
(2016) 10 SC CK 0015

In the Supreme Court Of India

Case No : Criminal Appeal No. 973 Of 2016(Arising out of SLP (Criminal) No. 9215 of 2013)

Saquib Abdul Hamid Nachan

APPELLANT

Vs

State of Maharashtra

RESPONDENT

Date of Decision : 04-10-2016

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 167(2)
Maharashtra Control of Organised Crime Act, 1999 — Section 21(2)(b)

Citation : (2016) 10 Scale 306

Hon'ble Judges : A.K. Sikri and N.V. Ramana, JJ.

Bench : Division Bench

Advocate : Mr. Mehmood Pracha, Mr. R. H. A. Sikander, Mr. Mansoor Ali and Mr. A. Venayagam Balan, Advocates, for the Petitioner; Mr. Sushil Karanjkar and Mr. Nishant Ramakantrao Katneshwarkar, Advocates, for the Respondent

Final Decision : Disposed Of

Judgement

1. Leave granted.

2. In FIR No. I-131 of 12 registered at the Police Station Nizampur, District Thane, Mumbai, the appellant was arrested on 04.08.2012. He was produced before the concerned Judicial Magistrate First Class (JMFC) and was remanded to judicial custody till 10.08.2012. Thereafter, the respondent took order of prior approval under Section 23(1)(a) of Maharashtra Control of Organised Crime Act, 1999 (MCOCA) to apply the provisions of Section 3(1)(ii), 3(2) and 3(4) of the MCOCA.

3. As per the provisions of Section 167 of the Code of Criminal Procedure (Cr.P.C) maximum period during which the investigation has to be completed is 90 days. Sub-section (2) of Section 167 provides that if the investigation is not completed within the said period of 90 days and charge-sheet filed, the accused is, as a matter of right, entitled to bail.

4. Since in the instant case the provisions of MCOCA were also invoked, Section 21 thereof got attracted. It modifies, to a certain extent, the provisions of Section 167 of the Cr.P.C. Insofar as the provision relating to completion of investigation and filing of charge-sheet within a period of 90 days is concerned, that can be extended by further 90 days under certain conditions as mentioned in the proviso which is added vide clause (b) of Sub-section (2) of Section 21 of MCOCA. For better understanding, this provision is reproduced below:-

"21. Modified application of certain provisions of the Code. - (1) Notwithstanding anything contained in the Code or in any other law, every offence punishable under this Act, shall be deemed to be a cognisable offence within the meaning of clause (c) of section 2 of the Code and "cognisable case" as defined in that clause shall be construed accordingly.

(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 up to 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."

5. In the instant case, limit of 90 days was expiring on 01.11.2012. As investigating officer was not in a position to complete the investigation by that time, few days before the said date of expiry, i.e. on 22.10.2012, prosecution moved an application invoking the provisions of Section 21 of MCOCA and seeking extension of time by another 90 days for completion of the investigation. The Special Judge, MCOCA, considered the said application and dismissed the same vide his orders dated 30.10.2012 holding that the prosecution could not satisfy the conditions contained in the aforesaid proviso to enable it to get the said extension. A perusal of the order of the Special Judge would reveal that according to him, unsatisfactory progress was made by the public prosecutor in the investigation of the case and no satisfactory reasons were given for detention of the appellant herein beyond the period of 90 days. Once this application was rejected by the Special Judge and period of 90 days expired on 01.11.2012, the appellant filed an application under Section 167(2) of the Cr.P.C. on 02.11.2012 submitting that he had become entitled for bail as the 90 days" period had expired and the said period of investigation was not extended by the competent Court. However, before this application could be considered and order passed thereupon, the respondent herein filed a revision application in the High Court of Bombay challenging the aforesaid order of the Special Judge. This revision application was filed on 31.10.2012 and on the same day, the High Court passed

ex-parte order staying the operation of the order dated 30.10.2012 passed by the Special Judge. This revision petition was ultimately heard. We may mention here that an objection was raised by the appellant on the maintainability of such a revision petition on the ground that as per section 12 of the MCOCA, there was a provision of statutory bail and therefore, revision was not maintainable. The High Court, however, passed orders dated 14.12.2012 converting the said revision petition into an appeal. This appeal was finally heard and by the impugned order dated 08.07.2013, the High Court allowed the appeal thereby setting aside the order passed by the Special Judge. Challenging this order, the present appeal is preferred.

6. We have gone through the orders that are passed by the High Court as well as the Special Judge, MCOCA. The High Court has stated the grounds which were taken by the public prosecutor in the application for extension of time and on that basis came to the conclusion that the order of the Special Judge did not adequately deal with those grounds and, therefore, suffered with non-application of mind. The relevant portion of the order of the high Court is reproduced below:

"It therefore appears that the Special Court has not considered the grounds for extension of time in its proper perspective as the order does not reflect any observation that the grounds set out by the Public Prosecutor are not justified. It is not even reflected that the Special Court was satisfied with the manner of investigation or not. There is nothing to indicate that the Special Court has considered each and every ground set out by the Public Prosecutor for seeking extension of time. There is no finding recorded to show that further investigation is not a necessary pre-requisite for filing of the charge-sheet."

7. Learned counsel for the appellant has argued that the High Court has simply found error in the approach of the Special Judge with the observations that the grounds stated by the Public Prosecutor in his application have not been considered satisfactorily. However, the High Court has not itself gone into the question as to whether the conditions contained in the proviso to Section 21(2) (b) were satisfied or not. It is further argued that while quashing the order of the Special Judge and allowing the appeal, the High Court has not given any directions extending the time or allowing the application of the Public Prosecutor for extension of time. On the basis of the aforesaid arguments, it is pleaded that since there is no specific extension and on the expiry of 90 days from the date of arrest since investigation could not be completed, the appellant got indefeasible right to get bail under Section 167(2) of the Cr.P.C.

8. Learned counsel for the respondent-State, on the other hand, submitted that in the detailed order passed by the High Court, the High Court had even set out the grounds which were raised by the Public Prosecutor in his application seeking extension of time and once the order is read in its entirety it would clearly reveal that the High Court was satisfied with those grounds warranting extension of time. It is further submitted that since the order of the Special Judge is set aside by the High Court, necessary consequence thereof would be that the application

for extension submitted by the Public Prosecutor stands allowed thereby extending the time for completing the investigation by another 90 days.

9. Though the order of the High Court does not categorically record that it is satisfied with the grounds on which the extension was sought, we ourselves went into each such ground raised by the Public Prosecutor in his application. After perusing the same, we are of the view that none of the grounds mentioned in the application warrant for an extension for further period of 90 days to complete the investigation.

10. No doubt, in the meantime, charge-sheet has been filed. We are informed that application for discharge submitted by the appellant has also been dismissed and the trial has commenced. However, in the instant case, we are only concerned with the right of the appellant to get statutory bail under Section 167(2) of the Cr.P.C. read with Section 21(2) of MCOCA. Once we find that the order of the Special Judge in rejecting the application for extension of time was proper and there was no reason to set aside the same, the appellant herein shall be entitled to consideration of his application filed under Section 167(2) of the Cr.P.C. which was filed on 02.11.2012. We, thus, set aside the order of the High Court and direct the Special Judge to dispose of such application filed by the appellant on its own merits

11. The appeal stands disposed of in the aforesaid terms.