
(2018) 01 BOM CK 0105
In the Bombay High Court
Case No : 839 of 2017

Shaikh Hussain alias Lakhan Shaikh Ibrahim

APPELLANT

Vs

State of Maharashtra

RESPONDENT

Date of Decision : 19-01-2018

Acts Referred:

[Code of Criminal Procedure, 1973](#), [Section 482](#), [Section 439](#), [Section 167](#) -
Saving of inherent powers of High Court - Special powers of High Court or Court of
Session regarding bail - Procedure when investigation cannot be completed In twenty-
four hours - Procedure when investigation cannot be completed In twenty-four hours -
Record of evidence in absence of accused

Citation : (2018) 01 BOM CK 0105

Hon'ble Judges : V. M. Deshpande

Bench : Single Bench

Advocate : S. V. Sirpurkar, T. A. Mirza, Mahesh S. Murugan

Judgement

1. Rule. Rule is made returnable forthwith. Heard finally by consent of the parties.
2. Criminal Application (APPP) No.29/2018 - For the reasons stated therein, the criminal application seeking permission to assist the prosecution filed by the complainant - Mohd. Akhtar Sheikh Mustaq, is hereby allowed and disposed of.
3. Heard Shri S. V. Sirpurkar, the learned counsel for the applicant, Shri T. A. Mirza, the learned Additional Public Prosecutor for the non-applicant - State and Shri Mahesh Murugan, the learned counsel for the complainant, who has filed the application to assist

the prosecution.

4. By filing this application under Section 482 of the Code of Criminal Procedure, the applicants are questioning the wisdom of the learned Additional Sessions Judge, Amravati, invested with the powers to conduct cases under the Maharashtra Control of Organized Crime (MCOC) Act, 1999. A common order is passed below Exh.67 in Special MCOC Case No. 317/2016 and Misc. Criminal Application No.838/2017, by which the learned Additional Sessions Judge, negated the contention of the present applicants that they are entitled for default bail and also rejected their Misc. Criminal Application No. 838/2017 for grant of bail on merits, which was filed under Section 439 of the Code of Criminal Procedure.

5. Mr. Sirpurkar, the learned counsel for the applicants submitted that the applicants are not claiming bail on evaluation of the prosecution evidence against them. He submitted that the applicants are challenging rejection of their application (Exh.67) by which the learned Additional Sessions Judge has rejected the application filed on their behalf under Section 167(2) of the Code of Criminal Procedure, thereby denying the bail which is commonly known as default bail.

6. Mr. Mirza, the learned Additional Public Prosecutor for the State has submitted that Crime No.74/2016 was taken up for investigation by the investigating agency and filed final report (charge-sheet) on 17.12.2016. In the charge-sheet filed in the Court on 17.12.2016, the applicants were shown as absconding and the charge-sheet under Section 299 of the Code of Criminal Procedure is shown to have been filed against the present applicants.

7. The applicants were arrested on 23.7.2017. Their police custody remand was obtained from 24.7.2017 to 02.8.2017. Subsequently, the applicants were taken in Magisterial custody

remand.

8. On 24.10.2017, the applicants filed an application under Section 167(2) of the Code of Criminal Procedure, since, from the date of arrest of the applicants till that date, the charge-sheet was not filed against them and therefore, they are entitled to be released by the Court under sub-section 2 of Section 167 of the Cr.P.C . As stated earlier, this application is at Exh.67 in Special MCOC Case No. 317/2016. No orders were passed by the learned Judge on the said date on the application (Exh.67). On 28.10.2017, supplementary charge-sheet is filed by the Investigating Officer in the Court. On 03.11.2017, the application Exh.67 is rejected.

9. Mr. Sirpurkar, the learned counsel for the applicants invited my attention to a reported case, which considers the question involved in the present case, in 2017 All M.R. (Cri.) 564 in the case of Pankaj Sundarlal Yadav .vs. State of Maharashtra and another and submitted that the case of the applicants is identical and therefore, in view of the law laid down by this Court in the said reported case, the applicants are entitled to be released on default bail.

10. The learned Additional Public Prosecutor for the State fairly submitted that in view of the law laid down in Pankaj Yadav's case cited supra, the application of the present applicants has to be considered in the light of the laid down in the said case.

11. Paragraph 21 of Pankaj Yadav's case cited supra reads thus : 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, completion 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 a.m. of 06/05/2016. During the period of detention of the applicant, initially in 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 be 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 a.m. 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."

12. Since, admittedly, the applicants were arrested on

23.7.2017 and the charge-sheet was filed beyond the stipulated

period on 28.10.2017, in my view, the applicants are entitled for the bail as prayed by them and as per the law laid down by this Court.

Consequently, I pass the following order :

13. The criminal application is allowed.

(i) The impugned order below Exh.67 in Special MCOC

Case No.317/2016 is hereby set aside.

(ii) The applicants - (1) Shaikh Hussain @ Lakhan

Shaikh Ibrahim and (2) Shaikh Ayyaj @ Bholu Shaikh Shekhaji, are directed to be released on bail in this case on they executing PR bond of Rs.50,000/- each with two solvent sureties of the like amount by each applicant.

(iii) The applicants shall regularly attend the Court dates.

(iv) The applicants shall cooperate the Court in expeditious disposal of the case.

(v) The applicants shall not directly or indirectly make an inducement, threat or provocation to any of the prosecution witness.

(vi) The applicants shall not leave the limits of Akola district without prior permission of the trial Court, except on the dates which they were required to attend the Court at Amravati.

14. With this, the criminal application is allowed and disposed of. Rule is made absolute accordingly. No costs.