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IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO. 273 OF 2025

Sayyed Tamkin @Tamma Sayyed Matin

APPELLANT

VERSUS

The State of Maharashtra

RESPONDENT

.....
Mr. T. W. Pathan h/f Ms. Unneza Begum Khan Advocate for
Appellant

Mrs. Uma S. Bhosale, APP for Respondent - State

.....

[CORAM : NITIN B. SURYAWANSHI, &
SANDIPKUMAR C. MORE, J. J.]

DATE : 14th JULY, 2025

ORDER :

1. This Appeal, filed under section 12 of the Maharashtra Control of Organized Crime Act, 1999 (hereinafter for short "MCOC Act"), takes exception to the order passed by learned Special MCOC Court, Aurangabad, below Exhibit-406 in Special Case MCOC No. 21 of 2012 dated 3rd March, 2025.

2. Admitted facts on record are that, Appellant, is Accused No.2 in Crime No. 21 of 2012 registered on 16th March, 2012 with Begampura Police Station, Aurangabad for the offence punishable under sections, 302, 364, 201, 120B, 143, 147, 148, 149 of the Indian Penal Code and under sections 3 (1) (i) (ii), 3

(2), 3 (4) of the MCOC Act. The Appellant was arrested on 16th March, 2012 and since then he is in jail.

3. Since investigation in the said crime was not completed and charge sheet was not filed within 180 days, the Appellant filed Application under section 167 (2) of the Criminal Procedure Code, seeking default bail. The said application was allowed by the learned Special Judge, on 14th September, 2012, as follows:-

“No Charge sheet is filed against Accused No.1 Gajanan Damodhar Mhatre and accused No. 2 Syed Tamkin alias Tamma Syed Martin within statutory limit of 180 days in this Crime. The Investigating Officer is not serious in filing Charge sheet within the time limit prescribed by Law. Therefore, accused No.1 Gajanan Damodhar Mhatre and accused No.2 Syed Tamkin alias Tamma Syed Martin are entitled for Default Bail. Hence following order

Order

- a. *Accused No.1 Gajanan Damodhar Mhatre and accused No.2 Syed Tamkin alias Tamma Syed Martin are hereby released on Default Bail under Sec. 167 (2) of Code of Criminal Procedure R/W Sec 21 (1) (b) of the MCOC Act, in Crime No. I-21/2012 registered at Begampura, Police Station, Aurangabad on their executing PR Bonds of Rs.50,000/- (Rs. Fifty thousand only) each with solvent surety / sureties in the like amount on following conditions:*
 - i) *They shall attend Begampura Police Station, Aurangabad on every Monday and Thursday till filing of Charge-sheet*
 - ii) *They 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 such facts to the Courts or to any Police Officer

iii) *They shall not leave India without the previous permission of trial Court.*

b. *A copy of this order be forwarded to the aforesaid accused through the Superintendent of Central Jail, Harsool, Aurangabad.”*

4. It appears that, in spite of bail order passed in favour of the Appellant, since bail was not furnished, the Appellant remained in the custody.

5. It further appears that, after passing of the bail order in favour of the Appellant, prosecution filed charge sheet on 27th September, 2012. Thereafter, the Applicant filed application Exhibit-17 seeking discharge. The said Application was rejected by the Trial Court vide order dated 24th June, 2016. The Appellant, thereafter, filed Applications Exhibit-86 and Exhibit-146 for regular bail. Both these applications were rejected by the Trial Court vide order dated 30th September, 2020. Thereafter, the Appellant again filed Application Exhibit-325 for grant of regular bail. The said application was also rejected by the Trial Court, by order dated 15th September, 2022.

6. Thereafter, on 23rd January, 2025, the appellant filed

application Exhibit-406 seeking permission to furnish bail and to release him in terms of the default bail granted to him vide order dated 14th September, 2012. This application is rejected by the Trial Court, vide impugned order dated 3rd March, 2025, observing that, though default bail was granted to the Appellant by order dated 14th September, 2012, the Appellant failed to furnish surety and applications Exhibit-86, Exhibit-146 and Exhibit-325 for regular bail were rejected on merit so also the discharge application Exhibit-17 filed by the Applicant under section 227 of the Criminal Procedure Code is rejected, therefore, Appellant's right to get default bail has been extinguished. The Trial Court, therefore, was of the view that, after rejection of regular bail applications and discharge application, now the Appellant cannot be permitted to furnish surety. Appellant has challenged this order.

7. Heard learned Advocate for the Appellant and learned APP for the State. With their assistance, we have perused the record.

8. Learned Advocate for the Appellant, by relying on ***"Raghubir Singh and Others V/s State of Bihar" (1986) 4 SCC 481*** and ***"The State through Central Bureau of Investigation V/s T. Gangi Reddy" (2023) 4 SCC 253***, submits that, though default bail was granted to the Appellant,

however, the Appellant was oblivious of the said fact and hence failed to furnish surety / bail and, therefore, he was not released. Subsequently, inadvertently, applications for regular bail were moved on his behalf and those were rejected on merits by the Trial Court. He, therefore, submits that since the prosecution has not sought cancellation of the default bail granted in favour of the Appellant by the Trial Court, the order granting default bail to the Appellant is still effective and the Appellant since is ready to furnish bail, he may be released on bail by quashing and setting aside the impugned order.

9. Learned APP, on the other hand, strenuously opposed the Appeal and supported the impugned order. By relying on **“Sanjay Dutt V/s State through CBI Bombay (II)” (1994) 5 SCC 410**, and Division Bench decision of Madras High Court dated 17th October, 2023 in **“Alex @ Alexpandiyan V/s State Represented by the Inspector of Police”**, it is submitted that, right of the Appellant to avail default bail granted to him, is extinguished, as he failed to furnish bail bonds / surety, within reasonable time. In view of the observations in **“Sanjay Dutt’s”** case (*supra*), it is submitted that, the Appellant has failed to avail the bail, though it was granted in his favour. She, therefore, submits that, there is no merit in the appeal and the same is liable to be dismissed.

10. The status of the trial is that, out of 37 witnesses, cited by the prosecution, 22 witnesses are examined so far. The prosecution is in the process of examining the remaining 15 witnesses. In the backdrop of aforesaid facts, we will consider the citations relied on by both the sides.

11. In **“T. Gangi Reddy”** (*supra*), the Accused was granted default bail under section 167 (2) of the Criminal Procedure Code, by the Trial Court. Thereafter, an application was filed under section 439 (2) of the Criminal Procedure Code for cancellation of the default bail granted to the Accused, which was dismissed by the Trial Court. The said order was challenged before the High Court. High Court held that once the Accused was released on default bail under section 167 (2) of the Criminal Procedure Code, thereafter bail cannot be cancelled on merits. In these facts, it is observed by the Apex Court that, where an accused is released on default bail under section 167 (2) of the Criminal Procedure Code and, thereafter on filing of the charge sheet, a strong case is made out and special reasons being made out in the charge sheet that the Accused has committed non bailable crime and considering the grounds set out in sections 437 (5) and 439 (2) of the Criminal Procedure Code, his bail can be cancelled on merits and the Courts are not precluded from

considering the application for cancellation of bail on merits.

12. In **“Raghubir Singh”** (*supra*), though the Petitioner therein was granted default bail under section 167 (2) of the Criminal Procedure Code, the special judge did not permit him to offer sureties of cash, holding that the bail order had come to an end by the passage of time, particularly after cognizance had been taken of the case. Argument before the Apex Court was that, learned Special Judge and the High Court were wrong in not permitting the Accused to offer fresh security or cash security. In these facts, the Apex Court observed:

“...What is of importance is that there is no limit of time within which the bond may be executed after the order for release on bail is made. Very often accused persons find it difficult to furnish bail soon after the making of an order for release on bail. This frequently happens because of the poverty of the accused persons. It also happens frequently that for various reasons the sureties produced on behalf of accused persons may not be acceptable to the court and fresh sureties will have to be produced in such an event. The accused persons are not to be deprived of the benefit of the order for release on bail in their favour because of their inability to furnish bail straight away. Orders for release on bail are effective until an order is made under s. 437(5) or s. 439(2).

21. *The result of our discussion and the case-law in this:*

An order for release on bail made under the proviso to s. 167(2) is not defeated by lapse of time, the filing of the charge sheet or by remand to custody under s. 309(2). The order for release on bail may however be cancelled under s. 437(5) or s. 439(2). Generally the grounds for

cancellation of bail, broadly, are, interference or attempt to interfere with the due course of administration of justice, or evasion or attempt to evade the course of justice, or abuse of the liberty granted to him. The due administration of justice may be interfered with by intimidating or suborning witnesses, by interfering with investigation, by creating or causing disappearance of evidence etc. The course of justice may be evaded or attempted to be evaded by leaving the country or going underground or otherwise placing himself beyond the reach of the sureties. He may abuse the liberty granted to him by indulging in similar or other unlawful acts. Where bail has been granted under the proviso to s. 167(2) for the default of the prosecution in not completing the investigation in sixty days, after the defect is cured by the filing of a charge sheet, the prosecution may seek to have the bail cancelled on the ground that there are reasonable grounds to believe that the accused has committed a non-bailable offence and that it is necessary to arrest him and commit him to custody. In the last mentioned case, one would expect very strong grounds indeed.

22. *In the present case, the High Court and following the High Court, the Special Judge have held that the order for release on bail came to an end with the passage of time on the filing of the charge sheet. That we have explained is not a correct view. The question now is what is the appropriate order to make? The order for release on bail was not an order on merits but was what one may call an order-on- default, an order that could be rectified for special reasons after the defect was cured. The order was made long ago but for one reason or the other, the accused failed to take advantage of the order for several months. Probably for that reason, the prosecuting agency did not move in the matter and seems to have proceeded on the assumption that the order had lapsed with the filing of the charge sheet. The question is should we now send the matter down to the*

High Court to give an opportunity to the prosecution to move that court for cancellation of bail? Having regard to the entirety of the circumstances, the long lapse of time since the original order for bail was made, the consequent change in circumstances and situation, and the directions that we have now given for the expeditious disposal of the case, we do not think that we will be justified in exercising our discretion to interfere under Art. 136 of the Constitution in these matters at this stage. The special leave petitions are, therefore, dismissed. Nothing that we have said is to be construed as an expression of opinion on the merits of the case.

13. Applying aforesaid ratio to the facts of the present case, we find that the order for release of the Appellant on bail, was not an order on merits, but it was an order on default, which could be rectified for special reasons, after the defect was cured. In our view, the said order is rectified by the rejection of two regular bail applications, on merits and dismissal of the discharge application filed by the Appellant.

Fact remains that, order of default bail was passed on 14th September, 2012 and the Appellant has failed to take advantage of the order for more than 12 years. Then, after filing of the charge sheet, the Appellant moved applications seeking regular bail twice. Both the applications are rejected on merits. Presently, the trial is going on and out of 37 witnesses, 22 are already examined by the prosecution. Rejection of bail twice to the Appellant and rejection of discharge application by the Trial

Court, in the facts of the present case, can be treated as cancellation of the order of default bail. Having regard to the entirety of the circumstances and the long lapse of 12 years since the original order of default bail was passed and taking into consideration the change in circumstances and situation, we are not inclined to allow the Appeal.

14. The Appeal is therefore, dismissed. Trial expedited.

[SANDIPKUMAR C. MORE]
JUDGE

[NITIN B. SURYAWANSHI]
JUDGE