others Vs. State of Andhra Pradesh reported in (1986) 3 SCC 141 is not specifically overruled in the case of Ravi Prakash Sinigh @ Arvind Singh (supra). He maintains the submission that, the date on which the accused were remanded will have to be included while computing the period of 90 days. He submits that, in this case, the distinctive factor is that the right was availed of by the accused persons by filing application on 08.04.2022. He submits that, the judgments relied upon by the prosecution are applicable only where the accused have not availed of the right accrued in them.

21. In further support of this contention, learned advocate relied upon the judgment in a case of Uday Acharya whereby the judgment in the case of Sanjay Dutt (supra) is considered. He submits that, presuming that even after charge-sheet is filed an application for default bail is filed, the right already accrued remains in force. The charge-sheet filed after such application will not take away right already accrued. In view of section the order passed on 09.05.2022 is *per se* illegal since it is after expiry of the period. In view of Section 21 (2) (6) passing such an order after expiry of the period is bad in law.

22. Thus, considering all these judgments, this Court finds that, in this case, considering the case of Ravi Prakash Singh @ Arvind Singh (supra), on first application for extension of time, order passed on it is not challenged and is accepted. In is only question of application filed on 10.04.2022 which was decided on 09.05.2022 is under challenge. This Court finds that, in view of the judgment in a case of Ravi Prakash Singh @ Arvind Singh (supra) the submission of the petitioners cannot be accepted that on 10.04.2022 the period had come to an end. The submission that the judgment in the case of Chaganti Satyanarayana and others (supra) is not specifically overruled is correct. However, in paragraph No. 11 of the judgment in the case of Ravi Prakash Singh @ Arvind Singh (supra), it is distinguished and it is specifically held that the day on which remand to judicial custody is granted be excluded.

23. On the point of following of the procedure, this Court finds that, as rightly pointed out by the learned A.P.P. that there are endorsements/signatures by the accused to show that the notice was properly given in view of the judgment in a case of Hitendra Vishnu Thakur and others (supra). This Court finds that, there is proper compliance with the procedure as no format of notice is given and mere intimation to the accused of filing of application for extension of time is sufficient compliance of the notice to the petitioners/accused.

24. Considering all these facts and submissions, this Court finds that, no case is made out to call for any interference in the petition. The writ petition therefore fails and is hereby dismissed.

25. Rule is discharged.

(KISHORE C. SANT, J.)

P.S.B.