

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

CRIMINAL BAIL APPLICATION NO. 2354 OF 2022

Kalim Rauf Sayyed	...Applicant
Versus	
State Of Maharashtra	...Respondent

Mr. Gaurav Bhawnani i/b Khan Abdul Wahab for the Applicant.
Ms. P. N. Dabholkar, APP, for the Respondent-State.

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CORAM : SHIVKUMAR DIGE, J.

DATE : 9th OCTOBER, 2023.

P.C. :

1. By this application, applicant is seeking bail in C. R. No. 394 of 2016 registered with Santacruz Police Station, Mumbai for the offences punishable under Sections 302, 307, 387, 449, 201 and 120-B read with 143, 144, 147, 149 of Indian Penal Code, 1860 (for short "IPC") and under Sections 37(1)(A), 135 of Maharashtra Police Act, 1951 and Sections 3, 4, 25, 27 of Arms Act, 1959 and Section 3(i)(ii), 3(2) and 3(4) of the Maharashtra Control of Organized

Crime Act 1999.

2. It is contention of learned counsel for the applicant that applicant is entitled for default bail under Section 167(2) of the Criminal Procedure Code, 1973 as within the prescribed period Investigation Officer failed to file charge-sheet against the applicant. Learned counsel further submits that as per Section 21 of Maharashtra Control of Organized Crime Act, 1999 charge-sheet has to be filed within 90 days the period can be extended up to 180 days, but for doing so the Public Prosecutor has to give the reason for extension of time. In the present case after completing 90 days the trial Court has extended 45 days time to file the charge-sheet. Thereafter, again application was made for extension of time of 30 days and the said time is extended by the trial court which is not proper and no reasons were given by the Special Public Prosecutor for extension of the time for filing charge-sheet. Learned counsel further submitted that the said extension of time was sought on the basis of approval which was not given by the concerned authority. It cannot be ground for extension of time but this fact is not considered by the trial Court. Hence, requested to allow the application. He

relied on *Hitendra Vishnu Thakur & Ors. Vs. State of Maharashtra & Ors. (1994) 4 SCC 602*.

3. It is contention of learned APP that as per Section 21 of MCOC Act, the trial Court has power for extension of time to submit the charge-sheet. In the present case, the concerned Public Prosecutor had filed the application before the trial Court and in the said application the reasons were mentioned that applicant had not co-operated to investigation when he was in Police Custody. The reports of FSL and CCTV footage are pending and it is necessary to take permission from Police Commissioner to file charge-sheet against the applicant. The said extension application was with reasons. Hence, requested to reject the application.

4. I have heard both learned counsel. Perused the impugned order dated 27th April 2022, Section 21 of Maharashtra Control of Organize Crime Act, 1999 reads as under.

Section 21: Modified application for certain provisions of the code:-

“(1) Notwithstanding anything contained in the Code or in any

other law, every offence punishable under this Act, shall be deemed to be a cognizable offence within the meaning of clause (c) of section 2 of the Code and “cognizable case” as defined in that clause shall be construed accordingly.

(2) Section 167 of the Code shall apply in relation to a case involving an offence punishable under this Act subject to the modifications that, in sub-section (2),—

(a) the references to “ fifteen days”, and “ sixty days ”, wherever they occur, shall be construed as references to “ thirty days ” and “ ninety days”, respectively;

(b) after the proviso, the following proviso shall be inserted, namely :—

“Provided further that if it is not possible to complete the investigation within the said period of ninety days, the Special Court shall extend the said period up to one hundred and eighty days, on the report of the Public Prosecutor indicating the progress of the investigation and the specific reasons for the detention of the accused beyond the said period of ninety days.”.

5. This section empowers the Special Court to extend the time to complete investigation beyond the period of 90 days, on the ground that the Public Prosecutor to indicate the progress of the investigation and specific reasons for the detention of the accused beyond the said period of 90 days. In the present case, the application was made before the Special Court and in the said application progress of investigation has mentioned and the reasons

are mentioned that when applicant was in police custody:- (1) He did not co-operate the investigating officer. (2) the report of CCTV footage of said crime and FSL report is not received; (3) The sanction of the Police Commissioner to file supplementary charge-sheet against applicant has not received. It finds that proviso of section 21 is complied. Moreover, the trial Court has power to extend the period for completing investigation, it cannot be challenged as of right.

6. I have gone through the case law cited by learned counsel for applicant. The facts of cited case and the present case are different as in the present case, in application progress of investigation is mentioned and reasons are given for detention of applicant.

7. In view of above, I pass following order.

ORDER

. Application is rejected.

(SHIVKUMAR DIGE, J.)