



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

BAIL APPLICATION NO. 3763 OF 2023

JALALUDDIN KAMALUDDIN QURESHI

ALIAS ARIF QURESHI

..APPLICANT

VS.

THE STATE OF MAHARASHTRA

..RESPONDENT

Adv. Akshay Shah for the Applicant.

Mr. B.B. Kulkarni, APP for the State.

CORAM : M. S. KARNIK, J.

DATE : APRIL 17, 2024

JUDGMENT:

1. Heard learned counsel for the applicant and learned APP for the State.

2. By this application, the applicant prays for default bail under Section 167(2) of the Code of Criminal Procedure ("Cr.P.C." for short) in respect of the offence punishable under Sections 302, 397, 120-B, 201, 109, 504, 506 read with 34 of the Indian Penal Code ("IPC" for short) and Sections 3(25) and 5(27) of the Arms Act, registered on 08/07/2021 vide C.R. No.104 of 2021 with Pawarwadi Police Station, Nashik.

The facts of the case, in brief, are as under:

3. One Aleem Saleem Khatique lodged a complaint on 08/07/2021 with Pawarwadi Police Station, Malegaon. The complainant is a goat cattle trader. He deals in the business of sale-purchase of goats. On 07/07/2021, he was travelling with the goats in a pick-up vehicle which was being driven by Nitesh Rama Nikam and proceeding towards Mumbai. When the said vehicle reached at Chalisgaon Phata in Malegaon, three riders on one motorcycle were chasing the vehicle. They tried to stop the vehicle. When the complainant's vehicle did not stop, the person sitting on the motorcycle in the middle fired from a gun. The assailants left the spot. One person sitting in the vehicle was injured due to the bullet which hit his head. An offence under Sections 307, 504 and 506 read with 34 of the IPC and under Sections 3 and 25 of the Arms Act against three unknown persons came to be registered on 08/07/2021.

4. During the investigation, initially, it was revealed that Hasim Harun Pujari @ Pappa Golden and Gopal Ravindra Girase were involved in committing the said offence. They

were arrested by the police. During the course of the investigation, the role of the other accused was revealed including that of the present applicant. The injured person died in hospital and hence charges under Sections 302 and 397 of IPC were added. The statements of thirteen witnesses were recorded. Two eyewitnesses have corroborated the case of the prosecution. During the course of the investigation, it was revealed that the present applicant (accused No.7) has played the main role in committing the said offence. According to the prosecution, the accused hatched a conspiracy and the offence was committed in a planned manner and the accused hatched a conspiracy. The applicant is the gang leader who has committed sixteen offences in Nashik district.

5. Learned APP submitted that the applicant has formed an organised crime syndicate with other co-accused and during the preceding 10 years, he along with other co-accused committed singly and/or jointly various offences i.e. dacoity, assault, theft, robbery by using criminal force etc. in Nashik district. A proposal dated 18/12/2021 along

with papers of investigation and record of evidence was sent by the Police Inspector, Pawarwadi Police Station, Malegaon to the Inspector General of Police, Nashik Range for seeking approval to apply the provisions of Maharashtra Control of Organised Crime Act, 1999 ("MCOC Act" for short) against the present applicant and other co-accused persons. A request for grant of sanction under Section 23(1) of the MCOC Act was also made. The Inspector General of Police, Nashik Range, accorded necessary approval under Section 23(1) of the MCOC Act vide order dated 15/02/2022. The investigation of the said offence was assigned to Smt. Lata Donde - the then Sub Divisional Police Officer, Malegaon City who conducted further investigation in the offence of MCOC till 30/04/2022 and after her retirement, Mr. Pradeep Kumar Jadhav - Camp Division took additional charge as Sub Divisional Police Officer, Malegaon City on 01/05/2022 and carried out further investigation. The applicant came to be arrested on 05/01/2022.

6. After completing the investigation, a proposal was

sent to the Additional Director General of Police, Law and Order, State of Maharashtra through proper channel on 22/09/2022 for obtaining sanction under sub-section 2 of Section 23 of the MCOC Act for filing of charge-sheet against the accused Nos. 5, 6 and the present applicant. In the meanwhile on 07/10/2021, the then investigating officer had filed charge-sheet for the offence punishable under Sections 302, 397, 120-B, 201, 109, 504, 506 read with 34 of the IPC and under Sections 3 and 25 of the Arms Act against the accused Nos. 3 to 8 before the Judicial Magistrate First Class, Malegaon, subject to the provisions of Section 173(8) of the Cr.P.C. The said case was committed to Sessions Court.

7. Thus, the first charge-sheet dated 07/10/2021 was filed by the prosecution before invoking charges of the MCOC Act. The present applicant (accused No.7) was shown as absconding in the said charge-sheet. Since the offence bearing C.R. No. 104 of 2021 was registered on 08/07/2021, it was necessary to file the charge-sheet within ninety days i.e. on or before 13/10/2021. Learned APP

submitted that the stipulated period of ninety days came to end on 13/10/2021. The proposal for invoking charges of the MCOC against the accused person was submitted and the same was pending for prosecution sanction and, therefore, required further time for obtaining sanction. The present applicant (absconding accused) was arrested on 05/12/2022 and after completing further investigation supplementary charge-sheet was filed against the present applicant for the offence punishable under Sections 302, 397, 120-B, 201, 109, 504 and 506 read with 34 of the IPC and under Sections 3 and 25 of the Arms Act on 09/11/2023.

8. Learned APP submitted that during the course of the investigation, it revealed that the present applicant had hatched a conspiracy of the present offence at Kallu Stadium, behind Shahi Golden Hotel where the other accused persons were present and made a conspiracy that as during the Eid festival, various vehicles of goats would be travelling on highway, the accused decided to intercept vehicles carrying goats and loot them.

9. Learned APP opposed the application for grant of default bail contending that the first charge-sheet filed on 07/10/2021 was within the stipulated period as a specific mention is made in the column of "M.C.R. Date" that accused No. 7 (the present applicant) is proceeded as per Section 299 of the Cr.P.C. It is submitted that Section 299 of the Cr.P.C. provided that "Record of evidence in absence of accused". It is, therefore, the contention of the learned APP that the present applicant was shown as an absconding accused in the said charge-sheet which was filed within the stipulated period and, therefore, the application for default bail is not tenable.

10. No doubt, the first charge-sheet was filed within a period of ninety days but the applicant was shown as an absconding accused in the said charge-sheet. The applicant was arrested on 05/12/2022. The supplementary charge-sheet under Section 173(8) of the Cr.P.C. against the applicant (accused No.7) was filed on 09/11/2023. The question is whether the charge-sheet dated 07/10/2021 where the applicant was shown as an absconding accused

can be said to be filed within the period stipulated by Section 167 of the Cr.P.C. qua the applicant to deny the relief of default bail under Section 167(2) of the Cr.P.C.

11. A similar question was the subject matter of consideration before the Nagpur Bench of this Court in Criminal Writ Petition No. 475 of 2016. Paragraph Nos. 18 to 21 of the order dated 23/08/2016 are relevant, reading thus:

"18] In the case of Suresh Kumar Bhikamchand Jain (supra), Hon'ble Apex Court has held that if the evidence on record shows that both the charge-sheet as well as supplementary charge-sheet were filed within 90 days from the date of the petitioner's arrest and remand to the police custody, it would be sufficient compliance with the provisions of Section 167(2)(a)(i) of the Code of Criminal Procedure. The Hon'ble Apex Court has also held that what is relevant for an indefeasible right seeking default bail to take birth is non-completion of the investigation as contemplated under Section 167 of the Code of Criminal Procedure and not the factum of cognizance of the offences taken by the Court. The Hon'ble Apex Court has held that if the investigation is not completed within the period as stipulated in Section 167 of the Code of Criminal Procedure, then such inviolable right would blossom into a mature entity. Relevant observations of the Hon'ble Apex Court, as they appear in paragraphs 16 and 17, are reproduced hereinbelow :

"[16] At this juncture, we may refer to certain dates which are relevant to the facts of this case, namely :

(a) 11.03.2012-Petitioner arrested and remanded to police custody;

- (b) 25.04.2012- First charge-sheet filed against the four accused;
- (c) 01.06.2012-Supplementary charge-sheet filed in which the Petitioner is named;
- (d) 30.07.2012-The Trial Court rejected the Petitioner's prayer for grant of bail;
- (e) 13.09.2012-The High Court confirmed the order of the Trial Court;
- (f) 02.10.2012-Application filed under Section 167(2) Cr.P.C. before the Trial Court;
- (g) 05.10.2012-Trial Court rejected the application under Section 167(2) Cr.P.C.

[17] From the above dates, it would be evident that both the charge-sheet as also the supplementary charge-sheet were filed within 90 days from the date of the Petitioner's arrest and remand to police custody. It is true that cognizance was not taken by the Special Court on account of failure of the prosecution to obtain sanction to prosecute the accused under the provisions of the PC Act, but does such failure amount to non-compliance of the provisions of Section 167(2) Cr.P.C. is the question with which we are confronted. In our view, grant of sanction is nowhere contemplated under Section 167 Cr.P.C. What the said Section contemplates is the completion of investigation in respect of different types of cases within a stipulated period and the right of an accused to be released on bail on the failure of the investigating authorities to do so. The scheme of the provisions relating to remand of an accused, first during the stage of investigation and, thereafter, after cognizance is taken, indicates that the Legislature intended investigation of certain crimes to be completed within 60 days and offences punishable with death, imprisonment for life or imprisonment for a term of not less than 10 years, within 90 days. In the event, the investigation is not completed by the investigating authorities, the accused acquires an indefeasible right to be granted bail, if he

offers to furnish bail. Accordingly, if on either the 61st day or the 91st day, an accused makes an application for being released on bail in default of charge-sheet having been filed, the Court has no option but to release the accused on bail.”

[19] It is obvious that for determining the availability of the right of default bail to the accused, what is required, is the completion of the investigation by filing the charge-sheet within the stipulated period of time, and if the charge-sheet is not filed within the stipulated period, it only would mean that the investigation is not over and then the accused would be entitled to be released on bail, if he is ready to furnish bail. It also becomes clear from this observation that stage of completion of investigation is marked only by filing of the charge-sheet and if further investigation is made, it would be treated as completed only after filing of the supplementary charge-sheet. These observations also throw light upon the date, which is required to be considered for computing the period of 60 days or 90 days as contemplated under Section 167 of the Code of Criminal procedure and the date of arrest of the accused is relevant date for this purpose. These principles of law would have to be borne in mind while appreciating the rival arguments.

[20] In the case of Narendra Kumar Amin (supra), it is held that from the scheme of Section 173(8) of the Code of Criminal Procedure it is clear that after the charge-sheet is submitted, further investigation, if called for, is not precluded. There is no dispute about this principle of law and it appears that by following this principle of law only that supplementary charge-sheet has been permitted to be filed by the learned Additional Sessions Judge.

[21] Now, it is clear to us that for ascertaining whether or not the right of default bail has been made available to the applicant, the date on which that charge-sheet is filed which marks the completion of investigation against the accused, is

relevant. If further investigation is started against an accused arrested after filing of first charge-sheet in which he is shown as absconding accused, competition of investigation would be declared only by the act of filing of supplementary charge-sheet against him. If the supplementary charge-sheet against such an accused is not filed within 90 days or 60 days, as contemplated under Sections 167(2)(a) (i) and (ii) of the Code of Criminal Procedure, the accused would get the right of default bail, which he can assert anytime thereafter but before filing of the supplementary charge-sheet subsequently. The period of 90 days or 60 days so contemplated under Section 167(2)(a) is essentially the period for which the Magistrate may authorise the detention of the accused. In other words, a police officer must complete the investigation within the period of 90 days or 60 days, as the case may be, or otherwise, it would not be possible for the Magistrate to authorise detention pending investigation. Therefore, any charge-sheet which marks completion of an investigation against the accused under detention would have to be filed within such stipulated period computed from the date of arrest of the accused against whom it is filed. In the instant case, although, the first charge-sheet was filed on 06/11/2015, it was filed by showing this applicant as absconding accused. This applicant came to be arrested by the order of the learned Additional Sessions Judge passed on 06/02/2016, when he surrendered on that date before that Court and on that very day, this applicant was remanded to police custody till 12/02/2016. On 12/02/2016, the Investigating Officer made an application for extension of his police custody remand, but that was rejected and the applicant was remanded to magisterial custody till 17/02/2016. The supplementary charge-sheet came to be filed in the afternoon of 06/05/2016. The application asserting the right of default bail was filed by the applicant at 11:00 am. of 06/05/2016. During the period of detention of the applicant, initially is the police custody and later on in the magisterial custody, between 12/02/2016 and 17/02/2016 and also

thereafter, although no order extending custody remand was passed, police indeed made further investigation. These are all admitted facts and it is clear from them that when the first charge-sheet was filed on 06/11/2015, investigation as against this applicant was not completed and it came to concluded only on 06/05/2016, when the supplementary charge-sheet was filed in the afternoon. The 6th day of May, 2016 was the 91st day from the date of arrest of the applicant i.e. 06/02/2016, and the supplementary charge-sheet came to be filed after this applicant had already asserted his right of default bail by filing an application on the same day but at 11:00 am. much before filing of the supplementary charge-sheet in the afternoon. Therefore, the learned Additional Sessions Judge did not have any option but to release the applicant on bail by making him available his indefeasible right of default bail under the law. As it was not done by the learned Additional Sessions Judge, now this Court would have to step in and allow the applicant to realise his such right. Accordingly, I find that the applicant is entitled to be released on bail in view of his right arising under Section 167(2) of the Code of Criminal Procedure."

(emphasis supplied)

12. In the present case, at the cost of repetition, it may be stated that the date of the offence is 08/07/2021. The charge-sheet against the accused who are arrested came to be filed on 07/10/2021 wherein the applicant was shown as an absconding accused. This charge-sheet was within the stipulated period of ninety days. After the applicant was arrested on 05/12/2022, a supplementary charge-sheet qua

the applicant came to be filed on 09/11/2023. The sanction under Section 23(2) of the MCOC Act against the applicant is still pending with the competent authority. The affidavit in reply filed by the respondent-State clearly reveals that after the arrest of the present applicant on 05/12/2022, further investigation was carried out and a supplementary charge-sheet under Section 173(8) of the Cr.P.C. against the applicant was filed on 09/11/2023. The bail application under Section 167(2) of the Cr.P.C. for grant of default bail was filed on 01/11/2023 before filing of the supplementary charge-sheet. The applicant had asserted his right to a default bail prior to the filing of the supplementary charge-sheet. The supplementary charge-sheet not having been filed within the period stipulated by Section 167(2) of the Cr.P.C. qua the applicant, the indefeasible right to claim default bail accrues in the applicant's favour. The application therefore deserves to be allowed. The applicant is entitled to be released on bail as per Section 167(2) of the Cr.P.C. Having regard to the criminal antecedents reported against the applicant, I propose to impose

stringent conditions. There are several offences registered against the applicant in Nashik district. Hence, the following order:-

ORDER

- (a) The application is allowed.
- (b) The applicant- Jalaluddin Kamaluddin Qureshi Alias Arif Qureshi in connection with C.R. No.104 of 2021 registered with Pawarwadi Police Station shall be released on bail on his furnishing P.R. Bond of Rs.1,00,000/- with one or more local sureties in the like amount.
- (c) Except for attending the trial in the present offence and other offences, the applicant shall not enter Nashik District after being released on bail, till the trial concludes.
- (d) The applicant shall not leave the State of Maharashtra without prior permission of the trial Court.
- (e) The applicant shall attend the Police Station, nearest to the place of his residence, while residing outside Nashik district, once a week, every Monday, between 11.00 a.m. and 1.00 p.m. The details of such police station be informed to the Investigating Officer.
- (f) The applicant shall not directly or indirectly make

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

(g) On being released on bail, the applicant shall furnish his contact number and residential address while residing outside Nashik district, to the Investigating Officer and shall keep him updated, in case there is any change.

(h) The applicant shall attend the trial regularly. The applicant shall co-operate with the trial Court and shall not seek unnecessary adjournments.

(i) The applicant shall surrender his passport to the trial Court. If the applicant does not have a passport, the applicant shall file an affidavit before the trial Court to that effect within a period of 15 days from the date of his release on bail.

13. The application is disposed of.

(M. S. KARNIK, J.)