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

CRIMINAL APPLICATION NO.1767 OF 2016

Shaikh Mushtaq s/o Shaikh Musa,
Age: 33 years, Occ: Labour,
R/o. Panwadi, Tal. Phulambri,
Dist. Aurangabad, at present
Sajapur, Tal. Gangapur,
Dist. Aurangabad.

..APPLICANT

VERSUS

The State of Maharashtra
Through the Police Inspector,
Chhavani Police Station,
Aurangabad.

..RESPONDENT

Mr P.P. Khandagale Patil, Advocate for applicant;
Mr A.B. Girase, Public Prosecutor for respondent

CORAM : N.W. SAMBRE, J.

DATE : 8th August, 2016

ORDER :

Present matter is arising out of the prayer for grant of regular bail pursuant to the provisions of Section 439 of the Code of Criminal Procedure in Crime No. I-40 of 2014 registered with Chhawani Police Station, District Aurangabad, for the offence punishable under Sections 376(D), 323, 506, 341, 504 of the Indian Penal Code.

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2. This Court vide order dated 12th April, 2016 called report from learned District Judge, Aurangabad as to the period within which trial in Sessions Case No. 137 of 2014 arising out of above crime could be concluded.

3. Learned District and Sessions Judge, Aurangabad and thereafter learned District Judge-10 and Additional Sessions Judge, Aurangabad brought to my notice by report that Special Public Prosecutor appointed pursuant to the provisions of Section 24(8) of the Code of Criminal Procedure is not extending co-operation in deciding the trial. It is during hearing of present application, in response to query of the Court, it is brought to my notice that the State Government has delegated its power under Section 24(8) of the Code of Criminal Procedure to the Commissioner of Police at Police Commissionerate and Superintendent of Police in the districts.

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4. Pursuant to the query raised by this Court, Mr. Girase, Public Prosecutor, upon instructions, makes categorical statement that Senior Public Prosecutor Mr. S.T. Shirsath has been instructed by District Government Pleader to conduct trial by extending co-operation to learned Additional Sessions Judge, Aurangabad in Case No. 137 of 2014 pending on the file of District Judge-10 and Sessions Judge, Aurangabad.

5. Vide affidavit in reply on behalf of the Joint Secretary, Law and Judiciary, it brought to my notice that the State Government through department of Home has issued resolution authorizing Superintendent of Police of the respective districts and Commissioner of Police where Police commissionerate is located to appoint Special Public Prosecutors in exercise of powers under Section 24(8) of the Code of Criminal Procedure, 1973. The copy of the affidavit along with said Govt. Resolution Dated 12/05/2015 bearing No. DPP-2012/PK-10/PL-10 is perused.

(4)

6. The provisions of Section 24(8) of the Code of Criminal Procedure reads thus :

“(8) The Central Government or the State Government may appoint, for the purposes of any case or class of cases, a person who has been in practice as an advocate for not less than ten years as a Special Public Prosecutor.”

7. It is brought to my notice that pursuant to the said G.R., the Commissioner of Police, Aurangabad and also at other places of the Superintendent of Police of respective district, the procedure for appointment of Special Public Prosecutors is already undertaken. *Prima facie* upon plain reading of Section 24(8) of the Code of Criminal Procedure, State Government cannot take recourse to the act of delegating its powers for appointment of Special Public Prosecutors under Section 24(8) of the Code of Criminal Procedure, as has been sought to be done by the Government

(5)

Resolution dated 12th May, 2015. In view of above, I am of the opinion that the validity of the said resolution is required to be tested in the light of above referred provision of the Code of Criminal Procedure.

8. As this Court is not armed to deal legality and validity of the said Government resolution and looking to the fact that resolution affects the process of administration of justice, particularly as regards appointment of Special Public Prosecutors, it will be appropriate, in my opinion, to refer the present matter before the Division Bench, who is taking criminal matters under the provisions of High Court Appellate Side Rules.

9. Advocate Mr. Vijay Sharma is appointed as amicus curiae to assist the Court in the present matter, who shall frame appropriate pleadings for in the above back ground placing the same before the Division Bench of this Court. Mr. Girase

(6)

undertakes to furnish copy of the G.R. Dated 12th May, 2015 along with copy of affidavit. Mr. Sharma undertakes to file appropriate pleadings within period of two weeks with advance copy to Public Prosecutor Mr. Girase. Mr. Girase undertakes to bring to the notice of the Department of Home and Department of Law and Judiciary of the State Government the present order, whose response pursuant to the above referred issue, is expected to be submitted before Division Bench within a period of three weeks from today.

This be registered as Criminal Writ Petition.

Authenticated copy of this order be made available to Mr. Girase and Mr. Sharma.

(N.W. SAMBRE, J.)

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