

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL BAIL APPLICATION NO. 1302 OF 2015

Datta Mangesh Patil. ... Applicant.
Versus
The State of Maharashtra. ... Respondent.

Mr. Vikram Sutaria, advocate appointed for Applicant.

Ms. S.S. Kaushik, APP for State.

Mr. S.R. Dhiwar, P.I., Juhu Police Station, Mumbai.

CORAM : SMT. SADHANA S. JADHAV,J
DATE : OCTOBER 23, 2015

P.C.:

1 This is an application received through jail. The present applicant is an accused in Crime No. 285 of 2013. The applicant is being prosecuted for an offence punishable under Section 395 read with Section 34 of the Indian Penal Code and Section 37 of the Bombay Police Act. The case is committed to the Court of Sessions and is registered as Sessions Case No. 37 of 2014 alongwith Sessions Case No. 174 of 2014 since the supplementary charge-sheet has been filed against the present applicant.

2 The learned Counsel appointed for the applicant has done some research and has placed on record the copy of the order rejecting the discharge application of the present applicant. It appears from the said order that the test identification parade was not held. That the witnesses have not disclosed the overt act by the present applicant. The trial Court has rejected the discharge application on the ground that although there is no test identification parade as against the present applicant or there is no evidence to that effect, the investigating officer can identify the accused at the time of trial.

3 It is pertinent to note that the investigating officer is neither an eye witness nor the applicant was apprehended on the spot. He was arrested subsequently. It appears that the applicant has been transferred from C.R. No. 201 of 2013 registered at Jogeshwari Police Station in Crime No. 285 of 2013. The applicant has prayed for enlarging him on bail or in the alternative for expediting the trial.

4 The learned APP upon instructions from the investigating officer who is present in the court submits that on 13/10/2015 charge has been framed against the accused in the present case. In view of this, it is submitted that the applicant does not deserve to be enlarged on bail. The learned APP further submits that the applicant has criminal antecedents of the similar nature.

5 The learned Counsel appointed for the applicant has placed on record the copy of the roznama in the present case, which shows that the matter was posted for framing of charge on 8/11/2014, 9/11/2014 and 6/12/2014. It is a matter of record that the application seeking discharge was rejected on 29/10/2014. Ever since then the matter was posted fr framing of charge. However, it is clear that the police had not produced the accused from jail and therefore, charge could not be framed. It is pertinent to note that the charge has been framed on 6/12/2014. On 11/9/2015, the matter was posted for evidence. On 15/9/2015 as well as 7/10/2015 the matter was posted for evidence. However, it appears that the

recording of evidence is not commenced. It further appears that the next date for recording of evidence is 27/10/2015. In view of this, the applicant does not deserve grant of bail. However, taking into consideration the observations made by the learned Judge while rejecting the discharge application, the applicant deserves an expeditious trial. The jail authorities are directed to produce the accused before the concerned court on 27/10/2015.

6 The learned APP upon instructions submits that there are four witnesses to be examined excluding the investigating officer and hence, the trial can be expedited. The learned APP upon instructions submits that the complainant is not in India and therefore, the trial has been protracted. The Sessions Judge is at liberty to record the evidence of the complainant through Video conferencing.

7 In the eventuality that the accused is not produced on the next date, the learned Judge, seized with the matter shall take an appropriate action and pass appropriate orders. The learned Judge

shall make an endeavour to conclude the recording of evidence within four months from today.

8 The application is partly allowed in the above terms and is being disposed of accordingly.

9 The learned Counsel appointed for the applicant has put in the best of the efforts to espouse the cause of the applicant. The learned Counsel has placed on record not only the orders rejecting the discharge application but also roznama of the trial court to demonstrate before this court that the trial is proceeding at a snail's speed. The Court has appreciated the efforts put in by the learned Counsel so appointed. The professional fees is quantified at Rs. 1500/- to be given to him within 3 months from the date of this order.

(SMT. SADHANA S. JADHAV,J)