

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CRIMINAL APPELLATE JURISDICTION****CRIMINAL APPEAL NO.563 OF 2024**

Sahil @ Munna S. Polekar and ors .. Appellants

Versus

The State of Maharashtra .. Respondents

Senior Advocate, Mr. Sudeep Pasbola a/w Rohin Chavhan, Mrunal Bhide, Shivraj Patil, Swaraj Sable, Rajan Gurnani, Uttam Singh Rathod, Chinmay Godse i/b Hulyalkar & Associates for the Appellants.

Mr.H.S.Venegavkar, PP a/w Dr. Ashvini A Takalkar, APP for the State.

Mr. Kale, HC, A.C.P. Crime Branch, Pune City.

**CORAM: BHARATI DANGRE &
MANJUSHA DESHPANDE, JJ.**

DATED : 5th AUGUST, 2024

P.C:-

1 The present petition seek quashing and setting aside of two orders in form of the extension granted for completion of investigation by the Special Court under MCOC Act in exercise of power under Section 21(2) proviso, being two orders of extension, the first being passed on 30/03/2024, and the second having been passed on 26/04/2024.

2 We have heard learned Senior Counsel, Mr. Pasbola for the appellant and the learned Public Prosecutor Mr. Venegavkar, for the State.

On perusal of the appeal along with the grounds raised therein and the annexure appended thereto has revealed to us that, the first extension was granted by the Special Judge, Pune on

30/03/2024, which was based upon the report by the Public Prosecutor dated 22/03/2024, whereas the second order being passed on 26/04/2024 is based upon the report from the Public Prosecutor dated 22/04/2024. Pertinent to note that on both occasions the extension has been granted of 30 days after the Special Judge specifically expressed his satisfaction over the report submitted by the Public Prosecutor and by recording the complexity of the offence as well as the stage of investigation a conclusion was derived, that the investigation officer needs more time and since the adequate reasons were put forth in the application on both the occasions extension has been granted.

The learned Senior Counsel Mr. Pasbola, also fairly state that on 22/05/2024, on completion of investigation the charge-sheet has been filed.

3 The argument advanced in favour of the appellant is premised on Section 21 of the MCOCA, which has culled out modified application of certain provisions of the Code, in relation to the MCOCA offences and as far as Section 167 of the Code is concerned, by virtue of sub-section (2) of section 21, it is made applicable to the cases involving offences punishable under the Act and sub-section (2) has introduced a proviso to be read in Section 167, which reads to the following effect:-

“(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.”

4 The proviso has been time and again interpreted to the effect that, this power can be exercised by the Court on the report of the Public Prosecutor indicating the progress of the investigation and the specific reasons for detention of the accused beyond the period of 90 days, if it is not possible to complete the investigation within the said period.

The well accepted position in law, therefore stands that the report of the Public Prosecutor shall be basis for granting extension to complete the investigation and it is expected that the Public Prosecutor shall independently apply his mind and shall not be a mouthpiece of the investigating officer.

5 It is in the light of the provision and the interpretation it has received from time to time we have perused the report of the Public Prosecutor, which is based upon the information supplied by the investigating officer however, in the report dated 22/03/2024, as well as the report dated 26/04/2024, we have noticed a specific averment to the effect that the investigating officer has submitted a report and the case diary to the Public Prosecutor, who thereafter satisfied himself about the report and after verifying the case diary and the investigation papers have arrived at a conclusion that, the investigation is at crucial stage and it is in progress and since some

more investigation is required to be carried out, the extension is sought for.

6 Though Mr. Pasbola, has invited our attention to the report of the investigating officer forwarded to the Court and the ground set therein, when we specifically queried with him as to on what basis does he infer that there was non-application of mind, according to Mr. Pasbola, it is, because of the verbatim reproduction at the contents of the report of investigating officer, though Mr. Venegavkar, the Public Prosecutor dispute the statement.

Infact, we need not be impressed by the language used in the report of the Public Prosecutor as what is of significance for granting extension is the independent application of mind by him to the report, which is placed before him by the investigating officer and his satisfaction that the investigation is not complete and it requires some time and he is expected to have a review of the stage at which the investigation lies and on expressing his satisfaction that the investigation would require some more time, by filing a report before the concerned Court, the extension is prayed for.

Merely saying that there is a verbatim reproduction of the report of the investigating officer, which in this case is not the situation, and unless and until it is established by any factor that the investigating officer has not applied its mind to the facts of the case, the report which has been accepted by the Court in granting extension on two occasions cannot be faulted.

The requirement of the proviso, which is a provision which permit extension of time for completion of investigation by

extending it beyond the period of 90 days, has been properly exercised by the learned Judge, as he was satisfied that the Public Prosecutor had applied his mind independently to the report of the investigating officer and worth it note that, the extension is not granted based only on the report of the investigating officer, but it was premised on the report of the Public Prosecutor.

Once the extension was granted for the first time on 30/03/2024, when the second report is filed on 22/04/2024, we have noticed the progress of the investigation as we could notice that when the first extension was sought, the correspondence was yet to be made to the Government and Semi Government authorities to obtain information regarding the movable and immovable properties acquired by the accused persons, however, on passage of time of 30 days, the applications were already made and we have noticed that the extension was sought taking into consideration the progress of the investigation, from the date, when the time was last extended i.e. on 30/03/2024.

Merely on the specious ground that there is non-application of mind on part of the Public Prosecutor, who has furnished his report and on the basis of which the extension is granted, we are not ready to accept the submission of the learned senior counsel that there was non-application of mind on behalf of the public prosecutor.

For the said reason, upholding the impugned orders, the Appeal is dismissed, being without merit and substance.

(MANJUSHA DESHPANDE,J)

(BHARATI DANGRE, J.)