

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

CRIMINAL WRIT PETITION NO. 1156 OF 2022

Jagjitsingh @ Jaggi Dilibagsingh Sandhu
Age : 28 years, Occu. : Labour,
R/o. Bhagatsingh Road, TCI Colony,
Nanded

.. Petitioner

Versus

The State of Maharashtra
Through Itwara Police Station,
Nanded, Tq. & Dist. Nanded

.. Respondent

Mr. Shailendra S. Gangakhedkar, Advocate for the Petitioner.
Smt. D. S. Jape, APP for Respondent/State.

CORAM : KISHORE C. SANT, J.

Date on which reserved for judgment : 16th November, 2022.

Date on which judgment pronounced : 07th January, 2023.

JUDGMENT :-

1. This is a writ petition challenging the order passed by the learned Special Judge, Nanded refusing default bail to the accused who is arrested under the Maharashtra Control of Organized Crime Act (for short "MCOC Act"). The learned Additional Sessions Judge-2, Nanded dismissed the application on the ground that the prosecution is granted extension of 90 days by order dated 22.07.2022 and therefore, the petitioner will not get benefit of the default bail under Section 167 (2)

of the Code of Criminal Procedure (for short "Cr.P.C."). The facts necessary for decision of this writ petition are that the information was lodged on 10.12.2019 on the basis Crime No. 273/2019 came to be registered with Itwara Police Station, Nanded for the offence punishable under Sections 307, 506, 120-B, 109 r/w 34 of the Indian Penal Code and Section 3/25, 4/25 of the Arms Act. In connection with the said offence, the petitioner was arrested on 13.07.2020. He was released on bail on 11.08.2020.

2. After a long gap, the police machinery obtained sanction from Special Inspector General, Nanded Range to apply the provisions of MCOC Act vide communication dated 27.05.2022. The accused thus, again came to be arrested. On 22.07.2022, the prosecution sought extension of period from the learned Special Court to file a charge-sheet and the same came to be allowed on 22.07.2022. The petitioner on completion of 90 days in the prison filed an application for default bail on 30.07.2022. The same came to be rejected and thus, he has approached this Court challenging the order seeking bail.

3. It is submission of the petitioner that in view of Section 167 (2) he is entitled to be released on default bail. However, the said bail is rejected on the ground that the prosecution has sought an extension of period to file a charge-sheet and the same was granted before filing of

an application for default bail. He submits that in fact, an extension was sought behind back of the petitioner. No notice was given to him, nor he was produced before the Court while seeking extension. He submits that therefore, the extension as granted by the Court below is not an extension in the eyes of law. This extension cannot be used to deny a valuable right of this petitioner to be released on default bail.

4. The learned A.P.P. submitted that once there was an extension granted by the Court below for filing a charge-sheet, there was no question of considering the application for default bail thereafter. In this case, since time is already extended, his application for default bail could not have been considered. It is further submission of the learned A.P.P. that, as per law the date of arrest and the date of application needs to be excluded while counting a period of 60/90 days. In this case, the application of the petitioner was premature as the same was filed on 30.07.2022 and for this reason also the petitioner was not entitled to be released on bail. It is submitted that an application was filed on 89th day of custody.

5. From the record it is seen that, the prosecution has submitted the report on 22.07.2022 and sought extension of time under the provisions of the MCOC Act. From the order it does appear that, the application was allowed for the reasons mentioned in the application.

There is no reference or there is no record that the notice of this application seeking extension was given to the accused. It also appears that, there is no mention that the accused was at least produced in the Court while considering the application for extension of time to file a charge-sheet.

6. Thus, before this Court there are two questions. First, what is the effect of extension of time granted to the prosecution behind back of the accused and whether that can be used to deny the right of the accused to be released on default bail. The second question as to whether the application filed by the petitioner was after 90 days or it was on 89th day as submitted by the learned A.P.P. that in view of the submission of learned A.P.P. that the date of arrest and the date of application are to be excluded while calculating the period of 90 days. For that purpose, it needs to be seen first that, the application of the petitioner before the learned Trial Court. The accused has given the period of his custody to show that he has completed 91 days. He has given the chart of the period of his custody as below.

CHART OF CUSTODIAL PERIOD AS BELOW

Sr. No.	Date of Remand	Days
1.	14.07.2020 to 31.07.2020	17
2.	01.08.2020 to 11.08.2020	11
3.	28.05.2022 to 31.05.2022	03

4.	01.06.2022 to 30.06.2022	30
5.	01.07.2022 to 30.07.2022	30
	Total	91

7. Thus, in his submission that the petitioner completed 91 days on 30.07.2022 and the application by the prosecution for extension of time to file a charge-sheet though was filed on 22.07.2022, however, he had no notice of the same. It is clear from his application that, he was not aware of any application moved by investigation machinery for extension of time to file a charge-sheet and he prayed for default bail as per the provisions under Section 167 (2) of the Cr.PC. and Section 21 sub section 2 of the MCOC Act.

8. The learned Trial Judge while rejecting the application has considered the judgments of this Court as well as the Hon'ble Apex Court. The learned Court below has observed that the extension is already granted on 22.07.2022 and now, the same cannot be reviewed as there is bar of provision under Section 364 of the Cr.PC. The Court has considered that against main accused namely one Harvindersingh @ Rindha Charansingh Sandhu there are 13 cases pending in Nanded district and 24 cases are pending in the Panjab State. One another accused No. 6 Gurupritsingh @ Gopi was in custody of local Panjab police and he was also in custody of N.I. and C.B.I and therefore, his

custody could not be obtained even after arrest warrant issued by the Court and application came to be dismissed. Thus, the order is challenged by the petitioner.

9. The learned A.P.P. has filed reply to the petition. The copy of prior approval by Deputy I.G. is brought on record. Further, the report dated 27.05.2022 filed by the I.O. before the learned J.M.F.C. is on record by which MCOC provisions are added and all the original papers were requested to be sent to the Special Judge, Nanded and the copy of the report dated 27.05.2022 with request to re-arrest the accused persons. Grant of bail is vehemently opposed by the prosecution.

10. It is submitted that the learned Trial Court has rightly extended the time by 90 days. It is submitted that the application filed by the petitioner on 30.07.2022 was premature as by order dated 22.07.2022 extension of 90 days was already granted by the learned Special Judge, Nanded. The averments of the petitioner that there are no other offences pending against the petitioner are denied and particulars of other offences are given wherein, the charge-sheets have already been filed in the concerned Court and ultimately prayed for rejection of the petition.

11. Learned advocate for the petitioner relies upon the judgment delivered by the Hon'ble Apex Court in a case of Union of India through C.B.I. Vs. Nirala Yadav alias Raja Ram Yadav alias Deepak Yadav reported in AIR 2014 Supreme Court 3036. He relies upon paragraph No. 12 wherein, the Hon'ble Apex Court has considered the case of Hitendra Vishnu Thakur Vs. State of Maharashtra reported in (1994) 4 SCC 602 wherein, it is held that Designated Court would not have jurisdiction to deny to an accused his indefeasible right to be released on bail on account of the default of the prosecution to file the Challan within the prescribed time if an accused seeks and is prepared to furnish the bail bond as directed by the Court and that a 'notice' to the accused is required to be given by the Designated Court before it grants any extension under the further proviso beyond the prescribed period for completing the investigation." The Hon'ble Apex Court has also considered paragraph Nos. 48 and 49 of the judgment in the case of Hitendra Thakur wherein, it is held that the indefeasible right accruing to the accused in such a situation is enforceable only prior to the filing of the Challan and it does not survive or remain enforceable on the Challan being filed, if already not availed of. Thus, once the Challan is filed, a question of grant of bail needs to be considered and decided only with reference to the merits of the case under the provisions relating to grant of bail to an accused after the filing of the Challan.

Further it is held that the notice to the accused before granting the extension for completing the investigation need not be a written notice to the accused giving reasons. The production of the accused at the time in the Court informing him that the question of extension of the period for completing the investigation is being considered, is alone sufficient for the purpose. The Hon'ble Apex Court thus relying on the cases cited before it, in paragraph No. 41 has concluded that the Court cannot act to extinguish the right of the accused if the law so confers on him.

12. In this case also no notice was given to the accused while seeking extension of period to file a charge-sheet, neither the Court has felt it necessary to give such a notice. Further, it is seen from the order that the Court was conscious of the fact that, while passing the order extending the time no notice was given. Therefore, the Court has observed that, now the order cannot be reviewed in view of Section 362 of the Cr.P.C.

13. Next judgment relied upon by the learned advocate for the petitioner is in a case of **Rakesh Kumar Paul Vs. State of Assam** reported in **AIR 2017 Supreme Court 3948** wherein, the Hon'ble Apex Court in paragraph Nos. 38 and 39, by considering the judgment in a case of Sanjay Dutt, has observed the following which is reproduced :

“38. This Court also dealt with the decision rendered in Sanjay Dutt and noted that the principle laid down by the Constitution Bench is to the effect that if the charge sheet is not filed and the right for ‘default bail’ has ripened into the status of indefeasibility, it cannot be frustrated by the prosecution on any pretext. The accused can avail his liberty by filing an application stating that the statutory period for filing the charge sheet or challan has expired and the same has not yet been filed and therefore the indefeasible right has accrued in his or her favour and further the accused is prepared to furnish the bail bond.

39. This Court also noted that apart from the possibility of the prosecution frustrating the indefeasible right, there are occasions when even the court frustrates the indefeasible right. Reference was made to Mohamed Iqbal Madar Sheikh v. State of Maharashtra wherein it was observed that some courts keep the application for ‘default bail’ pending for some days so that in the meantime a charge sheet is submitted. While such a practice both on the part of prosecution as well as some courts must be very strongly and vehemently discouraged, we reiterate that no subterfuge should be resorted to, to defeat the indefeasible right of the accused for ‘default bail’ during the interregnum when the statutory period for filing the charge sheet or challan expires and the submission of the charge sheet or challan in court.”

14. The Hon’ble Apex Court held that, the Court after considering the legal position was pleased to quash and set aside the order of granting extension of time. The application filed for bail by the appellant on the ground of default was allowed by setting aside the order of rejection passed by the learned Special Judge. In this case,

default bail was rejected as the charge-sheet had already been filed. In that case, the application was moved on 03.10.2013. There is endorsement of the learned Magistrate that the charge-sheet was received on 03.10.2013 that is on the same day and thus, the default bail was granted.

15. The Hon'ble Apex Court further has laid down the procedure to be followed for obtaining default bail. Thereafter again, the Hon'ble Apex Court has reminded the Court of its duties in paragraph No. 43. Learned advocate thus, submits that the practice of the Courts and the prosecution cannot frustrate the indefeasible right of the accused to seek default bail by seeking extension of time.

16. Learned advocate further relied upon the judgment in a case of **Sachin Namdeo Rathod and others Vs. State of Maharashtra** reported in **2019 All M.R. (Cri.) 801**, wherein this Court by considering various cases has held that, the facts are almost similar, the appeal was allowed wherein, the challenge was to the order of granting extension of time made by the learned Special Judge. Considering all the judgments, this Court was pleased to allow the appeal and the order granting extension of time by the learned Special Judge to file a charge-sheet was set aside and the application seeking default bail was allowed.

17. Further learned advocate for the petitioner relies on the judgment of this Court in a case of **Shaikh Moin Shaikh Mehmood Vs. State of Maharashtra, through Ramtirth Police Station** reported in **2020 SCC OnLine Bom 968**. This Court in paragraph No. 29 has observed that, the applications are filed before the Special Courts in casual manner by the prosecutor, or they are unaware of the position of law of tendering a report.

18. The latest judgment relied upon by the petitioner is in a case of **Jigar alias Jimmy Pravinchandra Adatiya Vs. State of Gujarat** reported in **2022 SCC OnLine SC 1290** wherein, it is held that failure to produce the accused before the learned Special Court and the time of extension is held to be grossly illegal. It is further held that, it is mandatory to produce the accused at the time when the Court considered the application for extension to file a charge-sheet/Challan. The judgment is delivered by considering various judgments. Thus, it is submitted that extension of time granted by the learned Special Judge is illegal and is not an extension in the eyes of law and therefore, the accused be released on default bail.

19. Learned A.P.P. relies upon the judgment of this Court in a case of **Indrajit Ramesh Kasar Vs. The State of Maharashtra** in **Criminal Writ Petition No. 988/2022 dated 06.10.2022**. She relies upon paragraph

Nos. 20 and 23 of the said Judgment on the point of computation of period and the point from which date the computation should be made. Paragraph No. 23 of the said judgment is in respect of extension of time, however in that case, notice was issued to the accused on an application made by the prosecutor for extension of time before completion of 90 days. This Court by relying upon judgment in the case of Ravi Prakash Singh @ Arvind Singh Vs. State of Bihar reported in 2015 AIR (SC) 1294 held that the day on which remand order is passed needs to be excluded while computing period of 90 days. Though in the case in hand, there is no such notice given to the accused, however, if date of remand is excluded while computing 90 days then it is found that the application under Section 167 (2) was filed before completing 90 days and thus was premature. Learned A.P.P. has also produced the judgment in a case of Ravi Prakash Singh @ Arvind Singh (supra).

20. Next judgment relied upon by the learned A.P.P. is the judgment of this Court in a case of Shabana Parveen Inayatullah Shaikh Vs. State of Maharashtra in Writ Petition No. 1959/2021 dated 12.08.2021.

Paragraph No. 16 of the said judgment is reproduced as below :

“16. A useful reference in this context can be made to the judgment of the Supreme Court in the case of State of Maharashtra vs. Lalit Somdatta Nagpal; 2007 4 SCC 171

wherein the Supreme Court emphasized the necessity of strict interpretation of the provisions of MCOC Act in view of the stringent nature thereof. It was in terms observed that as the provisions of MCOC Act seek to deprive a citizen of his right to freedom at the very initial stage of the investigation and make it extremely difficult for him to obtain bail, it is necessary to examine whether the investigation from its very inception has been conducted strictly in accordance with the provisions of the Act. The observations of the Supreme Court in paragraphs 62 and 63 are instructive and thus are extracted below:

“62. However, we are in agreement with the submission that having regard to the stringent provisions of MCOCA, its provisions will have to be very strictly interpreted and the authorities concerned would have to be bound down to the strict observance of the said provisions. There can be no doubt that the provisions of the MCOCA have been enacted to deal with organized criminal activity in relation to offences which are likely to create terror and to endanger and unsettle the economy of the country for which stringent measures have been adopted. The provisions of the MCOCA seek to deprive a citizen of his right to freedom at the very initial stage of the investigation, making it extremely difficult for him to obtain bail. Other provisions relating to the admission of evidence relating to the electronic media have also been provided for. In such a situation it is to be seen whether the investigation from its very inception has been conducted strictly in accordance with the provisions of the Act.

63. As has been repeatedly emphasized on behalf of all the parties, the offence under MCOCA must comprise continuing unlawful activity relating to organized crime undertaken by an individual singly or jointly, either as a member of the organized crime syndicate or on behalf of such syndicate by use of coercive or other unlawful means with the objective of gaining pecuniary benefits or gaining undue economic or other advantage for himself or for any other person or for promoting insurgency. In the instant

case, both Lalit Somdatta Nagpal and Anil Somdatta Nagpal have been shown to have been involved in several cases of a similar nature which are pending trial or are under investigation. As far as Kapil Nagpal is concerned, his involvement has been shown only in respect of CR No. 25/03 of Rasayani Police Station, Raigad, under Sections 468, 420 and 34, Indian Penal Code and Sections 3, 7, 9 & 10 of the Essential Commodities Act. In our view, the facts as disclosed justified the application of the provisions of the MCOCA to Lalit Nagpal and Anil Nagpal. However, the said ingredients are not available as far as Kapil Nagpal is concerned, since he has not been shown to be involved in any continuing unlawful activity. Furthermore, in the approval that was given by the Special Inspector General of Police, Kolhapur Range, granting approval to the Deputy Commissioner of Police (Enforcement), Crime Branch, C.I.D., Mumbai to commence investigation under Section 23(1) of MCOCA, Kapil Nagpal has not been mentioned. It is only at a later stage with the registering of CR No.25/2003 of Rasayani Police Station, Raigad, that Kapil Nagpal was roped in with Lalit Nagpal and Somdatta Nagpal and permission was granted to apply the provisions of the MCOCA to him as well by Order dated 22-8-2005.”

21. This Court has considered the case of State of Maharashtra Vs. Lalit Somdatta Nagpal reported in 2007 (4) SCC 171 particularly, paragraph Nos. 62 and 63. On the basis of this judgment it is held that strict interpretation of the provisions of MCOC Act is necessary in view of stringent nature of the provisions.

22. The last judgment relied upon by the learned A.P.P is in a case of Daya Wati Vs. The State NCT of Delhi and another in CRL.M.C. 3636/2022 dated 23.08.2022 passed by the Delhi High Court wherein,

it is held that the default bail can be granted only after 90 days. It is held that the extension of time was granted on the very day on which the application for extension of time was received. However, the application was moved before completion of 90 days. The application for extension of time was filed on 90th day. On the very day notice was issued to the accused informing that Special Public Prosecutor has filed the report regarding extension of time in view of progress of investigation. The petition was rejected considering that the right was not accrued to the petitioner therein to be released default bail as the application was filed before completion of 90 days and it was held to be premature.

23. In the case of Union of India through C.B.I. Vs. Nirala Yadav @ Raja Ram Yadav @ Deepak Yadav (supra), the Hon'ble Apex Court has considered the case of Hitendra Vishnu Thakur (AIR 1994 SC 2623). Paragraph No. 49 in the case of Hitendra Thakur is reproduced as below :

“49. This is the nature and extent of the right of the accused to be released on bail under Section 20 (4) (bb) of the TADA Act read with Section 167, Cr.PC. in such a situation. We clarify the decision of the Division Bench in Hitendra Vishnu Thakur, accordingly, and if it gives a different indication because of the final order made therein, we regret our inability to subscribe to that view.”

24. It is held that notice of the application for extension needs to be given to the accused. However, it is held that, it is not necessary to give written notice giving the reasons. It is sufficient to produce the accused in the Court and inform him about the question of extension of period for completing the investigation is sufficient. The Hon'ble Apex Court has also considered the provisions of Section 167 (2) of the Cr.P.C. in respect of default bail, wherein it is held that the right of the accused to be released on bail is enforceable only from the time of default bail till filing of the Challan and it does not remain enforceable on the Challan being filed. The Hon'ble Apex Court after considering the various judgments was pleased to hold in paragraph No. 41 as reproduced below :

“41. Coming to the facts of the instant case, we find that prior to the date of expiry of 90 days which is the initial period for filing the charge-sheet, the prosecution neither had filed the charge-sheet nor had it filed an application for extension. Had an application for extension been filed, then the matter would have been totally different. After the accused respondent filed the application, the prosecution submitted an application seeking extension of time for filing of the charge-sheet. Mr. P.K. Dey, learned counsel for the appellant would submit that the same is permissible in view of the decision in Bipin Shantilal Panchal (AIR 1996 SC 2897) (supra) but on a studied scrutiny of the same we find the said decision only dealt with whether extension could be sought from time to time till the completion of period as provided in the Statute i.e., 180 days. It did not address the issue what could be the effect of not filing an application for extension prior to expiry of the period because in the factual matrix it was not necessary to do so. In the instant case, the day the accused filed the application for benefit of the

default provision as engrafted under proviso to sub-Section (2) of Section 167CrPC the Court required the accused to file a rejoinder affidavit by the time the initial period provided under the statute had expired. There was no question of any contest as if the application for extension had been filed prior to the expiry of time. The adjournment by the learned Magistrate was misconceived. He was obliged on that day to deal with the application filed by the accused as required under Section 167(2) CrPC. We have no hesitation in saying that such procrastination frustrates the legislative mandate. A Court cannot act to extinguish the right of an accused if the law so confers on him. Law has to prevail. The prosecution cannot avail such subterfuges to frustrate or destroy the legal right of the accused. Such an act is not permissible. If we permit ourselves to say so, the prosecution exhibited sheer negligence in not filing the application within the time which it was entitled to do so in law but made all adroit attempts to redeem the cause by its conduct.

25. The Hon'ble Apex Court has held that the prosecution cannot frustrate or destroy the legal right of the accused and such act is not permissible. It was observed in that case that prosecution exhibited sheer negligence in not filing the application within the time which it was entitled to do. The order granting default bail by the High Court was upheld.

26. Considering the above judgments and legal position, this Court finds that in this case, the petitioner was arrested on 13.07.2020. He was remanded to custody on 14.07.2020. He was released on bail on 11.08.2020. He was re-arrested on 27.05.2022. The application for extension of time was preferred on 22.07.2022 and it was allowed on

the same day. On 30.07.2022 the petitioner filed application for default bail.

27. If we see the chart which is already produced in paragraph No. 6 of this judgment, while computing the period of 90 days the petitioner has counted the date 14.07.2020 also. Even as per his own chart the application was filed on 30.07.2022. In view of the judgment passed by the Hon'ble Apex Court in a case of **Ravi Prakash Singh @ Arvind Singh** (supra) and the judgment delivered by this Court in a case of **Indrajit Ramesh Kasar** (supra), the date 14.07.2020 on which remand order was passed needs to be excluded. If the date of remand is excluded, then the application filed by the petitioner was before completion of 90 days. This Court, thus holds that since there was already an extension granted to investigating machinery to file a charge-sheet, the prayer for default bail is rightly rejected by the learned Trial Court, even on the other count that the application was filed before completion of 90 days and on this count also the bail is rightly rejected. Considering this position, this Court finds that, no case is made out for grant of default bail and therefore, the writ petition is dismissed.

28. Writ petition is disposed off accordingly.

(KISHORE C. SANT, J.)

P.S.B.