

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

CRIMINAL APPEAL NO. 43 OF 2023

Darshan Subhash Nandagawali .
Aged about 20 years Old,
Occu.: Video Shooting, ... Appellant
R/o. Ambedkar Chowk, Akot File,
Akola, Tq. & Dist. Akola

Versus

State of Maharashtra, .
Through Police Station Officer, ...Respondent
Civil Lines, District – Akola.

Mr. S.V. Sirpurkar, Advocate for appellant.
Mr. N.R. Rode, APP for respondent.

CORAM : VINAY JOSHI, AND
BHARAT P.DESHPANDE, JJ.

RESERVED ON : 03.05.2023.

PRONOUNCED ON : 06.06.2023.

JUDGMENT : (PER: Bharat P. Deshpande, J.)

. **Admit.** Heard finally by the consent of the learned
counsel for the respective parties.

(2) The appellant is one of the accused in Crime
No.357/2022, registered with Police Station Civil Lines, District –
Akola, for the offence punishable under Sections 302, 120-B, 143 and

34 of the Indian Penal Code read with Section 4 and 25 of the Arms Act and Section 3(1)(i)(ii), Section 3(2) and Section 3(4) of the Maharashtra Control of Organized Crime Act, 1999. Present appeal is filed under Section 12 of MCOC Act, 1999, thereby challenging three orders, (i) First order of extension granted to the Investigation Agency for a period of 60 days under Section 21(2)(b) of MCOC Act, on 07.11.2022 by the Special Court, (ii) Order rejecting bail application filed by the appellant under Section 167(2)(a)(ii) of the Code of Criminal Procedure read with Section 21(2)(b) of MCOC Act dated 09.12.2022 and (iii) Second extension of 15 days granted to the Investigation Agency under Section 21(2)(b) of the MCOC Act dated 09.01.2023.

(3) Learned counsel Mr. Sirpurkar, basically raised three grounds thereby challenging the impugned orders. Firstly, he claimed that both extensions granted by the Special Judge, are without application of mind and without following settled propositions of law as laid down in Section 21(2)(b), proviso, wherein it is mandatory for the Public Prosecutor to submit his independent report by applying mind to the facts and circumstances of the case for applying for extension of time. Secondly, he claimed that after the first extension

was granted without following due procedure, rejection of bail was totally illegal, thereby detaining the appellant in illegal custody. Thirdly, he claimed that second extension was granted by the learned Special Court, only on the ground that Investigating Agency were awaiting sanction from the Government under the MCOC Act, which is not at all a ground for further extension. Mr. Sirpurkar, learned counsel for the appellant has placed reliance on the following decisions:

- (i) *Shaikh Moin Shaikh Mehmood Vs. State of Maharashtra, 2020 SCC OnLine Bom 968.*
- (ii) *Hitendra Vishnu Thakur and Ors. Vs. State of Maharashtra and Ors., (1994) 4 SCC 602.*
- (iii) *Santosh s/o Kisanrao Sonone Vs. State of Maharashtra in Criminal Bail Application No.820/2014 decided on 24.12.2014 by this Court.*
- (iv) *Pahadiya Tulshiram Champala Vs. State of Maharashtra, 2017 SCC OnLine Bom 8506.*
- (v) *Uday Mohanlal Acharya Vs. State of Maharashtra, (2001) 5 SCC 453.*
- (vi) *Mohinder Singh Gill and anr. Vs. The Chief Election Commissioner, New Delhi and Ors. (1978) 1 SCC 405.*

(4) Mr. Rode, learned APP appearing for the State strongly objected on the grounds raised in the appeal thereby claiming that the learned Public Prosecutor applied its mind and filed an application/report giving justification for extension. He further submitted that obtaining sanction is part and parcel of the investigation process and therefore, such ground is not available to the appellant. He then submitted that after the second extension of 15 days, charge-sheet was filed before the Special Judge and therefore, prayer for grant of default bail is now infructuous.

(5) With the assistance of Mr. Sirpurkar, learned counsel for appellant and Mr. Rode, learned APP, we have perused the entire record. Similarly, the Pursis was filed on behalf of the learned Public Prosecutor thereby placing on record application of Investigation Officer addressed to the learned APP for purpose of seeking extension to file charge-sheet. On perusal of above material, a short question which cropped up in the present appeal is as under together with our findings.

(i) Whether applications dated 07.11.2022 and 07.01.2023 seeking extension of time filed under Section 21(2)(b) of the MCOC Act, having joint signature of the Investigation Officer and learned

Assistant Public Prosecutor amount to due compliance of the proviso to Section 21(2)(b) of the said Act ?

(6) In order to appreciate above contentions, we would like to quote Section 21(2)(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 upto 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”.

(7) Mr. Sirpurkar, learned counsel for appellant vehemently argued that it is mandatory for the Public Prosecutor to submit his independent report satisfying himself, after applying mind to the papers placed before him by the Investigating Officer, so as to place it before the Special Judge, for grant of extension. According to Mr. Sirpurkar, the first extension application filed before the learned Special Court is dated 07.11.2022. The period of 90 days was supposed to be over on 11.11.2022. However, this application for grant of extension though signed by the Public Prosecutor along with SDPO/IO, is a replica of the application which the Investigating Officer

forwarded to the Public Prosecutor on 05.11.2022. In this regard, he pointed out that the application filed before the Special Court on 07.11.2022 and copy of the application produced along with the Pursis dated 19.04.2023, by the learned APP before this Court, dated 05.11.2022, is word by word, paragraph by paragraph is the same. Mr. Sirpurkar, further pointed out that second application for extension filed by the Public Prosecutor along with the Investigating Officer on 07.01.2023 before the Special Court is again the replica of the application which was addressed to the Public Prosecutor by the Investigating Officer which is dated 06.01.2023.

(8) We had an opportunity to peruse the applications filed by the learned Public Prosecutor before the Special Court on 07.11.2022 and second application dated 07.01.2023, with the copies of applications produced along with the Pursis dated 19.04.2023, which were addressed by the Investigating Officer to the Public Prosecutor attached to the Special Court, dated 05.11.2022 and 06.01.2023. On minute observations, we are surprised to know that all the contents word by word, paragraph by paragraph, including full stops and commas, in these applications are identically the same. Thus, the only conclusion which could be drawn is that application

which was forwarded by the Investigating Officer on 05.11.2022 addressed to the Public Prosecutor attached to the Special Court, is copied word by word and paragraph by paragraph in the application addressed to the Special Court dated 07.11.2022 by the Public Prosecutor. This application presented before the Special Court is jointly signed by the Investigating Officer and Public Prosecutor attached to the Special Court.

(9) With these factual findings on the basis of documents placed before us, we would like to observe one thing that the Public Prosecutor attached to the Special Court, completely failed in its duty to observe the mandate of the law as laid down under Section 21(2) (b) of the said Act, proviso of MCOC Act, 1999, scrupulously and law laid down by the Apex Court in the case of *Hintendra Thakur (supra)*.

(10) The observations of the Apex Court in the case of *Hitendra Thakur (supra)* in paragraph 23 are relevant and thus quoted for reference:

“23. We may at this stage, also on a plain reading of clause (bb) of sub-section (4) of Section 20, point out that the Legislature has provided for seeking

extension of time for completion of investigation on a report of the public prosecutor. The Legislature did not purposely leave it to an investigating officer to make an application for seeking extension of time from the court. This provision is in tune with the legislative intent to have the investigations completed expeditiously and not to allow an accused to be kept in continued detention during unnecessary prolonged investigation at the whims of the police. The Legislature expects that the investigation must be completed with utmost promptitude but where it becomes necessary to seek some more time for completion of the investigation, the investigating agency must submit itself to the scrutiny of the public prosecutor in the first instance and satisfy him about the progress of the investigation and furnish reasons for seeking further custody of an accused. A public prosecutor is an important officer of the State Government and is appointed by the State under the Code of Criminal Procedure. He is not a part of the investigating agency. He is an independent statutory authority. The public prosecutor is expected to independently apply his mind to the request of the investigating agency before submitting a report to the court for extension of time with a view to enable the investigating agency to complete the investigation. He is not merely a post office or a forwarding agency. A public prosecutor may or may not agree with the reasons given by the investigating officer for seeking

extension of time and may find that the investigation had not progressed in the proper manner or that there has been unnecessary, deliberate or avoidable delay in completing the investigation. In that event, he may not submit any report to the court under clause (bb) to seek extension of time. Thus, for seeking extension of time under clause (bb), the public prosecutor after an independent application of his mind to the request of the investigating agency is required to make a report to the Designated Court indicating therein the progress of the investigation and disclosing justification for keeping the accused in further custody to enable the investigating agency to complete the investigation. The public prosecutor may attach the request of the investigating officer along with his request or application and report, but his report, as envisaged under clause (bb), must disclose on the face of it that he has applied his mind and was satisfied with the progress of the investigation and considered grant of further time to complete the investigation necessary. The use of the expression "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" as occurring in clause (bb) in sub-section (2) of Section 167 as amended by Section 20(4) are important and indicative of the legislative intent not to keep an accused in custody unreasonably and to grant extension only on the

report of the public prosecutor. The report of the public prosecutor, therefore, is not merely a formality but a very vital report, because the consequence of its acceptance affects the liberty of an accused and it must, therefore, strictly comply with the requirements as contained in clause (bb). The request of an investigating officer for extension of time is no substitute for the report of the public prosecutor. Where either no report as is envisaged by clause (bb) is filed or the report filed by the public prosecutor is not accepted by the Designated Court, since the grant of extension of time under clause (bb) is neither a formality nor automatic, the necessary corollary would be that an accused would be entitled to seek bail and the court 'shall' release him on bail if he furnishes bail as required by the Designated Court. It is not merely the question of form in which the request for extension under clause (bb) is made but one of substance. The contents of the report to be submitted by the public prosecutor, after proper application of his mind, are designed to assist the Designated Court to independently decide whether or not extension should be granted in a given case. Keeping in view the consequences of the grant of extension i.e. keeping an accused in further custody, the Designated Court must be satisfied for the Justification, from the report of the public prosecutor, to grant extension of time to complete the investigation. Where the Designated Court

declines to grant such an extension, the right to be released on bail on account of the 'default' of the prosecution becomes infeasible and cannot be defeated by reasons other than those contemplated by sub-section (4) of Section 20 as discussed in the earlier part of this judgment. We are unable to agree with Mr Madhava Reddy or the Additional Solicitor General Mr Tulsi that even if the public prosecutor 'presents' the request of the investigating officer to the court or 'forwards' the request of the investigating officer to the court, it should be construed to be the report of the public prosecutor. There is no scope for such a construction when we are dealing with the liberty of a citizen. The courts are expected to zealously safeguard his liberty. Clause (bb) has to be read and interpreted on its plain language without addition or substitution of any expression in it. We have already dealt with the importance of the report of the public prosecutor and emphasised that he is neither a 'post office' of the investigating agency nor its 'forwarding agency' but is charged with a statutory duty. He must apply his mind to the facts and circumstances of the case and his report must disclose on the face of it that he had applied his mind to the twin conditions contained in clause (bb) of sub-section (4) of Section 20. Since the law requires him to submit the report as envisaged by the section, he must act in the manner as provided by the section and in no other manner. A Designated Court which

overlooks and ignores the requirements of a valid report fails in the performance of one of its essential duties and renders its order under clause (bb) vulnerable. Whether the public prosecutor labels his report as a report or as an application for extension, would not be of much consequence so long as it demonstrates on the face of it that he has applied his mind and is satisfied with the progress of the investigation and the genuineness of the reasons for grant of extension to keep an accused in further custody as envisaged by clause (bb) (supra). Even the mere reproduction of the application or request of the investigating officer by the public prosecutor in his report, without demonstration of the application of his mind and recording his own satisfaction, would not render his report as the one envisaged by clause (bb) and it would not be a proper report to seek extension of time. In the absence of an appropriate report the Designated Court would have no 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 bonds as directed by the court. Moreover, no extension can be granted to keep an accused in custody beyond the prescribed period except to enable the investigation to be completed and as already stated before any extension is granted under clause (bb), the accused must be put on notice

and permitted to have his say so as to be able to object to the grant of extension.”

(11) The above dictum as laid down by the Apex Court clearly goes to show that the duty of the Public Prosecutor attached to the Special Court is something special in which he has to apply his mind independently and satisfy himself as to whether there is actually need for extension of time to file charge-sheet. Only then the Public Prosecutor, after verifying the case papers and reasons given by the Investigating Officer, may apply by submitting his report to the Special Court for such extension. The Public Prosecutor along with his report may attach the request of the Investigating Officer made to him, but he has to apply his mind and demonstrate by giving his reasons as to why he is supporting the contentions raised by the Investigating Officer for extension of time.

(12) The Apex Court very clearly observed in the above quoted paragraph 23 that the Public Prosecutor may label his report as a report or as an application for extension and it would not be of much consequence, so long as it demonstrates on the face of it, that the Public Prosecutor has applied his mind and he is satisfied with the progress of the investigation, the genuineness of the reasons for grant

of extension thereby keeping accused in further custody. However, mere reproduction of the application or request of the Investigating Officer by the Public Prosecutor in his report, without demonstration of the application of his mind and recording his own satisfaction, would not render his report as the one envisaged in clause (b) proviso of Section 21(b) and it would not be a proper report to seek extension of time. Likewise, in absence of an appropriate report, the Designated Court would have no jurisdiction to deny to an accused his inalienable right to be released on bail on account of default of the prosecution to file challan within the prescribed time, if the accused is ready and willing to furnish bail bonds. The Court is duty bound to protect the rights of accused and also to follow the law laid down and no extension can be granted beyond the prescribed period without following such law laid down under Section 21 and by the Apex Court in various decisions.

(13) We need not discuss other grounds raised by the learned counsel Mr. Sirpurkar, apart from the one discussed above. Perusal of both the applications filed jointly by the Investigating Officer along with the learned Public Prosecutor attached to the Special Court, with the copies produced before this Court vide Pursis

dated 19.04.2023, thereby enclosing two applications addressed by the Investigating Officer to the Public Prosecutor, would go to show that there is absolutely no application of mind on behalf of the Public Prosecutor as both these documents are replica of each other. What was stated by the Investigating Officer in his application dated 05.11.2022 and 06.01.2023 addressed to the Public Prosecutor are reproduced in the applications dated 07.11.2022 and 07.01.2023. This itself demonstrate that the learned Public Prosecutor attached to the Special Court did not apply mind to satisfy himself as to whether there is actually a need for extension of time. Apart from applying his mind, the second aspect is recording his satisfaction, which is clearly absent in both the applications. Merely signing application for extension jointly with the Investigating Officer would not in any manner considered as a report of the Public Prosecutor satisfying himself to the provision of Section 21(2)(b), proviso of MCOC Act, 1999.

(14) The learned Special Judge, committed serious error by accepting both applications for extension dated 07.11.2022 and 07.01.2023 as due compliance within the meaning of Section 21(2)(b) of the MCOC Act. First extension was granted for 60 days vide

impugned order dated 07.11.2022. In fact, it was the duty of the learned Special Court to find out whether there is any independent report of the Public Prosecutor showing application of mind and recording his satisfaction for the purpose of extension to file charge-sheet. Only because application is signed jointly by the learned Public Prosecutor and the Investigating Officer would not in any manner show requirement of a mandatory provision on behalf of the learned Public Prosecutor. Thus, first extension vide impugned order dated 07.11.2022 for 60 days is itself without following due procedure and thus, requires to be considered as illegal extension.

(15) Appellant immediately filed an application for grant of bail under Section 167(2) of the Code of Criminal Procedure, wherein he has raised similar grounds. The learned Special Court vide its impugned order dated 09.12.2022 rejected such bail application only on the ground that the order of extension granted by it on 07.11.2022 was not challenged.

(16) The second extension granted by the learned Special Court vide its order dated 09.01.2023 is again vitiated for the same reasons which we have recorded for the first extension order.

(17) We need not discuss further as we are satisfied that the impugned orders needs to be quashed and set aside for the simple reason that the learned Public Prosecutor attached to the Special Court completely failed in his duty to record his satisfaction by applying mind before filing application for extension or before submitting his report to the Special Court for extension.

(18) Learned APP appearing for the State submitted an affidavit of the learned Public Prosecutor attached to the Special Court which is dated 02.05.2023 wherein he tried to justify about application of mind and recording satisfaction.

(19) Learned counsel Mr. Sirpurkar, has rightly placed reliance in the case of *Mohinder Singh Gill (supra)* wherein the Apex Court observed in paragraph 8 that when a statutory functionary makes an order based on certain grounds, its validity must be judged by the reasons so mentioned and cannot be supplemented by fresh reasons in the shape of affidavit or otherwise.

(20) Thus, affidavit filed by the Public Prosecutor attached to the Special Court dated 02.05.2023 trying to justify his action

cannot be looked into for the simple reason that the said learned Public Prosecutor was statutorily required to record his reasons independently and only after applying his mind and recording satisfaction on the basis of case papers produced by the Investigating Officer before him, before applying for extension of time. The report of the Public Prosecutor envisaged under Section 21(2)(b), proviso must reflect application of mind as well as his satisfaction. Such expression cannot be replaced by way of affidavit filed subsequently and that too when it is challenged before the higher Court. Thus, we cannot look into an affidavit filed by the learned Public Prosecutor attached to the Special Court.

(21) Having said so, all the impugned orders, which are found to be contrary to the law laid down in the case of *Hitendra Thakur (supra)*, needs to be quashed and set aside. Accordingly, we hereby quashed and set aside all the impugned orders.

(22) The appeal stands allowed. The impugned order dated 07.11.2022 (Annexure IV), impugned order dated 09.12.2022 and impugned order dated 09.01.2023, are hereby quashed and set aside.

(23) Since, the first extension dated 07.11.2022 is found to be illegal and without following the due procedure laid down, the appellant is entitled to be released on bail under Section 167(2) of the Code of Criminal Procedure and his further detention in custody needs to be considered as illegal. The appellant shall be released on furnishing PR bond of Rs.50,000/- (Rs.Fifty Thousand Only) with one or two solvent sureties in the like amount to the satisfaction of the Special Court and on the condition that he shall attend the concerned police station on every alternate Monday in between 10:00 a.m. to 12:00 noon till completion of trial and shall not tamper in any manner with the prosecution witnesses.

[BHARAT P. DESHPANDE, J.]

[VINAY JOSHI, J.]

Prity