

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

WRIT PETITION NO.5042 OF 2014

Manoharlal Phoolchand Jain .. Petitioner
-Versus-
The State of Maharashtra & Ors. .. Respondents

Mr.P.B.Shah i/b. K.P.Shah for petitioner
Mr.A.D.Joshi for respondent No.2
Mr.V.B.K.Deshmukh, APP for State.

CORAM : M.L.TAHALIYANI, J.

DATE : 10th February 2015.

P.C.

1] Heard the learned Counsel for the petitioner. This court is moved by the father of the deceased, Chandradevi who was allegedly murdered by respondent Nos. 2 and 3 and one Dharmaraj Chanduprasad Joshi. Respondent Nos. 2 and 3 are the accused Nos. 1 and 2 in Sessions Case No.60 of 2011 pending in the court of sessions, Thane.

2] The petitioner is aggrieved by the order passed by the Sessions Judge separating the trial of respondent Nos. 2 and 3 as

the accused No.3 Dharmaraj Joshi has absconded and has reportedly fled to Nepal.

3] The learned Counsel for the petitioner submitted that the learned Sessions Judge has adopted wrong procedure for separating the trial of the accused No.3. It is submitted that the learned Sessions Judge should have issued a proclamation and should have waited for the statutory period for surrender of accused No.3.

4] No doubt the learned Sessions Judge can issue a proclamation, if the non bailable warrant has already been issued and may try to secure attendance of accused No.3. However, from the order of the learned Sessions Judge, it appears that there is a police report on record that the accused No.3 has absconded and he is staying at Nepal with his father. It may be mentioned here that it is not possible for police to get him from Nepal in near future. The accused Nos. 1 and 2 are in custody since last about 4 years. The learned Sessions Judge has taken into consideration the period of custody of the respondent Nos. 2 and 3. Keeping in view that the

respondent Nos. 2 and 3 are in custody, the learned Judge has separated the trial of accused No.3.

5] In my opinion, the order is just and proper. The separation of trial has nothing to do with the procedure of securing the attendance of the accused. Even after separation of trial with regard to accused No.3, the learned Judge can continue to take necessary steps for securing attendance of accused No.3. He has already stated that the accused No.3 will be tried later on as and when arrested and produced before the Court.

6] I do not find anything wrong in the order. The writ petition is dismissed. Interim stay stands vacated.

(M.L.TAHALIYANI, J.)