

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

CRIMINAL BAIL APPLICATION NO.3673 OF 2021

Vikrant Chandrakant Koli

...Applicant

V/s.

The State of Maharashtra

... Respondent

Mr.Pankaj Kavale a/w Mr.Rounak Naik, Ms.Lochan Chandka,
for the Applicant.

Mr.Mahesh Mule, Special P.P. a/w Ms.Nidhi Narwekar, Mr.Amit
Palkar, APP for the Respondent-State.

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CORAM : G.A. SANAP, J.

DATE : 27th OCTOBER 2023

PC:-

. In this Application, the Applicant has prayed for bail
in Special Case No.293 of 2020 arising out of C.R. No.I-490 of
2019 registered with Nerul Police Station.

2. In this crime there are four accused. Initially the
crime was registered for the offences punishable under the
Indian Penal Code ('IPC' for short) as well as under the Indian

Arms Act. The Accused Nos.1 and 2 were arrested on 25th November 2019. The Accused No.3 was arrested on 26th November 2019. The Accused No.4 was arrested on 2nd December 2019. Before the expiry of period of 90 days of the custody, the Competent Officer, in terms of the provisions of Section 23(1)(a) of the Maharashtra Control of Organised Crime Act ('MCOC Act' for short) accorded the approval for investigation of the offences alleged to have been committed under the MCOC Act. The 90 days custody period was about to expire on 23rd February 2020. On receipt of the approval as above, on 23rd February 2020 the prosecutor in charge of the case filed an Application seeking extension of time to file charge-sheet and also for extension of the custody period. The learned Special Judge issued a notice to the Accused. The notice was sought to be served on the Accused in Taloja prison. The Accused persons refused to accept the notice on the ground that, they wanted go to consult their Advocate. On receipt of the report from the jail, the learned Special Judge ordered the production of the Accused. The Accused Nos.1 to 4 were produced before the learned Judge at 3.45 p.m., on 20th

February 2020. The learned Judge after granting an opportunity of the hearing to the prosecutor as well as to the Accused, partly allowed the Application, and extended the time till 21st March 2020.

3. The Accused Nos.1 to 4, thereafter, made an Application for bail by invoking the provisions of Section 167(2) of the Code of Criminal Procedure, 1973 ('Cr.P.C.' for short). It was contended that, the extension granted by the Court was without granting them sufficient opportunity of hearing and they were not allowed to consult their Advocate. It was contended that, therefore the indefeasible right accrued in their favour could not have been taken away, by the order of extension.

4. The Investigating Officer filed the reply to the Application and opposed the Application. It was contended that, 20th February 2020 was the last working day. The period would have expired on 23rd and therefore, considering the urgency the production of the Accused was ordered and they were heard. It was further contended that, the Accused

persons deliberately refused to accept the notice issued by the Court, on the Application made for extension.

5. The learned Special Judge has rejected Application after granting an opportunity of hearing to the parties.

6. The learned Advocate of the Accused No.1 has submitted that, while granting extension, as sought by the prosecution, the reasonable opportunity of hearing was not granted to the Accused persons. The learned Advocate submitted that, the Accused persons were sought to be served in the prison on 20th February 2020. The Accused wanted to consult their Advocate and therefore they did not accept the notice. The learned Advocate pointed out that on receipt of this report of a jailer of the non-acceptance of the notices by the Accused, they were produced before the Court as per the order of the Court. The learned Advocate submitted that, the Accused persons were not granted an opportunity to consult their Advocate and to oppose the Application. The learned Advocate submitted that, the learned Special Judge in a tearing

hurry conducted the proceeding and decided the Application. The learned Advocate submitted that, this approach of the learned Special Judge has violated the rights of the Accused given under the law and the constitution. The learned Advocate submitted that, since the order of granting extension was manifestly erroneous, the right of bail on expiry of period of 90 days had accrued to the Accused. The learned Advocate submitted that, therefore, the learned Special Judge was not right in rejecting the Bail Application made by the Accused persons under Section 167(2)(ii) of the Cr.P.C. The learned Advocate in order to substantiate his submission placed heavy reliance on the following decisions.

(i) Abdul Rehman Abdul Latif Shaikh @ Sonu V/s. The State of Maharashtra (Criminal Bail Application No.1318 of 2022 decided on 15th November 2022).

(ii) The State of Maharashtra V/s. Vikas Gajanan Mhatre & Anr. (Criminal Appeal No.297 of 2007 decided on 5th July 2007).

(iii) Mr.Ashok Shankar Kharat V/s. The State of Maharashtra (Criminal Application No.3827 of 2010 decided on 4th October 2010).

7. As against this, the learned Special P.P. submitted that, before passing the order of extension of custody period, the Accused were fully heard and then the order was passed. The learned Special P.P. submitted that, in this crime the approval for invoking the provisions of the MCOC Act was accorded on 18th February 2020 in terms of Section 23(1)(a) of the MCOC Act. It is pointed out that, thereafter, Section 3 of the MCOC Act, was added in the crime. It is submitted that, the period of 90 days was about to expire on 23rd February 2020 and, therefore, the learned Special P.P., Thane, on 20th February 2020 moved an Application under Section 21(2) of the MCOC Act, seeking extension of custody of the Accused persons for the purpose of further investigation. The learned Special P.P. submitted that, the Accused persons flatly refused to accept the notice issued by the Special Judge on the ground that, they wanted to consult their Advocate. The learned Special P.P. submitted that, on production of the Accused persons in the Court they were fully apprised about the factual position. It is pointed out that, their relatives were present in the Court. The

learned Special PP. submitted that, therefore the learned Special Judge by issuing notice to the Accused persons and on their failure to accept the notice by seeking their production before him had fully complied with the mandatory provisions. In short, learned Special PP. submitted that the order passed by the learned Special Judge granting extension of judicial custody beyond 90 days was strictly in accordance with law.

8. At this stage, it would be necessary to mention that, in this case the order was not passed by the Special Court behind the back of the Accused. The Application was made by the prosecutor seeking extension of the custody of the Accused persons beyond 90 days. The learned Special Judge issued the notices to the Accused and directed the jailor of the Taloja Jail to serve the notice on the Accused. The Accused persons refused to accept the notice. It would be appropriate to note that, the period of 90 days was about to expire on 23rd February 2020. 21st February 2020, 22nd February 2020 and 23rd February 2020 were non working days for the Court. The Special Judge was therefore, required to decide the said

Application one way or the other, on 20th February 2020. It can be seen on perusal of record and particularly the observations made by the learned Special Judge in his order that the relatives of the Accused were informed and, in fact, they were present in the Court. The Accused on their production, admitted that, notice was not accepted by them, as they wanted to consult their Advocate. The Accused persons, on their production, did not oppose the Application. Similarly, they did not seek time. In this case, notice was issued to the Accused persons of this Application. They were produced before the Court and they were given an opportunity to make their submissions. The relatives were present in the Court. It therefore, goes without saying that, the extension granted was after complying with the necessary requirements.

9. As far as the issue extension is concerned, it is mainly between the prosecutor and the Court. The Court has to examine the facts and grounds stated in the Application for seeking the extension of custody period. On the basis of the facts and grounds pleaded in the Application, the Court has to

decide about the sufficiency of the grounds to grant the extension. In this case on facts, I do not see that, there was any mistake on the part of the learned Special Judge. The grievance made by the Accused persons would have been fully justified if the notice was not issued to them and they were not produced and heard before passing the order.

10. In the decisions relied upon by the learned Advocate for the Applicant/Accused No.1, on facts it was noticed that, there was non compliance of the mandatory requirements, inasmuch as the Accused in those cases were either not issued with the notices of the Application or they were not heard before passing the order.

11. The Hon'ble Supreme Court in the case of *Qamar Ghani Usmani (Supra)* has held that, while considering the Application by the Investigating Agency, for extension of time for completing investigation beyond the prescribed period, the Accused is to be given notice and/or is to be kept present before the Court, so that the Accused has knowledge that the

extension is sought and granted. In my view, in this case this legal requirement was fully complied with. In the facts and circumstances, I am of the view that, the learned Judge was right in rejecting the Bail Application made by the Accused. The order passed by the learned Special Judge granting extension of judicial custody of the Accused by 30 days till 21st March 2020, was in accordance with the law. Accordingly, this Application is rejected.

(G.A. SANAP, J.)