

(2001) 12 MAD CK 0070

In the Madras High Court

Case No : Criminal Appeal No. 1227 of 2001

State of Maharashtra

APPELLANT

Vs

Mrs. Bharati Chandmal Varma and Ayesha Khan

RESPONDENT

Date of Decision : 04-12-2001

Acts Referred:

Citation : (2002) 1 LW(Cri) 375

Hon'ble Judges : S.N. Phukan, J;K.T. Thomas, J

Bench : Division Bench

Advocate : H.W. Dhabe and S.V. Deshpande, for the Appellant; R.K. Maheshwari, M.K. Singh, Rishi Maheshwari and Pavan Kumar, for the Respondent

Final Decision : Dismissed

Judgement

1. Leave granted.

2. A huge quantity of counterfeit notes of Rs 500 digit has been intercepted by the authorities and a case was registered by the Thane police, Maharashtra. A number of persons were arrested in connection with the said racket. We are now concerned only with the arrest of a lady by name Ayesha Khan (also Bharati Chandmal Verma) the Respondent in this case. After the arrest she was produced before the Metropolitan Magistrate who remanded her to custody. As the charge sheet was not laid within 90 days thereof she applied for being released on bail per the proviso to Section 167(2) of the Code of Criminal Procedure for short "the Code" Though the Metropolitan Magistrate disallowed her prayer a single judge of the High Court of Bombay allowed her to be released on bail solely on the aforesaid ground. The said order of the High Court is now being challenged by the State of Maharashtra.

3. The main contention of the State is that the period of 90 days envisaged in Section 167 (2) of the Code should be reckoned from the date when the police started investigating into the offences under the Maharashtra Control of Organised Crime Act, 1999 (its acronym is MCOC).

4. For considering the aforesaid contention more details of the fact are necessary. Respondent was arrested on 1.4.2001 for the offences under Sections 489A 489B 489C 120B and 420 of the Indian Penal Code. She was produced before the Metropolitan Magistrate on 2.4.2001 and he remanded the Respondent to police custody first and later to judicial custody. During the investigation police discovered that organized crimes under MCOC Act had also been committed and the Respondent was one of the links connected with foreign collaborators in pumping such counterfeit currency notes into India. The investigating agency sought sanction of the authorities under the MCOC Act for conducting investigation under the said Act. Such sanction was granted on 21.4.2001 and thenceforth investigation was conducted into the offences under the MCOC Act also. Finally the charge-sheet was laid on 12.7.2001.

5. Respondent moved for bail principally on the ground that charge sheet was not laid within 90 days. If the period of 90 days is to be reckoned from 2.4.2001 there is no doubt that Respondent is entitled to bail under the proviso to Section 167(2) of the Code. Sub-section (1) of Section 167 of the Code enjoins that the arrested person shall be produced before a magistrate if his detention is required for a period beyond 24 hours and any further custody of that person can be made only if the magistrate authorises to do so. Sub-section (2) empowers the magistrate to authorise the arrested person to be detained in custody for a term not exceeding 15 days and a magistrate having jurisdiction to try the case or commit the case for trial is imposed to authorise detention of the accused person even beyond the period of 15 days, if the magistrate is satisfied that there are adequate grounds for doing so. Nonetheless, such magistrate cannot authorise detention for a total period exceeding 90 days where the investigation relates to an offence punishable with imprisonment for a term of not less than 10 years. As the proviso to Section 167(2) is the hub of the plea made by the Respondent we find it necessary to extract it here. It reads thus:

Provides that -

(a) the Magistrate may authorise the detention of the accused person, otherwise than in the custody of the police, beyond the period of fifteen days, if he is satisfied that adequate grounds exist for doing so, but no Magistrate shall authorise the detention of the accused person in custody under this paragraph for a total period exceeding, -

(i) ninety days, where the investigation relates to an offence punishable with death, imprisonment for life or imprisonment for a term of not less than ten years;

(ii) sixty days, where the investigation relates to any other offence, and, on the expiry of the said period of ninety days, or sixty days, as the case may be the accused person shall be released on bail if he is prepared to and does furnish bail, and every person released on bail under this Sub-section shall be deemed to be so released under the provisions of Chapter XXXIII for the purposes of that

Chapter.

(Sub-clauses (b) and (c) of the proviso are not relevant now and hence they are omitted).

6. If the position remained under the said proviso the Respondent has no difficulty to have the impugned order sustained because the Appellant State cannot, by any stretch of imagination, show that charge-sheet was laid within 90 days from the date she was remanded to the custody at the first instance. But the endeavour of the State was to show that the said proviso can now be read only subject to the modifications made by the MCOC Act. Section 21 of the MCOC Act made modifications of the application of Section 167(2) of the Code. It is useful to extract Section 21 of the Act. It reads thus:

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 cognizable offence within the meaning of Clause (c) of Section 2 of the Code and "cognizable 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 reference 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."

(3) Nothing in Section 138 of the Code shall apply in relation to any case involving the arrest of any person on an accusation of having committed an offence punishable under this Act.

(4) Notwithstanding anything contained in the Code, no person accused of an offence punishable under this Act shall, if in custody, be released on bail or on his own bond, unless -

(a) the Public Prosecutor has been given an opportunity to oppose the application of such release; and

(b) where the Public Prosecutor opposes the application, the Court is satisfied that there are reasonable grounds for believing that he is not guilty of such offences and that he is not likely to commit any offence while on bail.

(5) Notwithstanding anything contained in the Code, the accused shall not be

granted bail if it is noticed by the Court that he was on bail in an offence under this Act, or under any other Act, on the date of the offence in question.

(6) The limitations on granting of bail specified in Sub-section (4) are in addition to the limitations under the Code or any other law for the time being in force on the granting of bail.

(7) The police officer seeking the custody of any person for pre-indictment or pre-trial interrogation from the judicial custody shall file a written statement explaining the reason for seeking such custody and also for the delay, if any in seeking the police custody.

7. It is admitted by the learned senior counsel for the State of Maharashtra that the Public Prosecutor has not filed any report before the Special Court showing reasons for the detention of the Respondent beyond 90 days from the date of the first remand order. Hence they are disabled from contending that the proviso to Section 21(2) of the MCOC Act would enable the investigating agency to have the pre-trial custody of the Respondent extended beyond 90 days. In order to circumvent the said hurdle learned Counsel adopted a two-fold contention. First is that the period of 90 days can be reckoned from 21.4.2001 (the date when the investigation was allowed to be conducted for the offence under the MCOC Act). Second is that the provision regarding bail under the said Act is very stringent as quoted above and the High Court did not consider it from the said angle.

8. The second limb of the said contention need not bother us at the present stage as that would become germane only when any motion for bail is made de hors Section 167(2) of the Code. For that purpose we may refer to the decision of a three Judge Bench of this Court in Uday Mohanlal Acharya Vs. State of Maharashtra, . Pattanaik J., who spoke for the majority view, pointed out that even in cases where the accused who is entitled to be released on bail under the proviso to Section 167(2) of the Code can be dealt with by the magistrate concerned by remanding into custody subject to all the provisions of the Code relating to bail etc. This is what the learned Judges have stated on that aspect.

Such an accused, who thus is entitled to be released on bail in enforcement of his indefeasible right will, however, have to be produced before the Magistrate on a chargesheet being filed in accordance with Section 209 and the Magistrate must deal with him in the matter of remand to custody subject to the provisions of the Code relating to bail the provisions of the Code relating to bail and subject to the provisions of cancellation of bail, already granted in accordance with the law laid down by this Court in the case of Mohamed Iqbal Madar Sheikh and Others Vs. State of Maharashtra,

9. So we leave the second limb of the contention without expressing any opinion on the merits since it is open to the court concerned to consider that aspect when any motion is made in that behalf.

10. Dealing with the first limb of the contention learned Counsel elaborated it by

reference to Section 23(1) of the MCOC Act, which contains an embargo that "notwithstanding anything contained in the Code no information about the commission of an offence of organized crime under this Act., shall be recorded by the police officer without the prior approval of the police officer not below the rank of the Deputy Inspector General of police." Hence it was submitted that investigation was impermissible until the approval of the police officer not below the rank of the Deputy Inspector General of Police." Hence it was submitted that investigation was impermissible until the approval has been accorded and its corollary is that the period for completion of investigation could be counted only from the date when investigation could legally be commenced.

11. For the application of the proviso to Section 167(2) of the Code there is no necessity to consider when the investigation could legally have commenced. That provision intended only for keeping an arrested person under detention for the purpose of investigation and the legislature has provided a maximum period for such detention. On the expiry of the said period the further custody becomes unauthorized and hence it is mandated that the arrested person shall be released on bail if he is prepared to and does furnish bail. It may be a different position if the same accused was found to have involved in some other offence disconnected from the offence for which he was arrested. In such an eventuality the officer investigating such second offence can exercise the power of arresting him in connection with the second case. But if the investigation in to the offence for which he was arrested initially had revealed other ramifications associated therewith, any further investigation would continue to relate to the same arrest and hence the period envisaged in the proviso to Section 167(2) would remain unextendable.

12. We are therefore, unable to agree with the contention of the learned Counsel for the State of Maharashtra that a new period of 90 days would commence from the date when approval was accorded u/s 23 of the MCOC Act for initiating investigation for any offence under the said Act. In the present case, accused would be entitled to bail, not on the merit of the case, but on account of the default of the investigating agency to complete the investigation within 90 days from the date of the first remand of the Respondent.

13. We, therefore, dismiss this appeal without prejudice to the right of the prosecution to move for the cancellation of the bail in the manner indicated by this Court in *Uday Mohanlal Acharya v. State of Maharashtra* (supra), the relevant portion of which has been extracted above.

14. As the Respondent has been taken back to jail when the impugned order was suspended we direct the jail authorities to release her on the strength of the bail bond which she had executed pursuant to the order of the High Court. Such bail bond would thus revive and could be enforced as and when necessary. The appeal is thus dismissed.