

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

THE HON'BLE MR. JUSTICE P.S. DINESH KUMAR

WRIT PETITION NO.36563 OF 2018 (GM-RES) DATED:31-10-2018

MOHAN KUMAR @ DOUBLE METER MOHAN S/ O LATE VENKATESH MURTHY AND ANOTHER VS. STATE BY  
YELAHANKA POLICE STATION BANGALORE-560 064

ORDER

This petition is filed by accused No.1, 2 and 12 in FIR No.58/2017 registered in Yelahanka Police Station challenging the order dated 12.05.2017 passed by the learned Sessions Judge, rejecting their application (I.A. No.3) to enlarge them on bail under section 167 ( 2) Cr.P.C.

2. Heard Shri Anees Ali Khan, learned advocate for the petitioners and Shri S. Rachaiah, learned HCGP for the State.

3. Brief facts of the case are, on 20.02.2017, FIR No.58/2017 was registered in Yelahanka Police Station against nine persons for offences punishable under sections 399 & 402 of 1PC; and sections 27 & 30 of Arms Act, 1959. Petitioners No.1 and 2 were arrested and produced before the Court on 20.02.2017 and petitioner No.3 was produced on 01.03.2017. They were remanded to police custody by the jurisdictional Magistrate. After investigation, police filed the charge sheet on 10.05.2017. Subsequently, on 02.08.2017, the Commissioner of Police, Bengaluru has accorded approval to invoke the provisions of the Karnataka Control of Organized Crime Act, 2000 " KCOCA " for short). 4. A batch of five applications were filed by the accused in the crime to enlarge them on bail under section 167 ( 2) Cr.P.C. Petitioners ' application was registered as I.A.No.3. All applications have been disposed of by the learned Sessions Judge by the common impugned order.

5. Shri.Anees Ali, learned Advocate for the petitioners urged that charge sheet S was not filed by the police within 60 days from the date of remand. Therefore, petitioners are entitled for grant of bail under section 167 (2) Cr.P.C.

6. He placed reliance on the decisions in the case of State of Maharashtra v. Mrs. Bharati Chandmal Varma alias Ayesha Khan and Achpal v. State of Rajasthan<sup>2</sup>.

7. Learned HCGP, in his usual fairness, submits that the charge sheet has been filed after expiry of 60 days.

8. I have carefully considered the submissions of learned advocates and perused the records.

9. Indubitably, as on the date of filing of the charge sheet on 10.05.2017, petitioners No.1 and 2 had remained in custody for 77 days and petitioner No.3 had remained in custody for 69 days. On the expiry of 60 days reckoned from the date of arrest, there were no papers or charge sheet before the learned Magistrate in terms of Section 173 Cr.P.C. to assess the situation whether on merits the accused were required to be remanded to further custody.

10. The Supreme Court of India in Achpal (supra)<sup>2</sup>, extracting a passage therefrom, has recorded that principles laid down in Uday Mohanlal Acharya v. State of Maharashtra<sup>3</sup> have been consistently followed. The relevant paragraphs read as follows: 11. The law on the point as to the rights of an accused who is in custody pending investigation and where the investigation is not completed within the period prescribed under Section 167 (2) of the Code, is crystallized in the judgment of this Court in Uday Mohanlal Acharya v. State of Maharashtra.

11. This case took into account the decision of this Court in Hitendra 3 (2001) 5 SCC 453 Vishnu Thakur v. State of Maharashtra, Sanjay Dutt v. State through C.B.I., Bombay (II) and Bipin Shantilal Panchal v. State of Gujarat Justice Pattanaik (as the learned Chief Justice then was) speaking for the majority recorded conclusions in para 13 of his judgment. For the present purposes, we may extract conclusions 3 and 4 as under:

3. On the expiry of the said period of 90 days or 60 days, as the case may be, an indefeasible right accrues in favour of the accused for being released on bail on account of default by the investigating agency in the completion of the investigation within the period prescribed a the accused is entitled to be released on bail, if he is prepared to and furnishes the bail as directed by the Magistrate.

4. When an application for bail is filed by an accused for enforcement of his indefeasible right alleged to have been accrued in his favour on account of default on the part of the investigating agency in completion of the investigation within the specified period, the Magistrate/court must dispose of it forthwith, on being satisfied that in fact the accused has been in custody for the period of 90 days or 60 days, as specified and no charge-sheet has been filed by the investigating agency. Such prompt action on the part of the Magistrate/court will not enable the prosecution to frustrate the object of the Act and the legislative mandate of an accused being released on bail on account of the default on the part of the investigating agency in completing the investigation within the period stipulated.

12. The principles laid down in Uday Mohanlal Acharya (supra) have been consistently followed by this Court namely in State of W.B. v. Dinesh Dalmia, Sanjay Kumar Kedia v. Intelligence Officer, Narcotics Control Bureau; Union of India v. Nirala Yadav and in Ranbeer Shokeen v. State (NCT of Delhi). It must therefore be taken to be well set that in terms of 3rd conclusion as recorded in Uday Mohanlal Acharya (supra), on the expiry of the period stipulated, an indefeasible right accrues in favour of the accused for being released on bail on account of default by the investigating agency in the comp of the investigation within the period stipulated and the accused is entitled to be released on bail, if he is prepared to and furnishes 7x the bail as directed by the Magistrate.

(emphasis supplied)

11. The learned trial Judge has dismissed I.A.No.3 on the premise that the provisions of KCOCA were invoked and the police had 90 days time to file the charge sheet. Therefore, the provisions of Section 167 ( 2) Cr.P.C, are not applicable to the facts of the Case.

12. Records disclose that the Commissioner of Police, Bengaluru, has accorded approval to invoke the provisions of KCOCA on 2.8.2017.Hence, it is indisputable that on the expiry of 60th day, the learned Magistrate did not have any papers or charge sheet before him.

13. In Achpal (supra), following Rakesh Kumar Paul v. State of Assam, the Supreme Court of India has held that there would be no prohibition for arrest or re arrest of the accused on cogent grounds and in such an eventuality accused would be entitled to apply for regular, bail.

14. Following the authority in Achpal (supra) <sup>2</sup>, I am of the view that, the petitioners are entitled for grant of bail under Section 167 ( 2) of Cr.P.C.

15. Resultantly, this petition merits consideration and hence, the following order:

( i) Petition is allowed;

(ii) Order dated 12.5.2017 passed in FIR No.58/2017 (Spl.C.C.No.414/2017) on the file of City Civil and Sessions Judge (CCH- 1), Bengaluru, is set aside;

(iii) Application, I.A.No.3 filed by the petitioners is allowed and petitioners shall be released on bail on the following conditions, if not required in any other case:

(a) Petitioners shall be released on bail in FIR No.58/2017 registered in Yelahanka Police Station, upon their executing Self bonds for a sum of Rs.1,00,000/- each with two sureties for the likesum to the satisfaction of the jurisdictional Court;

(b) Petitioners shall not tamper with the prosecution witnesses;

(c) Petitioners shall not directly or indirectly make any inducement, threat or promise to prosecution witness or any person acquainted with the facts of the case, so as to dissuade him from disclosing such facts to the Court or investigating officer;

(d) Petitioners shall not involve themselves in any criminal activities; and

(e) If the petitioners violate any one of the conditions, the prosecution shall be at liberty to seek cancellation of bail.

It is made clear that, this order would not prohibit or otherwise prevent the arrest or re-arrest of the petitioners on cogent grounds and in such an eventuality, petitioners shall be entitled to apply for regular bail.

No costs.