

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
AURANGABAD BENCH, AT AURANGABAD.**

Criminal Application No. 4905 of 2014

Sarfaraz Abdul Shakur Khan,
Age : 35 years,
Occupation : Business,
R/o. Galli No.5, Samta Nagar,
District : Aurangabad - 431 001 (M.S.). .. Applicant.

versus

The State of Maharashtra,
Through Secretary,
Mantralaya, Mumbai - 32. .. Respondent.

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Mr. Praveen B. Waghmare, Advocate, for the applicant.

*Mrs. S.G. Chincholkar, Additional Public Prosecutor, for
the respondent - State.*

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CORAM : A.M. BADAR, J.

DATE : 4TH MARCH 2015

PER COURT :

1. By this application, purported to be under Section 407 of the Code of Criminal Procedure, 1973, as well as, under Articles 226 and 227 of the Constitution, applicant / original informant is praying for staying the proceedings of Sessions Case No. 398/2012, pending on the file of the

learned Additional Sessions Judge, Aurangabad, and for transfer of the said case from the file of said Additional Sessions Judge to any other court of competent jurisdiction.

2. At the time of hearing of this application, the learned Counsel for the applicant has pointed out that the Presiding Officer of the said court is already transferred and, therefore, he is not pressing the prayer for transfer of the Sessions Case to some other court.

3. The learned Counsel for the applicant / original informant submitted that he has prayed for appointment of Special Public Prosecutor for conducting trial of Sessions Case No. 398/2012 as the concerned Public Prosecutor has not shown interest in prosecuting the case and has asked him to settle the matter with accused persons. He has drawn attention of this court to the applications made to the concerned Department of the State for appointing Special Public Prosecutor to conduct the trial. The learned Counsel for the applicant / original informant argued that the learned Additional Sessions Judge had exempted appearance of accused persons but the same prayer was rejected so far as the applicant is concerned.

4. Perused typed copies of orders allegedly passed by the learned Additional Sessions Judge, Aurangabad, in Sessions Case No. 398/2012. It is seen that on the pretext of seeking appointment of Special Public Prosecutor, the applicant / informant is desirous in protracting trial of Sessions Case indefinitely. The learned Additional Sessions Judge has observed in the impugned order that since last many dates, the case is

pending for evidence but the informant had filed an application for adjournment. In that context, exemption appears to have been granted to the accused. There is no question for granting exemption from personal appearance to the applicant as he is not an accused but informant in that case. We see that the Sessions Case is of the year 2012. It cannot be delayed indefinitely on the pretext that the applicant is making an attempt to secure appointment of Special Public Prosecutor to conduct the trial. Nothing is placed on record which will demonstrate that the learned Public Prosecutor to whom trial is entrusted is having an interest adverse to the applicant / informant. It is responsibility of the State to prosecute the accused persons and the victim can only seek indulgence by appointing a lawyer to assist the Prosecutor. In the case in hand, as submitted by the learned Counsel for the applicant, the learned trial court has already allowed his application for permission to appoint a lawyer to assist the prosecution. Therefore, we see no infirmity in the impugned order. In this view of the matter, we see no merit in the Application and the same deserves to be rejected.

5. The Application is accordingly rejected. Needless to mention, that the interim order as granted earlier stands vacated.

(A.M. BADAR)
JUDGE

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