

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL BAIL APPLICATION NO.126 OF 2015

Suresh Maruti Kamble

.. Applicant

Versus

The State of Maharashtra

.. Respondent

Mr.A.P. Mundargi, Sr. Advocate with Mr.Abhishek Yande, Advocate
for the applicant.

Mr.Deepak Thakre, APP for the Respondent State.

CORAM : ABHAY M. THIPSAY, J.**DATED : 21st APRIL, 2015**

P.C. :

1 Heard Mr.A.P. Mundargi, Senior Advocate for the
applicant.

2 Since this is the second application for bail, the first
having been rejected after observing that there existed a *prima*
facie case, a report was called for, from the trial court. This was
necessary because while rejecting the first Bail Application, the
trial court was directed to hold the trial expeditiously, but inspite
of this direction, the trial had not commenced.

3 The direction to expedite the trial was given by this
Court by an order dated 7th August 2014.

4 The report received from the trial court shows that during the period from 6th September 2014 (which was the date on which the writ of this Court was received by the trial court) till 23rd March 2015, 22(twenty two) dates were given by the trial court, but it is only on two dates that the applicant was produced before the court. The report indicates that even after issuing a production warrant, the accused had not been produced before the court.

5 Thus, non-production of the applicant and other accused before the Court seems to be the main reason for delay in commencement of the trial.

6 It appears that the learned trial Judge had issued letters to the Superintendent of Taloja Jail where the applicant and other accused have been lodged, to ensure their production. It needs to be brought to the notice of the learned Judge that it would be futile to write to the Superintendent of the Prison to ensure production of the accused persons before the Court, as the Prison Administration does not have any machinery for taking the prisoners from the Prison to the Court. That responsibility has not been placed on the Prison Administration. The under-trial prisoners are required to be produced before the Court by the police who are employed for that purpose. The learned trial Judge, therefore, should have written to the concerned authorities of the police who are responsible for providing police guards for bringing under-trial prisoners to the Court.

7 Indeed, non-production of under-trial prisoners on the dates of hearing of the case appears to be quite common and routine. This is not proper. The under-trials remain in prison because they are not granted bail. The object behind their detention is not to punish them, or 'teach a lesson to them', but to ensure that they would be available to face their trial. If the State is unable to produce them before the Court on the dates fixed by the trial court, the State would lose all moral authority to oppose grant of bail to them. Such detention, without production before the Court, would be unfair, unjust and violative of Article 21 of the Constitution. Such non-production of the under-trial prisoners by the State needs to be strongly disapproved.

8 However, the facts of this case are such that inspite of these lapses on the part of the State, I am inclined to still grant one opportunity to the concerned authorities to ensure the production of the applicant before the Court on the dates as may be fixed by the trial Court, so that the applicant and other accused can get a speedy trial. Needless to say that if the State persists in its defaults in producing the applicant and other accused before the trial court, the applicant shall be given another opportunity to seek bail.

9 Application is rejected.

10 However, liberty to the applicant to apply afresh for bail, in the event of the trial not concluding within a period of four months from today.

11 This order be brought to the notice of the Commissioner of Police, Mumbai who may ensure the production of the applicant, and other accused before the trial court on all dates of hearing, as the trial Court may fix. The Commissioner of Police, Mumbai is also requested to hold an inquiry into the matter, and to report to this Court, as to who is responsible for non-production of the accused persons before the Court on the dates given by the trial court. The Commissioner of Police may also submit his opinion to this Court as to whether production only on two dates out of 22 dates, is justified – even if there would be other problems such as law and order, etc. for the police force.

12 The Commissioner of Police, Mumbai be requested to send his reply communication to this Court by 7th May 2015.

(ABHAY M.THIPSAY, J)