REPORTABLE

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICITON

CRIMINAL APPEAL NO. 967-968 OF 2009
(Arising out of SLP (Crl.) Nos. 7210-7211 of 2007)

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SUPREME COURT OF INDIA

JUDGMENT

Mustaq Ahmed Mohammed Isak and Ors. …Appellants

Versus

State of Maharashtra …Respondent

JUDGMENT

Dr. ARIJIT PASAYAT, J.

1. Leave granted.

2. Challenge in these appeals is to the judgment of a Division Bench of the Bombay High Court holding that the order dated 4.9.2006 passed by learned Special Judge in bail application No.32 of 2006 filed in remand application No.17 of 2006 suffers from no infirmity.

3. Criminal Appeal No.996 of 2006 was filed under Section 12 of the Maharashtra Control of Organized Crime Act, 1999 (in short the 'Act').

4. The bail application was preferred by the accused Nos. 5 to 8 challenging the order dated 21.8.2006 passed by the Special Court thereby granting second extension of 15 days to complete the investigation and to file the charge-sheet. The bail application came to be rejected. It had been prayed in the appeal that the appellants be released on bail in LAC No. 3 of 2006 on default of the prosecution in completing the investigation within the extended period granted upto 21.8.2006. Whereas in Criminal Appeal No. 736 of 2006 filed by the original accused nos. 5 to 8 under section 12 of the Act, the order of extension passed by the Special Court on 7.8.2001 in

MA No. 260 of 2006 filed in Remand Application No. 52 of 2006 was prayed to be quashed and set aside, with the prayer that the appellants be released on suitable bail on default of the prosecution in filing the charge-sheet within the specified period of 90 days. As per the prosecution Criminal Appeal 736 of 2006 would not survive after disposal of the bail application No.32 of 2006 by the Special Court.

5. The sequence of events in the instant appeals is as under:

(a) The appellants were arrested on 13.5.2006 on the charges punishable under the MCOC Act, 1999.

(b) The period of initial 90 days to complete the investigation expired on 6.8.2006.

(c) The first application by the prosecutor for extension of time was filed on 3.8.2006.

(d) The first order, granting extension was passed on 7.8.2006 and the extension of 15 days so granted was to expire on 21.8.2006.

(e) The second application for extension was preferred by the prosecutor on 21.8.2006 seeking further extension and the Special Court granted extension upto 4.9.2006.

(f) The charge sheet has been filed on 4.9.2006.

(g) Criminal Appeal No. 996 of 2006 has been presented on 7.10.2006 before the High court i.e. after the charge sheet was filed.

6. It was submitted that the Special Court erred in law in rejecting the bail application by the order dated 4.9.2006 and while doing so it misinterpreted the provisions of section 21 (2) (b) of the Act. In short, it is submitted by the learned Counsel for the appellants that though the period for completing the investigation and filing the charge sheet is extended by another 90 days and the investigation is required to be completed in a maximum period of 180 days, there is no provision for granting extension after completion of 90 days in piecemeal in as much as the power of granting extension beyond 90 days can be exercised by the Special Court only once and while doing so, the Special Court on an application moved by the prosecutor can either refuse to grant extension or grant extension for any number of days upto 90 days, but if the extension application for the first occasion is considered and extension is granted for any period less than 90 days, the second application for granting extension moved by the prosecutor cannot be entertained and the Special Court has no such powers to consider such second application or any number of applications filed by the prosecutor for extension upto a total period of 180 days to complete the investigation and file the charge sheet.

7. Stand of the State before the High Court was that the stand of the appellants about the scheme of Section 21 (2)(b) is misconceived. The High Court accepted that the order passed by learned Single Judge did not suffer from any infirmity.

8. Learned counsel for the appellant submitted that the scope and ambit of Section 21(2)(b) of the Act has not been kept in view.

9. Learned counsel for the respondent-State on the other hand supported the judgment.

Section 21 so far as relevant reads as follows:

> "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.
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> (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 subs section (2),-
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> (a) the references to "fifteen days", and "sixty days", wherever they occur, shall be construed as references to "thirty days" and "ninety days", respectively;
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> (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 ninety 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."

10. Learned counsel for the appellant placed strong reliance on a decision of this Court in Hitendra Vishnu Thakur and Ors. v. State of Maharashtra and Ors. (1994 (4) SCC 602) and it was contended that once the application for extension for any period upto 90 days was considered and allowed by the Special Court no further applicable can be entertained for extension for the remaining period or for any period upto the remaining period, thus making the total extension of 90 days.

11. Learned counsel for the respondent-State submitted that the position is no longer res intergra in view of what has been stated by this Court in Hussainara Khatoon and Ors. v. Home Secretary, State of Bihar, Patna (AIR 1979 SC 1377). In Thakur's case (supra) this Court had considered the scheme of Section 20(4) of the Terrorists and Disruptive Activities (Prevention) Act, 1987 (in short the 'TADA') read with Section 167 of the

Code of the Criminal Procedure, 1973 (in short the 'Code'). In paras 21 and 22 it was noted as follows:

> **"21.** Thus, we find that once the period for filing the charge-sheet has expired and either no extension under clause (*bb*) has been granted by the Designated Court or the period of extension has also expired, the accused person would be entitled to move an application for being admitted to bail under sub-section (4) of Section 20 TADA read with Section 167 of the Code and the Designated Court *shall* release him on bail, if the accused seeks to be so released and furnishes the requisite bail. We are not impressed with the argument of the learned counsel for the appellant that on the expiry of the period during which investigation is required to be completed under Section 20(4) TADA read with Section 167 of the Code, the court must release the accused on bail on its own motion even without any application from an accused person on his offering to furnish bail. In our opinion an accused is required to make an application if he wishes to be released on bail on account of the 'default' of the investigating/ prosecuting agency and once such an application is made, the court should issue a notice to the public prosecutor who may either show that the prosecution has obtained the order for extension for completion of investigation from the court under clause (*bb*) or that the challan has been filed in the Designated Court before the expiry of the prescribed period or even that the prescribed period has actually not expired and thus resist the grant of bail on the alleged ground of 'default'. The issuance of notice would avoid the possibility of an accused obtaining an order of bail under the 'default' clause by either deliberately or inadvertently concealing certain facts and would avoid multiplicity of proceedings. It would, therefore, serve the ends of justice if both sides are heard on a petition for grant of bail on account of the prosecution's 'default'. Similarly, when a report is submitted by the public

prosecutor to the Designated Court for grant of extension under clause (*bb*), its notice should be issued to the accused before granting such an extension so that an accused may have an opportunity to oppose the extension on all legitimate and legal grounds available to him. It is true that neither clause (*b*) nor clause (*bb*) of sub-section (4) of Section 20 TADA specifically provide for the issuance of such a notice but in our opinion the issuance of such a notice must be read into these provisions both in the interest of the accused and the prosecution as well as for doing complete justice between the parties. This is a requirement of the principles of natural justice and the issuance of notice to the accused or the public prosecutor, as the case may be, would accord with fair play in action, which the courts have always encouraged and even insisted upon. It would also strike a just balance between the interest of the liberty of an accused on the one hand and the society at large through the prosecuting agency on the other hand. There is no prohibition to the issuance of such a notice to the accused or the public prosecutor in the scheme of the Act and no prejudice whatsoever can be caused by the issuance of such a notice to any party. We must as already noticed reiterate that the objection to the grant of bail to an accused on account of the 'default' of the prosecution to complete the investigation and file the challan within the maximum period prescribed under clause (*b*) of sub-section (4) of Section 20 TADA or within the extended period as envisaged by clause (*bb*) has to be limited to cases where either the factual basis for invoking the 'default' clause is not available or the period for completion of investigation has been extended under clause (*bb*) and the like. No other condition like the gravity of the case, seriousness of the offence or character of the offender etc. can weigh with the court at that stage to refuse the grant of bail to an accused under sub-section (4) of Section 20 TADA on account of the 'default' of the prosecution.

**22.** An application for grant of bail under Section 20(4) has to be decided on its own merits for the default of the prosecuting agency to file the charge-sheet within the prescribed or the extended period for completion of the investigation uninfluenced by the merits or the gravity of the case. The court has no power to remand an accused to custody beyond the period prescribed by clause (*b*) of Section 20(4) or extended under clause (*bb*) of the said section, as the case may be, if the challan is not filed, only on the ground that the accusation against the accused is of a serious nature or the offence is very grave. These grounds are irrelevant for considering the grant of bail under Section 20(4) TADA. The learned Additional Solicitor General rightly did not subscribe to the argument of Mr Madhava Reddy (both appearing for the State of Maharashtra) that while considering an application for release on bail under Section 20(4), the court has also to be guided by the general conditions for grant of bail as provided by Section 20(8) TADA. Considering the ambit and scope of the two provisions, we are of the opinion that it is totally inconceivable and unacceptable that the considerations for grant of bail under Section 20(8) would be applicable to and control the grant of bail under Section 20(4) of the Act. The two provisions operate in different and independent fields. The basis for grant of bail under Section 20(4), as already noticed, is entirely different from the grounds on which bail may be granted under Section 20(8) of the Act. It would be advantageous at this stage to notice the provisions of Section 20(8) and (9) of the Act.

"(8) Notwithstanding anything contained in the Code, no person accused of an offence punishable under this Act or any rule made thereunder 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 for 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 offence and that he is not likely to commit any offence while on bail.

(9) The limitations on granting of bail specified in sub-section (8) are in addition to the limitations under the Code or any other law for the time being in force on granting of bail."

As would be seen from the plain phraseology of sub-section (8) of Section 20, it commences with a non obstante clause and in its operation imposes a ban on release of a person accused of an offence punishable under TADA or any rule made thereunder on bail unless the twin conditions contained in clauses (*a*) and (*b*) thereof are satisfied. No bail can be granted under Section 20(8) unless the Designated Court is satisfied after notice to the public prosecutor that there are reasonable grounds for believing that the accused is not guilty of such an offence and that he is not likely to commit any offence while on bail. Sub-section (9) qualifies sub-section (8) to the extent that the two conditions contained in clauses (*a*) and (*b*) are in addition to the Limitations prescribed under the Code of Criminal Procedure or any other law for the time being in force relating to the grant of bail. Strictly speaking Section 20(8) is not the source of power of the Designated Court to grant bail but it places further limitations on the exercise of its power to grant bail in cases under TADA, as is amply clear from the plain language of Section 20(9). The Constitution Bench in Kartar Singh case while dealing with the ambit and scope of sub-sections (8) and (9) of Section 20 of the Act quoted with approval the following observations from Usmanbhai case: (SCC p. 704, para 344)

> "Though there is no express provision excluding the applicability of Section 439 of

> the Code similar to the one contained in Section 20(7) of the Act in relation to a case involving the arrest of any person on an accusation of having committed an offence punishable under the Act or any rule made thereunder, but that result must, by necessary implication, follow. It is true that the source of power of a Designated Court to grant bail is not Section 20(8) of the Act as it only places limitations on such power. This is made explicit by Section 20(9) which enacts that the limitations on granting of bail specified in Section 20(8) are 'in addition to the limitations under the Code or any other law for the time being in force'. But it does not necessarily follow that the power of a Designated Court to grant bail is relatable to Section 439 of the Code. It cannot be doubted that a Designated Court is 'a court other than the High Court or the Court of Session' within the meaning of Section 437 of the Code. The exercise of the power to grant bail by a Designated Court is not only subject to the limitations contained therein, but is also subject to the limitations placed by Section 20(8) of the Act."

And went on to add: (SCC p. 704, para 345)

> "Reverting to Section 20(8), if either of the two conditions mentioned therein is not satisfied, the ban operates and the accused person cannot be released on bail but of course it is subject to Section 167(2) as modified by Section 20(4) of the TADA Act in relation to a case under the provisions of TADA."

> Thus, the ambit and scope of Section 20(8) of TADA is no longer res integra and from the above discussion it follows that both the provisions i.e. Section 20(4) and 20(8) of TADA operate in different situations and are controlled and guided by different considerations.

12. In para 30 the conclusions were summarized. In Sanjay Dutt v. State thr. C.B.I. Bombay (II) (1994 (5) SCC 410) the decision in Thakur (supra) was considered alongwith large number of other cases where in paras 48 and 49 it was held as follows:

> **"48.** We have no doubt that the common stance before us of the nature of indefeasible right of the accused to be released on bail by virtue of Section 20(4)(*bb*) is based on a correct reading of the principle indicated in that decision. The indefeasible right accruing to the accused in such a situation is enforceable only prior to the filing of the challan and it does not survive or remain enforceable on the challan being filed, if already not availed of. Once the challan has been filed, the question of grant of bail has to be considered and decided only with reference to the merits of the case under the provisions relating to grant of bail to an accused after the filing of the challan. The custody of the accused after the challan has been filed is not governed by Section 167 but different provisions of the Code of Criminal Procedure. If that right had accrued to the accused but it remained unenforced till the filing of the challan, then there is no question of its enforcement thereafter since it is extinguished the moment challan is filed because Section 167 CrPC ceases to apply. The Division Bench also indicated that if there be such an application of the accused for release on bail and also a prayer for extension of time to complete the investigation according to the proviso in Section 20(4)(*bb*), both of them should be considered together. It is obvious that no bail can be given even in such a case unless the prayer for

extension of the period is rejected. In short, the grant of bail in such a situation is also subject to refusal of the prayer for extension of time, if such a prayer is made. If the accused applies for bail under this provision on expiry of the period of 180 days or the extended period, as the case may be, then he has to be released on bail forthwith. The accused, so released on bail may be arrested and committed to custody according to the provisions of the Code of Criminal Procedure. It is settled by Constitution Bench decisions that a petition seeking the writ of *habeas corpus* on the ground of absence of a valid order of remand or detention of the accused, has to be dismissed, if on the date of return of the rule, the custody or detention is on the basis of a valid order. (See Naranjan Singh Nathawan v. State of Punjab; Ram Narayan Singh v. State of Delhi and A.K. Gopalan v. Government of India.)

**49.** This is the nature and extent of the right of the accused to be released on bail under Section 20(4)(*bb*) of the TADA Act read with Section 167 CrPC in such a situation. We clarify the decision of the Division Bench in *Hitendra Vishnu Thakur*, accordingly, and if it gives a different indication because of the final order made therein, we regret our inability to subscribe to that view."

13. In Criminal Appeal No.736 of 2006 before the High Court challenge was to the order dated 7.8.2006 granting first extension for 15 days on the ground that the prosecution failed to make out the ingredients set out under Section 21 (2)(b) proviso. The Special Court noted that the reasons have been indicated and the High Court also noted that the Special Court recorded the satisfaction to the grant of extension. The High Court ultimately held as follows:

"It is pertinent to note that on the day this application was filed i.e. on 3.8.2006 or thereafter till 7.8.2006 the accused had not moved an application for being released on bail on completion of 90 days. Their indefeasible right to apply for being released on bail accrued to them on 6.8.2006 as well as on 21.8.2006. However, it appears that the first bail application i.e. bail application NO.32 of 2006 was filed on 4.9.2006."

14. The dates and events have been set out by the respondent in the affidavit filed on 24th March, 2008. They read as follows:

| Date | PARTICULARS OF EVENTS |
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| 9.5.2006 | ATS staff (which has jurisdiction over entire Maharashtra) intercepted and apprehended Al Mohammed Amir Shakil Ahmed in TATA Sumo Jeep on Verul-Aurangabad Road which resulted in seizure of 10 AK47 rifles, 2000 live rounds, 30 kgs.RDX etc. and the panchanama went on from 9.5.2006 to 10.5.2006 |
| 10.5.2006 | LAC 3/06 under Section 120-B of IPC r.w. Section 4,5 of Explosive Substances Act, 1908 r.w. 5, 6, 9, 9(B) of. Indian Explosive Act, 1884 r.w. 3, 4, 25 of Indian Arms Act, 1959 r.w. Section 10, 13, 16, 18, 23 of Unlawful Activities (Prevention) Act, 1967 came to be Referred. |
| 13.5.2006 | Present Petitioners i.e. Accused Nos. 5 to |
| | Accused No.8 namely Javed Ahmed, Mustak Ahmed, Afzal Khan and Riyaz Ahmed came to be arrested. |

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| 14.5.2006 | Present petitioners were produced before Additional C.M.M. 2nd court, Mazgaon and remanded to PCR Upto 24.5.2006 |
| 22.5.2006 | Competent Authority with due application of |
| | mind granted prior approval order under Section 23(1) (a) of MCOC Act, 1999 to the present offence and accordingly provisions of MCOC Act came to be applied to present offence |
| 24.5.2006 | Thereafter, Petitioners/accused Nos. 5 to 8 were produced for further remand MCOC, special Court and they were granted remand as under:<br>PCR upto 6.6.2006 |

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| | PCT upto 12.6.2006<br>MCR upto 21.6.2006<br>MCR upto 4.7.2006<br>MCR upto 17.7.2006<br>MCR upto 25.7.200h<br>MCR upto 7.8.2006 |

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| 3.8.2006 | Before expiry of period of 90 days, special<br><br>Public Prosecutor, Smt. Rohini Salian filed separate application bearing MA No.260 of 2006 in Remand Application No. 17 of 2006 for extension of period of filing of chargesheet by another 30 days. Hereto annexed and marked as annexure "Rl/1" is the copy of MA No.260 of 2006 in remand application No. 17 of 2006 dated 3.8.2006 filed by Special Public Prosecutor Smt. Rohini Salian before MCOC Special Court.<br><br>On the said application MCOC Special Court passed order which is reflected in Roznama as under:<br><br>"SPP Ms. Salian for the State present.<br>ACP Dhawale attached to ATS present.<br>Application is filed by Ld. Special PP praying for extension of period to file charge sheet beyond 90 days.<br>She submits that 93 days will get over on 7.8.2006.<br>Prosecution seeks permission to serve the notice and the copy of the application to all the accused. Granted permission to serve the application/notice to the accused in the jail. Suptd.of Arthur road Jail is directed to comply the order. |
| 5.8.2006 | Competent Authority granted sanction to prosecute order under Section 23(2) of MCOC Act for prosecuting accused in present offence also for offences under Section 3(1) (ii), (2), (4) of MCOC Act, 1999 |
| 7.8.2006 | Initial period of 90 days for filing the charge sheet |

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| | was expiring on 7.8.2006 |

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| 7.8.2006 | Application of Public Prosecutor bearing *MA* No.260 of 2006 came to be allowed by MCOC Special Court thereby granting extension to File chargesheet for a period of 15 days i.e. Upto 21.8.2006 wherein the order is reflected in the Roznama as under:<br>"Application for extension of time to file chargesheet beyond 90 days is argued by the Learned Spl. P.P. and is opposing by Learned Defence Advocate Mr. Azmi and Mr. Solkar. Learned Prosecutor has pointed out that today nearly documents running in 3000 pages are collected and prepared by the 10 and yet he has to collect printouts of the cellphones and the investigation<br>inter-alia is incomplete.<br><br>It is further submitted by Ld. prosecutor that on 3.8.2006, one accused is arrested and police are likely to get some information. It is further submitted that the preparation of the chargesheet is voluminous record and police have yet to collect<br>CA report. Ld Defence Advocate has submitted that specific details in respect of the incomplete investigation are not mentioned. Ld. Prosecutor has given general details in respect<br>of the investigation$_s$ and it is much or less repetition of the previous applications. It is further submitted by them that specific reasons in respect of each accused separately should have been given in the application.<br><br>*On* this *ground* this application is opposed. Perused application for extension of time alongwith case-diary. Ld. Defence Advocate Mr. Moobin Solkar submits that prosecution has not furnished details whether cognizable |

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| | Considering the volume of the matter, it appears that the police need some time to collect information and investigate all the points mentioned above. I am of the opinion with a view that in this case, Section 21 (b) is to be invoked and time to file final report is extended for a period of 15 days i.e. Upto 21.8.2006.<br><br>Accused are remanded to further JC till 21.8.2006. Confession statement. He is directed to place it in writing if he wants. |
| 18.8.2006 | Challenging order of granting extension of 15 days i.e. Upto 21.8.2006 for filing chargesheet, accused /petitioner filed Criminal Appeal No.736 of 2006 under section 12 of MCOC Act before Bombay High Court. |
| | 10 ACP Dhawale filed separate application i.e. Remand Application No. 54 of 2006 praying for extension of judicial custody remand of -petitioner/accused upto 4.9.2006. Hereto annexed and marked as Annexure "R1/2" is the copy of |
| | Remand Application No.54 of 2006 dated 21.8.2006 filed by ACP Dhawale before MCOC Special Court.<br><br>Special *P. P.* Smt. Rohini Salian filed separate application i.e. MA No.266 of 2006 in RA No. 17 of 2006 thereby praying for further extension of period to file chargesheet under Section 21 (2)(b) of MCOC Act, 1999. Hereto annexed and marked Annexure "RJ/3 is the copy of M.A No.266 of |
| | ,<br>2006 in RA No. 17/ 2006 dated 21.8.2006 filed by Special PP Smt. Rohini Salian before MCOC Court.<br><br>MCOC Special Court granted further extension by 15 days i.e. till 4.9.2006 for filing charge sheet by allowing aforesaid application and order on the aforesaid two applications is reflected in Roznama as under:<br><br>*"SPP Ms.* Salian for the State present.<br>*A CP* Dhawale attached to *A TS* present.<br>Adv.Khan for accused. No. 1 present. Adv. Kanse for |

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| | accused. |

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| | Nos. 2 and 12 present Adv, Momin Solkar for accused Nos. 15 and 16 present. Adv. Sandip Sarpande h/f Amin Solkar for accused Nos.5 to 8. Adv. Biyamane h/f Bandarkar for accused No. 11 present. Adv, Shahid Azmi for accused Nos. 3 4,9,10,13 and 14 present.<br>Misc. Appln. 266/2006 is made in RA 17 of 2006 under section 21(2)(b) proviso for extension of the time for filing chargesheet beyond 90 days. Ld. Spl.PP submitted that the copies of this application are served on the advocates defending the accused persons and the accused persons. She submitted that the investigation team has come across a fresh information and pursuant to the said information they have obtained production warrant against two more accused who are arrested by west Bengal police at Calcutta as their involvement has been disclosed in this case. She has further submitted that in view of this new development, police have to investigate more areas and thus required period of 15 days to file the chargesheet.<br>Ld. Adv. Momin Solkar and Adv. Kanse submit that no specific ground is made out under section 21 (1) to justify the.,<br>detention of these accused. Hence oppose this application.<br><br>Heard.<br><br>Period of 90 days got over on 7.8.2006 and therefore 15 days time was extended. In view of submissions in para 7 and 14 time extended hereafter by 15 days i.e. till 4.9.2006.<br>"Further J/c is prayed. Granted. Accused are remanded to J/c till 4.9.2006. |

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| 4.9.2006 | Within the period extended by MCOC Special Court, concerned. Investigation Officer ACP Dhawale filed first chargesheet on 4.9.2006 against 16 accused (including present petitioners/accused Nos. 5 to 8) before MCOC Special Court, Mumbai accordingly MCOC Special Case No. 16 of 2006 came to be registered. It is not out of place to |

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| | point out that thereafter, against accused No. 17 second chargesheet was filed *which* bear MCOC Special Case No.16A/2006. Against accused Nos. 18 and 19 third chargesheet came to be filed which bear MCOC Special Case No.16B/2006. Against Accused No.20 fourth chargesheet came to be filed which bear MCOC Special Case No. 16C/2006.<br>Whereas 7 accused have been shown so far as absconding accused |
| | first chargesheet dated 4.9.2006. |
| 4.9.2006 | For the first time present petitioners/accused Nos. 5 to 8 filed bail application No. 32 of 2006 on technical ground under section 21 of MCOC Act thereby only contending that "The applicants state that there is no provision under section 21 of the MCOC Act for extension of period for the second time after it has been granted initially for the first time and therefore, after the first extended period for filing chargesheet having expired the applicants have become entitled for their release on bail on account of default in filing chargesheet within the extended period granted under section 21 of MCOC *Act.* |
| 4.9.2006 | Since charge sheet was filed on 4.9.2006 i.e. within extended time granted by MCOC Special Court, said fact is reflected in Roznama dated 4.9.2006. Accordingly *Bail* Application No.32 of *2006* came to be rejected by MCOC Special Court by well reasoned order |

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| 7.10.2006 | *Challenging* order dated 4.9.2006 in Bail application N0.32 of<br>2006, accused No. 5 to 8, present petitioners filed Criminal Appeal No.996 of 2006 under Section 12 of MCOC Act |
| 28.2.2007 | I.0. ACP Dhawale filed detailed affidavit in reply in Criminal Appeal No.996 of 2006 before the Bombay High Court. Contentions raised therein may kindly be treated as **a** part and Parcel of the present affidavit before the High Court. Therein |

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| | the contentions raised in Criminal Appeal No.736 of 2006 were also responded. |
| **4.5.2007** | **Bombay High Court passed present impugned common order in Criminal Appeal No.736 of 2006 and Criminal Appeal No.996 of 2006 thereby rejecting prayer for bail under Section 21(2)(b) of the MCOC Act, r.w. section 167(2) of Criminal Procedure Code.** |

15. There is nothing in the language of second proviso inserted in Section 167(2) of the Code by Section 21(2) of the Act to indicate that the power of extension can be exercised only once as contended by the appellants. Para 30 of the Hitendra Thakur's case (supra) on which the appellants place reliance did not deal with the present issue i.e. whether the power can be exercised more than once under the proviso.

16. In this context, we cannot loose sight of Section 167(2) of of the Code. Section 167 of Code and section 21 of MCOC Act deal with power of remand. The provisions of Section 21 of MCOC Act must be read in the light of Section 167 of Code. Section 167(2) of Code itself indicates that power of remand has to be exercised form time to time and this clearly dispels any doubt as regard the true effect of the second proviso added in Section 167(2) of Code by Section 21(2) of the MCOC Act, 1999. The only possible interpretation of the said proviso is that the Special Court can exercise power under the said proviso from time to time however, the total period for filing charge sheet/challan cannot exceed 180 days.

17. In the instant case, appellants were arrested on 13.5.2006, the first extension was granted on 7.8.2006 for a period of 15 days i.e. upto 21.8.2006 and the second extension was granted on 21.8.2006 for a period of 15 days i.e. upto 4.9.2006 and the charge sheet has been filed on 4.9.2006. The application for bail on the default ground came to be filed for the first time on 4.9.2006 i.e. the date on which the charge sheet was submitted, which is Bail Application No.32 of 2006. Prior to this, there was no application under Section 21(2)(b) of MCOC Act, 1999 r/w Section 167(2) of Code on default ground. Affidavit of Assistant Commissioner of

Police Mr.Uttam Chopane specifically states that such an application on a default ground was made for the first time on 4.9.2006 and not on 18.8.2006 as incorrectly contended by the appellants herein. Appellants are contending that the appeal filed by them on 18.8.2006 should be considered as their application for bail. This appeal filed in High Court was challenging the order dated 7.8.2006 of Special Court granting extension till 21.8.2006 and on 21.8.2006 extension was granted till 4.9.2006. The appeal filed on 18.8.2006 cannot be considered as application for bail. Even if it is treated an application for bail the same was not tenable on default ground as the Special Court extended the period on 7.8.2006 till 21.8.2006 and further extended the period on 21.8.2006 till 4.9.2006. Thus the prosecution filed the charge sheet.

18. On 4.9.2006 the charge sheet has been filed and on that day itself, the application for bail was filed by the appellants on default ground and therefore, the application for bail was rejected by the courts below.

19. We are of the view that the impugned judgment of the High Court does not suffer from any infirmity to warrant interference. The appeals fail and are dismissed accordingly.

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…J.

(DR. ARIJIT PASAYAT)

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(P. SATHASIVAM)

New Delhi:
May 08, 2009