



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

CRIMINAL APPEAL NO. 448 OF 2024

1. Bhagwat Vishnu Dongare
Age: 30 years, Occu.: Nil,
R/o Baji Umradi, Tq. & Dist. Jalna
Presently residing at Hari Govind Nagar,
Khapudi Road, Jalna Tq. & Dist. Jalna
2. Laxman Kisan Gore
Age: 29 years, Occu.: Nil,
R/o Gokulwadi, Khapudi Road,
Tq. & Dist. Jalna
3. Rohit Narendra Tadipamulwar
Age: 19 years, Occu.: Nil,
R/o Morya Residency, Pachod Road,
Ambad, Tq. Ambad, Dist. Jalna

..APPELLANTS

VERSUS

1. State of Maharashtra
Through In-charge Police Station,
Taluka Jalna
2. The Sub-Divisional Police Officer/
Investigation Officer,
Sub-Division Jalna, Near Bus Stand Road,
Bharti Complex, Near to Old Mondha,
Dist. Jalna

..RESPONDENTS

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Mr. V.D. Sapkal, Senior Advocate i/b Mr. S.R. Sapkal, Advocate a/w R.N.
Patil, Advocate for appellants
Dr. K.B. Patil Bharaswadkar, Addl.P.P. for respondents
Mr. S.J. Salunke, Advocate for assist to P.P.
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**CORAM : R.G. AVACHAT AND
NEERAJ P. DHOTE, JJ.
DATE : 22nd OCTOBER, 2024**

ORDER :

1. This appeal, under Section 12 of the Maharashtra Control of Organised Crimes Act, 1999 ('MCOC Act'), takes exception to the order

dated 06th March, 2024, i.e. the order granting extension of time to file the charge-sheet and then consequential order dated 02nd April, 2024 refusing to grant the appellants bail in connection with Crime No. 802 of 2023 registered with Taluka Jalna Police Station, Dist. Jalna for the offences punishable under Sections 302, 143, 144, 147, 148 and 149 of the Indian Penal Code ('I.P.C.') and under Sections 3/25 of the Arms Act and under Section 135 of the Maharashtra Police Act and under Sections 3(1)(i)(ii), 3(2) and 3(4) of the Maharashtra Control of Organised Crimes Act, 1999 ('MCOC Act').

2. Learned Senior Counsel for the appellants would submit that the order granting extension of time for filing the charge-sheet was illegal one. He would submit that initially, when the application was moved by the Investigating Officer (SDPO), the same was not maintainable, since such application ought to have been moved by the Public Prosecutor. Thereafter the Public Prosecutor simply counter signed the copy of the application preferred by the Investigating Officer (SDPO). Same indicates non application of mind by the Public Prosecutor. He would further submit that the appellants had a right to be heard before granting extension of time. The appellants were detained in jail at Nashik. They were neither produced physically before the remand Court nor were served with the copy of application for extension of time. The Court granted extension mechanically. The appellants preferred an application for bail on 02th April, 2024 on account of failure of filing charge-sheet within a stipulated period of ninety days. Eventually, the competent authority did not grant sanction for prosecution of

the appellants for the offences registered under the MCOC Act. Admittedly, the charge-sheet was filed after the application for default bail was preferred. As such, according to learned senior counsel, the appellants were entitled to be released on bail on account of undefeatable right thereof to have been accrued because of failure of prosecution agency to file the charge-sheet within a stipulated period. He heavily relied on the Apex Court judgment in case of ***Hitendra Vishnu Thakur and Ors. Vs. State of Maharashtra, AIR 1994 SC 2623.***

3. Learned Addl.P.P. would, on the other hand, submit that the Public Prosecutor had a discussion with the Investigating Officer. He found that some investigation was necessary to be made. The Public Prosecutor, therefore, preferred a fresh application. She adverted our attention to the said application to contend that it was filed after due application of mind. According to her, the appellants were produced before the Court online. Same suggests them to have been given the right of hearing. She, therefore, urged for dismissal of the appeal.

4. Learned counsel for the intervener would, on the other hand, raise three objections; the first one is relating to maintainability of the appeal. According to him, the order granting extension of time to file charge-sheet is necessarily interlocutory order. He would further submit that the order granting or refusing to grant bail has admittedly been an order interlocutory in nature. No appeal under Section 12 of the MCOC Act is permitted against an order which is interlocutory in nature. He would further submit that the

period of 90 or 180 days for filing the charge-sheet must be counted from the date on which the provisions of the MCOC Act were invoked. If such date is considered, then charge-sheet would be said to have been filed within a stipulated period. In the present case, such a period has to be counted from 17th February, 2024 and not from the date of their first remand for the offence under the I.P.C. The application preferred by the appellants was thus premature and not maintainable.

5. We have considered the submissions advanced. So far as regards objection as regards maintainability of the appeal is concerned, one first needs to refer to Section 12(1) of the MCOC Act, which reads thus :-

“Notwithstanding anything contained in the Code, an appeal shall lie from any judgment, sentence or order, not being an interlocutory order, of a Special Court to the High Court.”

Close reading of the aforesaid provision would indicate that no appeal is provided against the order which is interlocutory in nature. Needless to mention, the order granting or refusing to grant bail is admittedly interlocutory in nature. The question is whether the order granting extension of time for filing the charge-sheet is interlocutory one.

6. The Division Bench of this Court in Criminal Appeal No. 732 of 2018 (Sachin s/o Namdeo Rathod and Ors. Vs. State of Maharashtra) had entertained similar prayers. Although the question as to maintainability of appeal might not have been raised therein, we propose to rely on the said judgment for entertaining the present appeal. Failure on our part to entertain

this appeal would amount to each day's detention of the appellants being unauthorised and against their fundamental right under Article 21 of the Constitution of India. So keeping open the said question to be decided in appropriate proceeding, we propose to deal with the present appeal on merits. Before proceeding, one must refer to a judgment of Madras High Court in Criminal Original Petition No. 16024 of 2023 (Gnanasekaran Thiagaraj Vs. State Rep. By The Deputy Superintendent of Police), wherein the learned Single Judge has held that there are three kinds of orders, viz. (i) final order; (ii) intermediate order and; (iii) interlocutory order. Paragraph nos. 14 and 15 of the said judgment reads thus :-

“14. This Court will now consider the issue of maintainability raised by the learned Additional Public Prosecutor. It is contended that an order dismissing an application under Section 167(2) of Cr.P.C., substantially affects an important right that has been given or in other words infeasible right that has been given to an accused person to be released on bail and such an order cannot be said to be an interlocutory order and hence, only a revision petition is maintainable, and the inherent jurisdiction of the High Court under Section 482 of Cr.P.C., cannot be invoked in view of an alternative provision that is available in the Code to challenge such an order.

15. Where an order is purely interlocutory in nature, the bar under Section 397(2) of Cr.P.C., operates. An accused person who is aggrieved by such an order generally invokes the inherent jurisdiction of this Court under Section 482 of Cr.P.C. It is now too well settled as to what is the nature of an interlocutory order. The judgments that were cited on either side makes it clear that there are broadly three types of orders that are taken into consideration. One is called the final order, where the order virtually brings the entire proceedings to an end. The other is called as a interlocutory order which is almost a converse of the term final order and such type of order does not bring the entire proceedings to an end. These orders are passed during the pendency of the main proceedings. There is a third category of order called as intermediate order. These are orders which are not in the nature of an interlocutory order and these orders also do not bring the entire

proceedings to an end. However, such orders brings to an end a substantial issue that is involved in that particular application which is filed during the pendency of the main proceedings. For instance, a question of jurisdiction is raised during the pendency of the main proceedings or a discharge petition is filed during the pendency of the main proceedings on the ground that the final report does not make out an offence against the accused person. Any order that is passed in these types of applications will not bring the main proceedings to an end, but it certainly brings to an end that particular issue that has been raised, and it is finally decided by virtue of that order. These types of orders can be brought within the category of intermediate orders and not interlocutory orders. For such intermediate orders, the bar under Section 397(2) of Cr.P.C., will not apply.”

7. Now turning to the merits of the present case, it is to be stated that crime, vide C.R. No. 802 of 2023 was initially registered for the offences punishable under the I.P.C. and under the Arms Act on 11th December, 2023. Admittedly, Appellant No.1 and Appellant Nos. 2 and 3 were arrested on 12th and 13th December, 2023 respectively and on the same day they were produced before the learned Magistrate, who remanded them to police custody. Later on, on 22nd January, 2024 the provision of MCOC Act came to be invoked. Accordingly, offences punishable under Sections 3(1)(i)(ii), 3(2) and 3(4) of the MCOC Act were registered against the appellants. It was on 05th March, 2024, the Investigating Officer i.e. SDPO preferred an application, to the Special Court constituted for trial for the offences under MCOC Act for extension of time by ninety days for filing the charge-sheet. After having realised that the application was not in terms of Section 21(2)(b) of the MCOC Act, the mistake was said to have been corrected. Then the replica of the application dated 05th March, 2024 was presented before the Special Court on the very next day i.e. 06th March, 2024 with the signature of

the Investigating Officer and counter signature of the Additional Public Prosecutor. Reading of both these applications would indicate that the subsequent application dated 06th March, 2024 is nothing but a replica of the earlier application. It, therefore, cannot be said that the Public Prosecutor had applied his mind and preferred the application dated 06th March, 2024.

8. For better appreciation, Section 21 of the MCOC Act needs to be reproduced below :-

“21. Modified application of 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 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.

.....”

9. Reading of sub-section 2 of Section 21 of the MCOC Act would indicate that it simply makes Section 167 of the Cr.P.C. applicable with certain modifications. Needless to mention, for grant of default bail, the period of 60 or 90 days is calculated from the day on which the accused was

remanded by the Magistrate or Special Court to either PCR or MCR. Since sub-section 2 above speaks about modification of application of Section 167 of the Cr.P.C., learned counsel for the intervener could not be heard to say that the period of 90 days should be calculated from day one on which the provisions of MCOC Act were invoked. Reliance by learned counsel for the intervener on the judgment of this Court in case of **Aniket Viju Kuchekar Vs. State of Maharashtra, 2022 All MR (Cri) 536** is of no assistance to him since it was an application for bail under Section 439 of Cr.P.C., wherein there was no challenge to the order granting extension of time for filing the charge-sheet.

10. Paragraph nos. 22 and 28 of the judgment of the Apex Court in case of Hitendra Vishnu Thakur (supra) need to be reproduced below :-

“22. 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 Govt. and is appointed by the State under the CrPC. 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 alongwith 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 adding 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 over-looks 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.

28. In conclusion, we may (even at the cost of repetition) say that to sum up, an accused person seeking bail under Section 20(4) has to make an application to the court for grant of bail on grounds of the 'default' of the prosecution and the court shall release the accused on bail after notice to the public prosecutor uninfluenced by the gravity of the offence or the merits of the prosecution case since Section 20(8) does not control the grant of bail under Section 20(4) of TADA and both the provisions operate in separate and independent fields. It is, however, permissible for the public prosecutor to resist the grant of bail by seeking an extension under Clause (bb) by filing a report for the purpose before the court. However, no extension shall be granted by the court without notice to an accused to have his say regarding the prayer for grant of extension under Clause (bb). In this view of the matter, it is immaterial whether the application for bail on ground of 'default' under Section 20(4) is filed first or the report as envisaged by Clause (bb) is filed by the public prosecutor first so long as both are considered while granting or refusing bail.

If the period prescribed by Clause (b) of Section 20(4) has expired and the court does not grant an extension on the report of the public prosecutor made under Clause (bb), the court shall release the accused on bail as it would be an indefeasible right of the accused to be so released. Even where the court grants an extension under Clause (bb) but the charge-sheet is not filed within the extended period, the court shall have no option but to release the accused on bail, if he seeks it and is prepared to furnish the bail as directed by the Court. Moreover, no extension under Clause (bb) can be granted by the Designated Court except on a report of the public prosecutor nor can extension be granted for reasons other than those specifically contained in Clause (bb), which must be strictly construed.

11. Needless to mention, Section 20 of the TADA (since repealed) is para-material with the provisions of Section 21 of the MCOC Act. In view of the aforesaid observations of the Apex Court and the factual matrix of the present case, we are of the clear view that the concerned learned Public Prosecutor did not apply his mind while he preferred application dated 06th March, 2024 for extension of time for filing the charge-sheet. There is no record to indicate that copy of such application was served to the appellants and they were given an opportunity of hearing before granting the extension of time. It is reiterated that the appellants were lodged in jail at Nashik. Their mere presence, if any, through video conferencing on the given day would be of little help to the prosecution.

12. Admittedly, the appellants had moved an application for default bail on 02nd April, 2024, whereas the charge-sheet admittedly came to be filed thereafter, meaning thereby the appellants did get the right to be released on bail. Since the Special Court did not grant them bail and granted extension of time without there being an application of mind by learned Public Prosecutor, both the orders impugned herein are hereby set aside. Needless to mention, the charge-sheet filed by the prosecution i.e. the trial would be taken to its logical conclusion by Special Court. In view of above, appeal is allowed in terms of following order :-

ORDER

- (I) Criminal appeal is allowed.

- (II) The appellants be released on their executing P.R. bond in the sum of Rs.25,000/- (Rupees Twenty Five Thousand Only) each with surety bond in the equal amount.
- (III) The appellants shall not enter the city of Jalna and the adjoining villages thereof for a period of next one year except for attending proceedings of this case and in case of extreme urgency to visit their respective houses on account of medical or like emergency. On such visit to their house, they shall mark their presence at the concerned police station by 12:00 noon.

SSD
(NEERAJ P. DHOTE, J.)

(R.G. AVACHAT, J.)