

## Rambeer Shokeen vs State Of Nct Of Delhi on 31 January, 2018

**Equivalent citations:** AIR 2018 SUPREME COURT 688, AIR 2018 SC (CRIMINAL) 385, (2018) 5 MH LJ (CRI) 9, (2018) 1 BOMCR(CRI) 630, (2018) 2 RECCRIR 109, (2018) 69 OCR 873, (2018) 2 MAD LJ(CRI) 282, (2018) 2 PAT LJR 111, 2018 (2) SCC (CRI) 498, (2018) 1 UC 742, (2018) 1 CRILR(RAJ) 223, (2018) 2 ALLCRILR 208, 2018 CRILR(SC MAH GUJ) 223, 2018 CRILR(SC&MP) 223, 2018 CALCRILR 1 301, (2018) 125 CUT LT 1110, (2018) 185 ALLINDCAS 206 (SC), (2018) 1 CRIMES 170, (2018) 1 CURCRIR 204, 2018 CALCRILR 2 108, (2018) 103 ALLCRIC 621, (2018) 2 JLJR 82, 2018 (4) SCC 405, 2018 (1) KLT SN 111 (SC)

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**Bench:** D.Y. Chandrachud, A.M. Khanwilkar, Dipak Misra

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IN THE SUPREME COURT OF INDIA  
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NOS.2181-2182 OF 2017  
(Arising out of SLP(Crl.) Nos.7052-7053 of 2017)

RAMBEER SHOKEEN

.... APPELLANT

:Versus:

STATE OF NCT OF DELHI

.... RESPONDENT

### J U D G M E N T

A.M. Khanwilkar, J.

1. These appeals, by special leave, question the legality and tenability of the judgment and order passed by the learned Single Judge of the High Court of Delhi at New Delhi dated 22nd May, 2017 in Criminal Appeal No.311/2017 and Criminal M. (Bail) No.525/2017.

accused in FIR No.10 of 2015 registered at the Police Station (Special Cell), Delhi, for offence punishable under Sections 3 & 4 of the

Maharashtra Control of Organized Crime Act, 1999 (hereinafter referred to as the "MCOCA"). He has also been named as an accused in FIR No.65/2016 for offence punishable under Sections 26 & 27 of the Arms Act, registered at the same police station. He was declared as a proclaimed offender in connection with the said case and was later arrested on 27th November, 2016.

3. The appellant came to be arrested in connection with the present FIR on 1st December, 2016. Before the expiry of 90 days period, the Additional Public Prosecutor on 28th February, 2017 moved an application for extension of time to file charge sheet up to 15th March, 2017. The said application reads thus:

" ANNEXURE P-3 IN THE COURT OF SHRI RAKESH PANDIT, LD.ASJ, MCOCA # 25, PATIALA HOUSE COURTS, NEW DELHI.

FIR No. 10/2015 dated 23.02.2015 U/s 3/4 MCOC Act PS Special Cell, Lodhi Colony, Delhi.

Sl. Name, Parentage & address Date of arrest No. 01 RAMBEER SHOKEEN aged – 01.12.2016 37 years, S/o Shri Naval Singh r/o H.No.151, S/ Extension IV, Nangloi, Delhi V 41 & permanent address – H.No.70, village Kamruddin Nagar, P.S. Nihal Vihar, Delhi.

Subject : Regarding extension of limitation period upto 15.03.2017  
Hon'ble Sir, It is submitted that I have perused the report of the Investigating Officer of this case. The allegations against above Accused Rambeer Shokeen in present case are that he along with other syndicate members was running an organized crime syndicate in Delhi & other states by committing a series of sensational crimes including gruesome and inimical murder, extortion by putting by some businessmen in fear with criminal intimidation, obstruction of Govt. servants to deter them from discharge of official duties and offences under the arms act etc. The above accused Rambeer Shokeen was continuously evading his arrest and didn't join investigation. On 20.04.2015, non-bailable warrant against him was issued but couldn't be executed, as not available at his possible hideouts and later on after further proceedings, he was declared P.O. on 26.08.2015 by this Hon'ble Court. On 27.11.2016, he was arrested in case FIR No.65/2016 U/s 25/27 Arms Act of P.S. Special Cell, Delhi and later on 01.12.2016, arrested in this case.

During investigation, several evidences including followings have been collected against above accused Rambeer Shokeen:

1. Income Tax Return report (ITR) dated 10.02.2017 from year 2006-2016, which reflects that he has not filed ITR during this period, while he has incurred huge expenses during Delhi Legislative Elections of year 2013 & 2015 apart from other expenses.

2. Reports regarding property details from the office of Sub Registrar West, SDM Nangloi etc.

3. FORM 26 submitted by him before Election Officer showing details of moveable & immovable properties etc.  
THE INVESTIGATION OF THE CASE IS TO BE CONDUCTED ON FOLLOWING GROUNDS

1. As per FORM 26 submitted by the Accused before Election Commission to contest Delhi Legislative Assembly Election for Assembly Constituency-8 in year 2013, he has shown immovable and moveable assets of himself & his wife worth Rs. 1.85 (approx.), while he and his wife Mrs. Reeta Shokeen are not found filing income tax returns during year 2006-2016, so the investigation on this point is necessarily required.

2. To make further interrogation from accused to verify the source of huge amount of money in respect of the assets as mentioned above vis-à-vis the ITR for a period 2006-2016 (NIL returns), the details of which were obtained on 10.02.2017.

In view of above pending investigation points, it is, humbly requested that the limitation period for filing charge sheet against above accused Rambeer Shokeen may be extended upto 15.03.2017, so that charge sheet against him may be filed before the Hon'ble Court as per the time limit fixed by Hon'ble Court.

Submitted please,

Sd./- 28.02.17  
(RAVINDRA KUMAR)  
Addl. Public Prosecutor  
Patiala House Court, New Delhi  
Dated: 28.02.2017"

4. On the same day i.e. 28th February, 2017, the accused moved an application for grant of statutory bail under Section 167(2) of the Code of Criminal Procedure read with Section 21(2)(b) of MCOCA. The Special Judge, by an order dated 28th February, 2017, extended the judicial custody of the appellant until 1st March, 2017. The said order reads thus:

“An application for further extension of JC moved on behalf of IO. Copy given.

Report is also submitted by Ld. APP for State for the purposes of extension of JC beyond 90 days and for seeking further extension of time for investigation beyond period of 90 days.

JC is extended till 01.03.2017.

Put up with main file for arguments on this application on 01.03.2017.

Copy of Order be given dasti.”

5. On 1st March, 2017, the appellant filed his reply to oppose the application filed by the Additional Public Prosecutor seeking extension of limitation period for filing of charge sheet against the appellant, upto 15th March, 2017. Besides, the appellant was produced before the District & Sessions Judge and as the Presiding Officer of the Special Court was on leave, the District & Sessions Judge passed the following order:

“01.03.2017 File is put up before me Shri Rakesh Pandit, Ld. Spl. Judge, NIA/POCSO/MCOCA, ASJ B1, PHC, New Delhi is on leave today on account of unwellness.

Present : Shri Devender Kumar, Ld. Chief PP for the State along with Shri Ravindra Kumar, Ld. Addl. PP and ACP Hridaya Bhushan Accused produced from JC.

Shri Mehmood Pracha and Shri R.H.A. Sikander, Ld. Counsels for the accused Rambeer Shokeen.

Reply has been filed on behalf of accused Rambeer Shokeen to the application moved on behalf of the State seeking extension of time for filing the charge sheet. Copy supplied. An application has been moved on behalf of State seeking extension of JC of the accused above named.

As Ld. Presiding Officer is on leave. Judicial custody of the accused Rambeer Shokeen is extended till 07.03.2017. Merits of the application dated 28.02.2017 shall be decided by the concerned court.

Ld. Chief PP for the State submits that he has not been supplied with the copy of the application moved on behalf of the accused Rambeer Shokeen under Section 167(2) of Cr.P.C. seeking grant of statutory bail. Ld. Counsel for the accused is directed to supply the copy of the same during the

course of the day against proper receipt.

Put up on 07.03.2017 for further proceedings.”

6. On the next day i.e. 2nd March, 2017, the appellant moved another application for grant of statutory bail under Section 167(2) of Cr.P.C. read with Section 21(2)(b) of MCOCA.

7. On 4th March, 2017, the ACP/Special Cell/NDR, Lodhi Colony, New Delhi, moved an application before the Special Court for permission to interrogate the appellant in Central Jail No.3, Tihar, Delhi. The said application reads thus:

“ ANNEXURE P-8 IN THE COURT OF SHRI RAKESH PANDIT, LD. ASJ, MCOCA# 25, PATIALA HOUSE COURTS, NEW DELHI.

FIR No.10/2015 dated 23.02.2015 U/s 3/4 MCOC Act PS Special Cell, Lodhi Colony, Delhi.

Sl. No.	Name, Parentage & address	Date of arrest
S/V 01	RAMBEER SHOKEEN aged 01.12.2016 – 37 years, S/0 Shri Naval Singh r/o H.No.151, Extension-IV, Nangloi, Delhi-41 & permanent address – H.No.70, village Kamruddin Nagar, P.S. Nihal Vihar, Delhi.	

Subject : Regarding permission for interrogation in Central Jail, Tihar, Delhi.

Hon'ble Sir,

It is submitted that the present case is pending investigation against accused Rambeer Shokeen and other syndicate members for running an organized crime syndicate in Delhi & other states by committing a series of sensational crimes including gruesome and inimical murder, extortion by putting by some businessmen in fear with criminal intimidation, obstruction of Govt. servants to deter them from discharge of official duties and offences under the arms act etc. On 01.12.2016, accused Rambeer Shokeen was arrested in this case. During investigation it is revealed that in November 2013, he had filed an affidavit before Election Commission to contest Delhi Legislative

Assembly Election. In this affidavit, he has shown immovable and moveable assets of himself & his wife worth Rs.1.85 crores (approx.). As per report dated 10.02.2017 of Income Tax Department, neither he nor his wife Mrs. Reeta Shokeen has filed income tax returns during year 2006-2016.

In view of above, it is humbly requested that the necessary permission to interrogate accused Rambeer Shokeen may be granted in Central Jail No.3, Tihar, Delhi. The accused Rambeer Shokeen is running in judicial custody till 07.03.2017.

Submitted please, Sd./ (HRIDAYA BHUSHAN) ACP/Special Cell/NDR Lodhi Colony, New Delhi Dated: 04.03.2017”  
The Special Judge considered the said application on 4th March, 2017 and allowed the prayer for permission to interrogate the appellant in judicial custody before 7th March, 2017. The order passed by the Special Court reads thus:

“04.03.2017 File is put up before me as Shri Rakesh Pandit, Ld. Spl. Judge, NIA/POCSO/MCOCA, ASJ No.1, PHC has gone to Odisha for National Seminar, Judicial Academy, Cuttack. Present : Shri Ravindra Kumar Ld. Addl. PP for the State ACP Hridaya Bhushan along with Inspector Ravinder Kumar Tyagi.

Accused Pankaj Sehrawat, Neeraj Sehrawat, Naveen Dabas and Rahul Dabas produced from JC.

An application has been moved on behalf of Special Cell seeking permission to interrogate the accused Rambeer Shokeen in Central Jail No.3, Tihar Delhi submitting that the accused Rambeer Shokeen was arrested in this case on 01.12.2016 and he is running in JC which is extended till 07.03.2017. During investigation it is revealed that in November, 2013, he has filed an affidavit before Election Commission to contest Delhi Legislative Assembly Election and in the said affidavit, he has shown his immovable and moveable assets as well as of his wife which is worth Rs.1.85 crores (approx.). It is stated that as per the report dated 10.02.2017 of Income Tax Department, neither he nor his wife Smt. Reeta Shokeen has filed income tax return during the year 2006-2016.

Heard. Keeping in view the fact and circumstances, the application stands allowed by permitting Special Cell to interrogate the accused Rambeer Shokeen in judicial custody before 07.03.2017.

Application stands disposed of accordingly. Copy of this Order be sent to Superintendent, Tihar Jail, Delhi for compliance.

Copy of this Order be also given to the Special Cell, as prayed for.

Put up on 18.03.2017 for further proceedings.”

8. On 7th March, 2017, the application for extension of time for filing charge sheet dated 28th February, 2017 and the application filed by the appellant for grant of statutory bail dated 2nd March, 2017, were taken up by the Special Court. The Court after considering the arguments of the parties passed the following order:

“07.03.2017 Present: Shri Ravindra Kumar Ld. APP for State. Shri Mehmood Pracha and Sh. R.H.A. Sikander counsel for accused.

Accused Rambeer Shokeen from JC.

IO ACP Hirdey Bhushan in person.

Arguments heard on application for extension of time for investigation dated 28.02.2017 and on application u/sec.167 (2) Cr.P.C. dated 02.03.2017 (moved at 10.00 a.m.)  
Put up for order on these applications on 08.03.2017.

JC is extended till 08.03.2017.

Copy of order be given dasti.”

9. As directed, the matter was taken up by the Special Court on 8th March, 2017 when the prosecution filed supplementary charge sheet against the appellant. The Court passed the following order:

“08.03.2017 Present: Shri Ravindra Kumar Ld. APP for State.

Shri Mehmood Pracha and Sh. R.H.A. Sikander and Prateek Gupta counsel for accused Rambeer Shokeen. IO ACP Hirdey Bhushan in person.

Accused Rambeer Shokeen from JC.

Supplementary charge sheet filed with respect to Accused Rambeer Shokeen.

Charge sheet perused I take cognizance of the offences involved.

Copies of documents supplied with respect to the charge sheet against Rambeer Shokeen. Time sought by IO to supply copy of earlier charge sheet against other accused persons. Same be supplied within 7 working days.

Put up for scrutiny of documents on 18.03.2017. Considering the fact that supplementary charge sheet has already been filed against accused Rambeer Shokeen, so the application regarding extension of time dated 28.02.2017 become infructuous and thus dismissed as infructuous. Put up for arguments/order on application u/sec. 167 (2) Cr.P.C. on 09.03.2017.”

10. Again, the matter was taken up on 9 th March, 2017 when the hearing on statutory bail application remained inconclusive. The Court passed the following order:

“09.03.2017 Present: Shri Ravindra Kumar Ld. APP for State. Shri Mehmood Pracha and Prateek Gupta counsel for accused Rambeer Shokeen.

Part arguments on application u/sec.167 (2) Cr.P.C. Heard.

Put up for further arguments on this application on 14.03.2017.”

11. Finally, on 14th March, 2017 the Special Court rejected the statutory bail application dated 2nd March, 2017 filed by the appellant. The relevant extract of the observations/reasons recorded by the Special Court reads:

“xxx xxx xxx xxx So, in these circumstances, the application dated 28.02.2017 i.e. seeking extension of period to file charge sheet/investigation was not decided on merits (as sought vide order dated 01.03.2017). Moreover, on 08.03.2017, cannot be decided on merits as the charge sheet was already filed before order on this application. So, in these circumstances, the issue before the court in this application is that whether vide order dated 01.03.2017, the said court of Ld. District & Session Judge, NDD was within its power to extend the judicial custody of the accused or not and for that purpose whether there should be a specific order of extension of period of investigation.

As far as this issue is concerned, the law says that it is the prerogative of the investigating agency to file charge sheet/complete investigation, as per their wishes. The Court cannot interfere in the period/duration of investigation. However, in Sec.21(2)(b) MCOCA, the rider is that in case if the investigation is not completed within 90 days and the prosecution/IO wanted that the accused shall remain in judicial custody, then only he has to move in terms of Sec.21(2)(b) of MCOCA.



In this case, the prosecution had moved such application on 28.02.2017 (analogous to the movement of application u/sec.167(2) Cr.P.C. by accused, before charge-sheet). The order could not be passed as the court under Sec.5(5) MCOCA had stated that the same is to be heard by the concerned court. So, there was no lapse on the part of IO. He had already moved the application on time. As far as the JC is concerned, the same has been extended by the concerned court after the application u/sec.28(2)(b) MCOCA is already moved by the IO. So, in these circumstances, the court had acted in legal way in extending the period of judicial custody since the application for seeking extension of time was already pending before the court. So, in these circumstances, no ground exists which suggest that there was illegal custody of accused beyond the period of 90 days from the day of his first judicial remand and he is entitled for statutory bail u/sec.21(2)(b) of MCOCA.

So, the application u/sec. 167(2) Cr.P.C. alternatively read as application u/sec.21(2)(b) of MCOCA is dismissed. Copy of order be given dasti.

Put up for purpose fixed on date already fixed i.e.18.03.2017.”

12. Aggrieved, the appellant filed Criminal Appeal No.311/2017 before the High Court of Delhi at New Delhi and challenged the legality of orders dated 1st March, 2017, 4th March, 2017, 7th March, 2017 and 14th March, 2017. Besides, the appellant moved an application for grant of interim bail. By the impugned judgment, the High Court has rejected Criminal Appeal No.311/2017 and Criminal M. (Bail) No.525/2017 on 22nd May, 2017.

13. The principal argument of the appellant before the High Court as noted in paragraph 20 of the impugned judgment is that the report/application submitted by the Additional Public Prosecutor for extension of time to file charge-sheet till 15th March, 2017, was not in conformity with the requirement of proviso to Section 167(2) of Cr.P.C. The appellant placed reliance on the decision of this Court in *Hitendra Vishnu Thakur v. State of Maharashtra*,<sup>1</sup> to buttress his submission. After adverting to the legal position expounded in the said decision, the High Court in paragraph 24 considered the factual matrix relevant for answering the issue. The contention specifically raised by the appellant has been dealt with from paragraph 25 of the impugned judgment and noted thus:

“25. The request submitted by the public prosecutor on 28.2.2017 seeking extension of the period for filing charge-sheet (1994) 4 SCC 602 sheet against him in this case till 15.3.2017, briefly referred to the report of the investigating officer that had been submitted before him (the public prosecutor) and upon its perusal the brief background facts were mentioned indicating certain steps that

had been taken to collect evidence with regard to the income and assets of the appellant. The public prosecutor informed the special court by the said request in writing that investigation of the case was to be conducted, inter alia, by his 'further interrogation' as to the source of money for acquiring the assets worth Rs. 1.85 crores as had been declared to be held by him and his wife to the Election Commission at the time of contesting the election to Delhi Legislative Assembly in 2013, income tax returns not having been filed by him or his wife during 2006-2016.

26. Pertinent to mention here that the request for interrogation of the appellant in custody made by the investigating officer on 4.3.2017, granted on the same date by the District and Sessions Judge, was for the same reasons and on the same grounds as were set out by the public prosecutor in his request submitted on 28.2.2017.

27. It is true that the request of the public prosecutor submitted on 28.2.2017 is not captioned as 'report' nor does it specifically refer to the provision contained in the second proviso to Section 167 (2) Cr.P.C. But, this cannot be construed as a deficiency. It has to be borne in mind that it is not a matter of form but one of substance. The request in writing dated 28.2.2017 of the additional public prosecutor satisfies the twin criteria of the second proviso to Section 167 (2) Cr.P.C. It indicates that the public prosecutor had subjected the investigating officer's report as made to him to scrutiny and also informed the court the progress of the investigation and setting out the reasons why the continued detention of the appellant in custody was necessary. Therefore, it has to be accepted as a 'report' of the public prosecutor satisfying the requirements of second proviso to Section 167 (2) Cr.P.C. Whether or not, in the facts and circumstances of the case, as prevailing on the date such report was submitted to the special court will have to be considered separately.

28. As noted above, the appellant had moved an application under Section 167(2) Cr.P.C. for release on bail by default under Section 167(2) Cr.P.C. on 28.2.2017. It is fairly conceded by the learned counsel for the appellant that such application moved on 28.2.2017 was premature as ninety days would expire only on 1.3.2017.

29. On 28.2.2017, besides the application of the investigating officer seeking extension of the custody period of the appellant, the report of the public prosecutor for extension of the period of investigation had come be submitted to the special court. Without doubt, the report could be considered before expiry of the period of ninety days or on the last day of such period ordinarily available which would be 1.3.2017. The special court, within its judicial discretion, decided to postpone the consideration to the following date i.e. 1.3.2017. It is reflected in the order passed on 1.3.2017 by the District and Sessions Judge, as extracted earlier, that the additional sessions judge presiding over the

special court was indisposed and, therefore, on leave of absence on 1.3.2017. The District and Sessions Judge, before whom the file was placed for consideration of the report of the public prosecutor and the application of the investigating officer, decided to defer the former to 7.3.2017 for it to be 'decided by the concerned court' while extending the judicial custody for such period. Questions have been raised as to the competence of the District and Sessions Judge to deal with this case under MCOCA on the plea that the judicial officer presiding over the court of District and Sessions Judge was not designated as a special court in terms of Section 5 MCOCA."

14. While dealing with the argument regarding the competence of the District & Sessions Judge, the High Court referred to the Notification dated 15th September, 2010 and opined that it was regarding conferral of powers of Presiding Officer of the Special Court under MCOCA ascribable to Section 5 of the special enactment. Further, the Lieutenant Governor of National Capital Territory of Delhi was pleased to confer on each member of the Delhi Higher Judicial Service, inter alia, the powers of Presiding Officer of the Special Court under MCOCA as extended to NCT of Delhi, with conferral of powers to be exercised "with effect from the date of assumption of the charge" of such post in pursuance of "transfer or posting orders by the Chief Justice of the Delhi High Court".

15. The High Court then considered the grounds urged by the appellant and after advertng to Section 5 of MCOCA and Section 15 of the General Clauses Act and the reported precedents pressed into service by both the sides, answered the issue against the appellant. The High Court concluded that the validity of Notification dated 15th September, 2010, issued by the Lieutenant Governor of NCT of Delhi, inter alia, conferring powers to be exercised by the members of Delhi Higher Judicial Service, in terms of MCOCA, such empowerment being "ex-officio", cannot be questioned.

16. As regards the merits of the application for grant of statutory bail, the High Court adverted to the decisions relied upon by the parties. In paragraph 69 the Court then observed:

"69. As has been held above, the District and Sessions Judge, while dealing with the matter arising out of, inter alia, the report of the public prosecutor on 01.03.2017, and the additional sessions judge presiding over the special court also dealing, amongst others, with the said report of the public prosecutor on 07.03.2017 and 08.03.2017, failed to discharge the judicial responsibility properly. The consideration of the report of the public prosecutor, submitted (on 28.02.2017) well in time before expiry of the period of ninety days ordinary available, was deferred unnecessarily on 01.03.2017 and beyond till it was treated, wrongly so, as

□ Infructuous on 08.03.2017. It is against this backdrop that the appellant argues that there being no order in terms of second proviso to Section 167(2) Cr.P.C. enlarging the period of investigation, a right to bail by default has accrued in his favour which cannot be defeated by submission of the charge sheet on 07.03.2017. The crucial question, however, is as to whether such benefit can be extended to the appellant in a fact□ situation where the investigating police officer, and the public prosecutor, had done their part of the duty under the law, well within time, and the default in consideration of, and decision on, the report of the public prosecutor was wholly for the reasons (or, shall we say, fault) attributable to the District & Sessions Judge and the special court.”

17. Again in paragraphs 74 to 77, the Court observed thus:

“74. It is clear that the report submitted on 28.02.2017 by the public prosecutor in terms of second proviso to Section 167(2) Cr. PC seeking enlargement of time for completion of investigation did not receive due consideration of the court. If the grounds on which the public prosecutor was recommending extension of time were sufficient, there would be no justification for its denial and, resultantly absolutely no justification for the appellant to be released on bail by default.

If, on the other hand, the request was unfounded, it should have been rejected and an appropriate order extending release on bail by default should have been passed.

75. Since the report did not receive due consideration and was improperly treated as ‘infructuous’, there are two options available before this court : one, to remit the matter back to the special court for a proper decision on the report or, two, to consider the report and pass appropriate order thereupon. The former course would only entail further delay. In a case involving questions of personal liberty, such course is not desirable. In this view, the learned counsel on both sides were also heard on the merits of the report of the public prosecutor, bearing in mind that this court is duty bound to secure the ends of justice and to prevent abuse of the process of court.

76. The background facts and circumstances of the case against the appellant have already been noted. Certain assets of the appellant and members of his immediate family had come to light for which, prima

f a c i e , t h e r e w a s n o a c c o u n t , particularly in view of the declaration made on the subject in 2013, when he was a candidate in the election to Delhi Legislative Assembly. Noticeably, the investigating officer was seeking opportunity to interrogate the appellant against these facts to seek his explanation, if any. Under the provisions of the special enactment (MCOCA), the investigating police officer is entitled to interrogate the accused in judicial custody. As mentioned earlier, a formal request to this effect made by the investigating officer was allowed by order dated 04.03.2017.

The report submitted on 28.02.2017 by the public prosecutor, thus, is found to pass the necessary muster of the second proviso to Section 167(2) as inserted in the Code of Criminal Procedure by Section 21(2) of MCOCA. The fact that the charge-sheet was filed on 08.03.2017, only re-assures that the request for enlargement of time for completion of investigation made on 28.02.2017 was not with ulterior motive.

77. In above view, in the considered view of this court, the request made by the public prosecutor should not only have received due consideration of the special court on 28.02.2017, or the District & Sessions Judge on 01.03.2017, but also deserved to be allowed. The trashing of the said report as “infructuous”, by order dated 08.03.2017, was thus not only incorrect but improper. In these circumstances, in exercise of the jurisdiction vested in this court to satisfy itself as to the correctness, legality or propriety of the order passed or as to the regularity of proceedings of the inferior criminal court (under Section 397 Cr. PC), as indeed invoking the ‘inherent powers’ of this court to secure the ends of justice and prevent abuse of the judicial process (under Section 482 Cr. PC), the order dated 08.03.2017 disposing of the report of the public prosecutor under second proviso to Section 167(2) Cr. PC is set aside and, instead the said report is accepted and the period for completion of investigation of the case at hand against the appellant is extended till 08.03.2017 when the report under Section 173 Cr. PC (supplementary charge-sheet) against him was actually filed. In this view, the prayer of the appellant for release on bail by default under Section 167(2) is rendered impermissible and is accordingly declined.”

18. Being aggrieved, the appellant has approached this Court by way of these appeals. In the course of hearing, the only argument canvassed by the counsel for the appellant was about the entitlement of the appellant for grant of statutory bail as, admittedly, the Special Court did not pass any specific order on the report/application for extension of time for filing of charge-sheet against the appellant preferred by the Additional Public Prosecutor. In absence of such an order, contends the appellant, the appellant acquired an indefeasible

right. Thus, he ought to have been granted statutory bail as prayed vide application dated 2nd March, 2017, under Section 167(2) of Cr.P.C. read with Section 21(2)(b) of MCOCA. As the statutory period of 90 days had already expired and there was no extension of time granted to the prosecution by the Special Court to file the charge-sheet, filing of the charge-sheet against the appellant on 8th March, 2017 could not denude the appellant of statutory bail. In support of his submission, reliance is placed on the decisions in the case of Union of India v. Nirala Yadav,<sup>2</sup> Uday Mohanlal Acharya v. State of Maharashtra,<sup>3</sup> and Sanjay Dutt v. State through CBI <sup>4</sup>. No other argument has been canvassed by the learned counsel for the appellant in these appeals.

19. The respondent on the other hand would support the reasons recorded by the Special Court and by the High Court to oppose these appeals. According to the respondent, the Special Court and the High Court have not committed any error in rejecting the prayer for grant of statutory bail, in view of indisputable facts of the present case. The appellant was well advised not to pursue his application for grant of (2014) 9 SCC 457 (2001) 5 SCC 453 (1994) 5 SCC 410 statutory bail application dated 28th February, 2017. For, by that date, 90 days period for filing charge-sheet had not expired. Resultantly, the question of entertaining prayer for grant of statutory bail did not arise. As regards the statutory bail application filed on 2nd March, 2017, the same was also misconceived as the Additional Public Prosecutor had already filed report/application for extension of time on 28th February, 2017 itself and the Court had extended the judicial custody of the appellant pursuant to the said application until 1st March, 2017. Again on 1st March, 2017, the hearing on report/application for extension of time preferred by the Additional Public Prosecutor was deferred and judicial custody was finally extended until 8th March, 2017. Further, merely because no express order was passed on the said report/application of the Additional Public Prosecutor on 2nd March, 2017 or for that matter, till 8th March, 2017 when the charge-sheet was filed against the appellant, ipso facto did not create any right in favour of the appellant. For, judicial custody of the appellant was consciously extended by the competent Court from time to time (from 28th February, 2017 till the filing of charge-sheet). In any case, the Special Court, in law, was obliged to first decide the said report/application for extension of time preferred by the Additional Public Prosecutor, and only if the same was to be rejected before filing of the charge-sheet or expiry of the period of judicial custody of the appellant, could the appellant claim that an indefeasible right had accrued in his favour. In other words, application for grant of statutory bail preferred by the appellant on 2nd March, 2017 was also premature and in any case, the same could not have been taken up for consideration until the report/application for extension of time to file charge-sheet submitted by the Additional Public Prosecutor dated 28th February, 2017, was finally decided. In support of this submission, reliance has been placed on the dictum in paragraph 48 of the decision of the Constitution Bench in Sanjay Dutt's case (supra). It is contended that the decisions

in Uday Mohanlal Acharya (supra), Nirala Yadav (supra) and Sanjay Dutt will be of no avail to the appellant as the exposition in those cases was in light of the facts of those cases. It is contended that the High Court justly considered the merits of the report of the Additional Public Prosecutor dated 28th February, 2017 for extension of time, and after analysing the relevant aspects, concluded that the request made by the Additional Public Prosecutor was genuine and appropriate. The High Court, after hearing both sides, concluded that the time to file charge-sheet against the appellant stood extended till 8th March, 2017 when the same was, in fact, filed. Resultantly, the application for grant of statutory bail filed by the appellant albeit on 2nd March, 2017, was bound to be dismissed. According to the respondents, these appeals are devoid of merit and ought to be dismissed.

20. We have heard Mr. Mehmood Pracha, learned counsel appearing for the appellant and Ms. Pinky Anand, learned Additional Solicitor General assisted by Mr. Aman Sinha, learned senior counsel and Mr. B.V. Balaram Das, learned counsel for the respondent.

21. After having analysed the facts and events as unfolded from 28th February, 2017 until 8th March, 2017, it is indisputable that on 28th February, 2017, the Additional Public Prosecutor had filed report for extension of time to file charge-sheet against the appellant until 15th March, 2017. The same was filed within time, before the expiry of 90 days from the date of initial arrest of the appellant in connection with the subject FIR. Realising this position, the appellant did not pursue his first application for statutory bail dated 28th February, 2017. Instead, he was advised to file a fresh statutory bail application on 2nd March, 2017. Admittedly, on 2nd March, 2017 the report submitted by the Additional Public Prosecutor dated 28th February, 2017 was still undecided. Therefore, no right can be said to have accrued to the appellant for grant of bail on the ground of default. In law, only upon rejection of the prayer for extension of time sought by the Additional Public Prosecutor, right in favour of the appellant for grant of statutory bail could have ignited. The mere fact that 90 days period from the date of initial arrest of the appellant in connection with the subject FIR had lapsed on 2nd March, 2017, could not ineluctably entail in grant of statutory bail to the appellant. Moreso, when no decision was taken by the Court on the report/application submitted by the Additional Public Prosecutor until 8th March, 2017, on which date the supplementary charge-sheet against the appellant was filed in Court. Considering the effect of filing of the supplementary charge-sheet against the appellant, coupled with the fact that his judicial custody was extended by the Court of competent jurisdiction until the pendency of consideration of the report/application for extension of time to file the charge-sheet, in law, it is unfathomable as to how the appellant could claim to have any accrued right to be released on bail on the ground of default or for that matter, such a right having become infeasible.

22. The legal position has been expounded by the Constitution Bench of the Supreme Court in the case of Sanjay Dutt (supra), in particular, in paragraph 48 as under:

“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 [1952 SCR 395 : AIR 1952 SC 106 : 1952 Cri LJ 656] ; Ram Narayan Singh v. State of Delhi [1953 SCR 652 : AIR 1953 SC 277 :

1953 Cri LJ 1113] and A.K. Gopalan v. Government of India [(1966) 2 SCR 427 : AIR 1966 SC 816 : 1966 Cri LJ 602].)” (emphasis supplied) Further, the conclusion articulated in paragraph 53, makes it clear that the decision in Hitendra Vishnu Thakur (supra) must be understood accordingly. It observed thus:



“53. As a result of the above discussion, our answers to the three questions of law referred for our decision are as under:

(1) xxx xxx xxx xxx (2)(a) Section 20(4) (bb) of the TADA Act only requires production of the accused before the court in accordance with Section 167(1) of the Code of Criminal Procedure and this is how the requirement of notice to the accused before granting extension beyond the prescribed period of 180 days in accordance with the further proviso to clause (bb) of sub-section (4) of Section 20 of the TADA Act has to be understood in the judgment of the Division Bench of this Court in Hitendra Vishnu Thakur. The requirement of such notice to the accused before granting the extension for completing the investigation is not a written notice to the accused giving reasons therein.

Production of the accused at that time in the court informing him that the question of extension of the period for completing investigation is being considered, is alone sufficient for the purpose.

(2)(b) The ‘indefeasible right’ of the accused to be released on bail in accordance with Section 20(4)(bb) of the TADA Act read with Section 167(2) of the Code of Criminal Procedure in default of completion of the investigation and filing of the challan within the time allowed, as held in Hitendra Vishnu Thakur is a right which enures to, and is enforceable by the accused only from the time of default till the filing of the challan and it does not survive or remain enforceable on the challan being filed. 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. The right of the accused to be released on bail after filing of the challan, notwithstanding the default in filing it within the time allowed, is governed from the time of filing of the challan only by the provisions relating to the grant of bail applicable at that stage.” The aforementioned opinion has been expressed by the Constitution Bench in the context of question No.2 formulated in paragraph 2 of the judgment as under:

“2. The questions of law indicated in the said order of reference, to be decided by us, are three, namely:

(1) xxx xxx xxx xxx (2) The proper construction of clause (bb) of sub-section (4) of Section 20 of the TADA Act indicating the nature of right of an accused to be released on bail thereunder, on the default to complete investigation within the time allowed therein;

(3) xxx xxx xxx xxx”

23. It is thus clear that no right had accrued to the appellant before filing of the charge-sheet; at best, it was an inchoate right until 8th March, 2017. Resultantly, the question of granting statutory bail after filing of charge-sheet against the appellant and moreso during the pendency of report/application for extension of time to file charge-sheet was impermissible. In other words, the application for grant of statutory bail filed by the appellant on 2nd March, 2017, even if pending, could have been taken forward only if the prayer for extension of period was to be formally and expressly rejected by the Court.

24. As held by the Constitution Bench of this Court, the consideration of application for grant of statutory bail in a situation, as in the present case, was dependent on rejection of prayer of the Additional Public Prosecutor for extension of time. When such prayer is made, it is the duty of the Court to consider the report/application for extension of period for filing of the charge-sheet in the first instance; only if it was to be rejected could the prayer for grant of statutory bail be taken forward. In no case, the hearing on statutory bail application precede the consideration of prayer for extension of the period for filing of the charge-sheet made by the Additional Public Prosecutor.

25. The Constitution Bench decision in Sanjay Dutt's case (supra) also answers the next issue raised by the appellant about the absence of a valid remand/detention. In that, in the concluding part of the afore-quoted paragraph 48, the Court has opined that a petition seeking a writ of habeas corpus on the ground of absence of a valid order of remand or detention 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.

Admittedly, in the present case, the judicial custody of the appellant was extended by the Court of competent jurisdiction from time to time pending consideration of request to extend time to file charge-sheet, initially from 28th February, 2017, till 1st March 2017 and so continued from 1st March, 2017, until 7th March, 2017, and again from 7th March, 2017, till 8th March, 2017 on which date the charge-sheet was filed against the appellant in the Court. The order passed by the Special Court on 8th March, 2017, has been so construed by the High Court and additionally by explicitly extending the period for filing of the charge-sheet against the appellant until 8th March, 2017. We find no error in that approach of the High Court. No interference is warranted in that regard.

26. The appellant, however, relies on the observations in Uday Mohanlal Acharya (supra) rendered by a three-Judge Bench of this Court. In the said case, the accused had himself surrendered in Court and was remanded to judicial custody. The period for filing of charge-sheet (60 days in that case) expired on 16th August, 2000. The accused moved an application on 17th August, 2000, for grant of statutory bail on the ground of default in filing of charge-sheet within the statutory period of 60 days. That bail application was rejected by the Magistrate on the same day, holding that the provisions of Section 167(2) of Cr.P.C. had no application to the cases pertaining to the special enactment i.e. Maharashtra Protection of Interest of Depositors (in Financial Establishments) Act, 1999. The accused then approached the High Court. When the matter was pending before the High Court, charge-sheet was filed before the Trial Judge on 30th August, 2000. The High Court refused to grant relief on the ground that by the time the High Court could consider the correctness of the order on the statutory bail application passed by the competent Court, a charge-sheet was filed against the accused before the Magistrate and, therefore, the so called enforceable right did not survive or remained enforceable. In this backdrop, this Court considered the matter and answered the issue in favour of the accused on the finding that before the charge-sheet was filed, the accused had invoked the remedy of statutory bail. Thus, the factum of filing of charge-sheet subsequently cannot defeat the right accrued to him. In the present case, before the appellant instituted the subject application for grant of statutory bail on 2nd March, 2017, the Additional Public Prosecutor had already filed his report/application for extending the period for filing of charge-sheet against the appellant until 15th March, 2017, but decision thereon was deferred. As held by the Constitution Bench in the case of Sanjay Dutt (supra), unless the report/application filed by the Additional Public Prosecutor for extension of time was rejected, no right would accrue in favour of the accused much less to consider his application for grant of statutory bail. Further, in such cases it is the duty of the concerned Court to first deal with the prayer for extension of period to file charge-sheet made by the Additional Public Prosecutor. The High Court, in the impugned judgement, thus answered the issue against the appellant and additionally considered the justness of the prayer made by the Additional Public Prosecutor for extension of period for filing charge-sheet. It recorded an express finding that the said request was genuine and appropriate and thus extended the time for that purpose till 8th March, 2017.

27. Reverting to the decision in the case of Nirala Yadav (supra) rendered by two-Judge Bench, the accused in that case was arrested and sent to judicial custody on 5th December, 2006. After lapse of the statutory period of 90 days on 14th March, 2007, the accused filed application for grant of statutory bail on the ground of default. The prosecution (CBI), however, on 15th March, 2007, moved an application for extension of time for a period of 30 days. Since the application for grant of statutory bail filed by the accused preceded the filing of application for extension of time, the issue was answered in favour of the accused. In the present case, however, the prayer for extension of period for filing charge-sheet

sheet was moved by the Additional Public Prosecutor before the statutory period had lapsed, but the same remained pending until 8th March, 2017, when charge-sheet was filed in Court. Until the said request was formally and expressly rejected by the competent Court, in view of the exposition in the case of Sanjay Dutt (supra), the concerned Court could not have assumed jurisdiction to consider the prayer for grant of statutory bail of the appellant.

The request made by the Additional Public Prosecutor was formally disposed of as infructuous on 8th March, 2017, after filing of the charge-sheet against the appellant. That was not an order of rejection of the request of the Additional Public Prosecutor as such. The High Court has examined this aspect and, in our opinion, rightly answered the issue against the appellant for the reasons recorded in paragraphs 75 to 77 of the impugned judgment, including by explicitly extending the time to file charge-sheet till 8th March, 2017. We affirm the said view of the High Court. Therefore, even this decision relied upon by the appellant will be of no avail in the fact situation of the present case.

28. Taking overall view of the matter, therefore, it is noticed that the Additional Public Prosecutor had submitted his report to the concerned Court for extending time until 15th March, 2017, to file the charge-sheet. That report was submitted on 28th February, 2017, before expiry of the initial statutory period of 90 days for filing of the charge-sheet against the appellant. That request was disposed of by the Special Court on 8th March, 2017 as infructuous, after the charge-sheet against the appellant was submitted in Court. Until 8th March, 2017, the appellant was sent to judicial custody by the competent Court pending consideration of request of the Additional Public Prosecutor for extension of time to file the charge-sheet. The Court, in law, could not have considered the prayer for grant of statutory bail of the appellant until 8th March, 2017, on which date the charge-sheet was already filed against the appellant in the concerned Court. Further, the High Court considered the circumstances in which the order came to be passed by the Special Court on 8th March, 2017. In our opinion, it rightly held that the said request could not have been closed as having become infructuous. Rather, it was the duty of the Court to decide the request on its merits and only upon its rejection, proceed to consider the prayer for grant of statutory bail. The High Court, therefore, noticed that it had two options: first, to remit the matter back to the Special Court for a proper decision on the said report of the Additional Public Prosecutor dated 28th February, 2017 or second, to consider the same itself and pass appropriate orders thereupon. It chose to adopt the second option, which was thought desirable and not objected to by the appellant as can be discerned from the noting in paragraph 75 of the impugned judgment. The High Court, in paragraph 76 of the impugned judgment, then proceeded to consider the prayer for extension of time made in the report submitted by the Additional Public Prosecutor on 28th February, 2017, and, for tangible reasons, found the same to be genuine and appropriate. Having thus held, it allowed the said request by extending the time to file charge-

sheet till 8 th March, 2017. We find no infirmity in the said approach of the High Court. Having extended the time till 8th March, 2017 and as the charge sheet was already filed on that date, the question of considering the prayer for grant of statutory bail of the appellant vide application dated 2 nd March, 2017, on the ground of default, did not survive for further consideration. Right to grant of statutory bail would have enured to the accused only after rejection of the request for extension of time prayed by the Additional Public Prosecutor. As a result, the High Court rightly rejected the prayer for grant of statutory bail pursued by the appellant vide application dated 2 nd March, 2017. We are in full agreement with the said conclusion reached by the High Court.

29. A priori, these appeals must fail. Indeed, rejection of the prayer for grant of statutory bail will not come in the way of the appellant in pursuing his remedy for grant of regular bail on merit. The appellant is free to pursue that remedy which may be considered on its own merits in accordance with law.

30. Accordingly, these appeals are dismissed being devoid of merits.

.....CJI.

(Dipak Misra) .....J.  
(Dr. D.Y. Chandrachud) New Delhi;

(A.M. Khanwilkar) .....J.

January 31, 2018.