

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO. 1681 OF 2023

SANTOSH
SUBHASH
KULKARNI

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Date: 2024.01.29
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ShahinBanu @ Halima Akbarullah Khan
and anr.

...Applicants

Versus

State of Maharashtra

...Respondent

Mr. Fahad Qureshi, a/w Shubham Upadhyay and Aniket
Yadav, for the Applicant.

Mr. S. R. Aagarkar, APP for the State/Respondent.

IO Raju Thubot, PI, Chunabhatti Police Station, present.

CORAM: N. J. JAMADAR, J.

DATED: 24th JANUARY, 2024

PC:-

1. Heard the learned Counsel for the parties.
2. This is an application preferred assailing the legality propriety, and correctness of an order passed by the learned Metropolitan Magistrate on 5th December, 2023, whereby an application for bail under Section 167(2) of the Code of Criminal, 1973 ("the Code") came to be rejected.
3. The applicants were arrested on 28th August, 2023. The charge-sheet came to be filed on 23rd November, 2023. The learned Magistrate was of the view that the charge-sheet came to be filed within the statutory period as the applicants

alongwith co-accused have been arraigned for the offences punishable under Sections 120B, 302, 307, 326, 324, 323, 341, 143, 145, 147, 148, 149 and 109 of the Indian Penal Code, 1860 ("the Penal Code"), Section 4(25) of the Indian Arms Act and Sections 37(1)(A) and 135 of the Maharashtra Police Act.

4. The learned Counsel for the applicants submitted that the learned Magistrate committed an error in rejecting the application as the Investigating Agency has filed the charge-sheet by invoking the provisions of Section 173(8) of the Code. Since the charge-sheet was not filed under Section 173(2) of the Code, there was no occasion for filing the charge-sheet under Section 173(8) of the Code and, therefore, the indefeasible right of the applicants to be enlarged on bail crystallized and thus the applicants deserve to be released on bail.

5. I have perused copy of the charge-sheet (Exhibit-B). the charge-sheet does not appear to have been filed as and by way of a supplementary charge-sheet. Indeed, there is a mention of sub-section (8) of Section 173 in the title of the final report form. At the same breath, the report is stated to have been filed under Section 173. It is trite nomenclature or

mis-description of a section is not decisive much less of conclusive significance in any proceedings before the Court. It is the substance of the matter that has to be looked into rather than form.

6. The charge-sheet in question is essentially the first charge-sheet under Section 173(2) of the Code. Therefore, there is no substance in the application.

7. The application thus stands rejected.

[N. J. JAMADAR, J.]