

## FARAD CONTINUATION SHEET NO.

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
APPELLATE SIDE, BENCH AT AURANGABAD

**CRIMINAL WRIT PETITION NO. 245 OF 2015****[Sukhdeo s/o Pundlik Jagdale and ors. Vs The State of Maharashtra]**

Office Notes, Office  
Memoranda of Coram,  
appearances, Court's  
orders or  
directions and  
Registrar's orders

Court's or Judge's orders

Shri M.G.Deokate, advocate for the petitioners  
Shri S.A.Ambad, A.P.P. for respondent/State

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**CORAM : V.M.DESHPANDE, J.**

**DATED : 4<sup>th</sup> March, 2015**

**PER COURT :-**

1] Learned counsel for the petitioner orally made a prayer for deletion of respondent nos. 2 to 4 since their presence is not required for the decision of present Writ Petition. Prayer accepted. Learned counsel shall delete the names of respondent nos. 2 to 4 immediately.

2] Rule. Rule is made returnable forthwith. Heard finally with the consent of the parties.

3] Present petition is filed by original accused nos. 1 to 5. They are facing prosecution along with

other co-accused for the offences punishable under Sections 407, 420, 411, 468, 471 r/w 34 of the Indian Penal Code in view of the first information report registered against them at police station Vaijapur vide Crime No. 96 of 2007 dated 27.5.2007.

4] The investigating agency, after completion of investigation has filed the charge sheet in the court of law on 3.6.2008 and case is registered as Regular Criminal Case No. 188 of 2008 and is pending on the file of Judicial Magistrate, First Class, Vaijapur. The case is pending since 2008.

5] During pendency of the case, present petitioner moved an application (Exh.17) before the learned Magistrate, by which it was pointed out that the applicants, who are accused nos. 1 to 5, are regularly attending the court, however, accused no.6 Babasaheb Balu Sajan is not attending the court since the time he was released on bail. Therefore, a request was made for separation of their trial.

6] It appears that, the learned Public Prosecutor objected the said prayer and learned Magistrate on 19.1.2011 passed following order.

“ (१) आरोपी न. ६ चें जामीनदारास नोटीस काढावी.

(२) सरकारी वकीलानी हरकत घेतल्यानी अजर नाकारला आहे.”

The afore said order is a non-speaking order passed by the learned Magistrate. Though the learned Public Prosecutor conducting the case has opposed the said application, it was obligatory on the part of the learned Magistrate to decide the application (Exh.17) on its own merits. The afore said order, passed by the learned Magistrate shows that the learned Magistrate has not applied his mind at all, and therefore, such order cannot stand to the scrutiny of law.

7] Further, the learned counsel for the petitioner has invited my attention to the Roznama, which is filed along with the present Writ Petition. The said Roznama is dated 20.8.2014 and the matter is still at the stage of appearance of the absconding accused.

8] The speedy trial is right of the accused. The learned Magistrate cannot remain mute spectator in such eventuality and it was obligatory on the part of the learned Magistrate to pass appropriate order.

9] In that view of the matter, the order, dated 19.1.2011, passed below Exh. 17 in Regular Criminal Case No. 188 of 2008 is hereby quashed and set aside. The learned Judicial Magistrate, First Class, Vaijapur is directed to decide the application Exh.17 afresh, in accordance with law.

10] With the above observations, Writ Petition is allowed. Rule is made absolute accordingly.

**[V.M.DESHPANDE, J.]**

dbm/crwp245.15