

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**  
**CRIMINAL APPELLATE JURISDICTION**  
**BAIL APPLICATION NO.3380 OF 2022**

Mohd Nadeem Naushad Shaikh .. Applicant  
Versus  
The State of Maharashtra .. Respondent

**WITH**  
**INTERIM APPLICATION NO.2502 OF 2022**  
**IN**  
**BAIL APPLICATION NO.3380 OF 2022**

Khalid Abdul Rehman Shaikh .. Applicant  
Versus  
The State of Maharashtra .. Respondent

Mr.Gaurav Bhavnani a/w Khan Abdul Wahab for the applicant.  
Mr.Sudeep Pasbola, a/w Ayush Pasbola for the intervenor.  
Smt.M.H. Mhatre, APP for State.

**CORAM: BHARATI DANGRE, J.**  
**DATED : 30<sup>th</sup> APRIL, 2024**

**P.C:-**

1           The applicant Mohd Nadeem Naushad Shaikh, seek his release on bail, in connection with C.R. No.118 of 2020 of DCB CID Unit-IX, corresponding to C.R. No.258 of 2020 of Juhu Police Station, and he also has prayed for setting aside the impugned order dated 13/11/2020, passed by the Special Judge, MCOC Act in MCOC MA Miscellaneous Application No.1018

of 2020, extending the period of filing chargesheet by 20 days.

Parity is sought with one Abdul Rehman Adbul Latif Shaikh @ Sonu, who had approached this Court, with the very same relief (BA No.1318 of 2022) and upon consideration of the entire gamut of law laid down on the point, as to whether the extension can be granted without affording an opportunity to the accused, and by taking into consideration the latest decision of Apex Court in case of *Jigger @ Jimmy Pravinchandra Adatiya Vs. State of Gujarat 2022, SCC Online SC 1290*, as well as by referring to the decision of the Constitution Bench in case of *Sanjay Dutt Vs. State through CBI, 1994(5) SCC 410*, I had arrived at a conclusion, that in the wake of the position of law prevailing as well as on the facts of the case, he was entitled for being enlarged on bail, by setting aside the extension that was granted.

2           The present applicant being arraigned as accused no.2, stand identically on the same footing as Abdul Rehman Abdul Latif Shaikh, who was arraigned as accused no.1.

It is informed by Mr. Bhavnani, the learned counsel, representing the applicant, that the order passed by me on 15/11/2022, was assailed before the Apex Court by the complainant and on 24/04/2023, the SLP was dismissed, by recording that there is no reason to entertain the petition on perusal of the material placed on record.

3           The learned counsel Mr. Pasbola, appearing for the

complainant seek to invite my attention to certain facts, which according to him distinguish, the case of the present applicant from that of Abdul Rehman Abdul Latif Shaikh, but despite the vehement submission of Mr. Pasbola, I am unable to persuade myself to accept that there exist any such distinction.

Pertinent to note that on 11/11/2020, when a Miscellaneous Application was filed by the prosecution under Section 21(2)(d) for extension of period of filing of the chargesheet beyond 90 days, the accused no.1, Abdul objected the said extension on the ground that, there is no justification to extend the period. Similarly accused no.2 i.e. the present applicant also pressed his objection.

Accused no.3 was represented by an Advocate and he sought an adjournment upto 13/11/2020, as his senior was out of station.

The roznama of the Special Judge, record that accused nos.1 and 2 requested to appoint legal aid counsel. Therefore a direction was issued to the department to provide legal aid to both the accused and the matter was adjourned to 13/11/2020.

Mr. Pasbola has pointed out to me an endorsement of 12/11/2020 on exhibit F of the Roznama reporting the compliance to the learned Judge, informing that Advocate Habij Kotwal, a legal advocate is appointed for accused no.1 and 2.

4 Then comes the adjourned date of the proceedings i.e. 13/11/2020, when the protest of accused nos.1 and 2 is recorded and it is also recorded that the accused no.3 has presented written submissions by raising primary protest about non-supplying the copy of the report.

Merely by recording a protest without ensuring that the appointed Advocate mark his appearance on behalf of the accused nos.1 and 2, the learned Judge deemed it appropriate to grant extension of 20 days from 16/11/2020, by recording that sufficient cause has been shown for this extension.

5 This approach of the learned Judge is dealt by me in the order 15/11/2022, when by referring to the decision of the Apex Court in case of Jigger @ Jimmy (supra), I had categorically recorded that unfortunately, though legal aid was arranged, without ensuring that the legal aid is actually availed, the learned Judge proceeded to decide the application on 13/11/2020, apparently without presence of the applicants or their representative before him and merely noting that there is an objection.

This was held to be violative of Article 21 of the Constitution, and recorded in the following words:

*“In the wake of the above, since there is a complete failure on the part of the learned Judge to secure the presence of the applicant physically or virtually before him, and there is an abject failure to inform him about such an application, and without hearing him or his counsel, it has definitely violated his rights under Article 21 of the Constitution. The prejudice is*

*inherent and as observed by the Hon'ble Apex Court in case of Jigar (supra), need not be established by the accused."*

6           The decision in case of Jigger (supra), in unequivocal terms has held that the failure of the prosecution to produce the accused before the Court and to inform him that the application of extension is being considered by the Court is a procedural irregularity, however the reason for grant of extension of time takes away the right of the accused to get default bail, which is intrinsically connected with his fundamental right guaranteed under Article 21 of the Constitution. The procedure contemplated by Article 21, required to be followed before the liberty of a person is taken away has to be fair and reasonable procedure, is the crux of the decision, as it has been categorically held that the failure to procure the presence of the accused either physically or virtually before the Court and the failure to inform him that the application made by the Public Prosecutor for extension of time is considered, is not mere procedural irregularity, but it would amount to gross illegality that violate right of an accused under Article 21.

I had specifically drawn advantage from the observations made to the above effect and held that the impugned order dated 13/11/2020 cannot be sustained and it was quashed and set aside.

7            Though Mr. Pasbola, has attempted to urge before me that it is not necessary that the accused should be physically present before the Court, when the application is considered, the emphasis of all the decisions, to which a reference is made by me, is about an opportunity being afforded to an accused while the application filed by the prosecution for extension of time is being considered, and this has been categorically held to be the integral part of his rights, particularly when on failure to complete the investigation within the prescribed period, an indefeasible right accrues in an accused and if this right is sought to be taken away by the prosecution by preferring an application for extension, on ground that the extension is required to complete the investigation, definitely he must have his say on this aspect and failure to do so, would amount to negating his right.

             The submission of Mr. Pasbola that the legal aid Advocate was appointed on 12/11/2023 is of no consequence, since the Advocate never appeared and the protest of accused no.1 and 2, which infact was required to be translated into legal submissions through the legal aid, never fructified and though the same Advocate, who was representing accused no.3, was arranged through legal aid, no opportunity of hearing is afforded to them, while the extension is granted.

8            Mr. Pasbola has relied upon the latest decision of the Apex Court in case of *Qamar Ghani Usmani Vs. State of*

*Gujarat (2023) SCC Online SC 380* and I have perused the same. In fact, the said decision has strengthened the position of law and particularly the decision of the Constitution Bench in case of *Sanjay Dutt* (supra) as well as the decision in case of Jigger and paragraph 24, their Lordships of the Apex Court has specifically recorded that the law is laid down in case of *Sanjay Dutt* and Jigger (supra), that while considering the application by the Investigating Agency for extension of time for completing the investigation beyond the period prescribed under Section 167 (2) of Cr.P.C, the accused is to be given notice and/or is to be kept present before the Court, so that, the accused had knowledge so that the extension is sought and granted.

It is upon the facts of the case, the benefit of this decision is not made available, to the appellant since after being informed about the extension, no steps were taken for assailing the same, but on the other hand an application for default bail/statutory bail is made on the ground that the charge-sheet has not been filed within the period of 90 days. Noting the lacunae, that despite being intimated about the extension, since the accused/ applicant did not bother to raise a challenge thereto and claimed default bail, resulting into the extension remaining unchallenged, the relief was refused in favour of the appellant.

9           There is no quarrel about the submission of Mr. Pasbola that the physical presence of the applicant at this stage may not be necessary and it would be sufficient if he is even

presented through a video conferencing facility and when it is require an opportunity to be afforded to him, even the presence of his Advocate is sufficient to justify this opportunity.

10 For the very same reasons recorded by me on an earlier occasion, when I decided the application of the co-accused on 15/11/2022, which order is upheld by the Apex Court, the present application also deserves to be allowed, by setting aside the order dated 13/11/2020, extending the period to file the chargesheet and by holding that the applicant is entitled to default bail.

Hence he is liable to be enlarged on bail subject to the following stipulations:

### ORDER

- (a) Application is allowed.
- (b) The Applicant Mohd Nadeem Naushad Shaikh shall be released on bail in C.R. No. 118 of 2020 of DCB CID Unit-IX corresponding to C.R. No.258 of 2020 of Juhu Police Station, on furnishing P.R. bond to the extent of Rs.25,000/- with one or two sureties of the like amount.
- (c) The Applicant shall mark his attendance before the concerned police station on first Monday of every trimester between 3.00 p.m. to 5.00 p.m.
- (d) The Applicant shall not directly or indirectly make any

inducement, threat or promise to any person acquainted with facts of case so as to dissuade him from disclosing the facts to Court or any Police Officer and should not tamper with evidence.

(e) The Applicant shall attend the trial on regular basis.

(f) On being released on bail, the applicant shall furnish his contact number and residential address to the Investigating Officer and shall keep him updated, if there is any change.

11 Interim Application No.2502 of 2022 also stands disposed off.

**( SMT. BHARATI DANGRE, J.)**