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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 138 OF 2016

Lt. Col. Prasad Shrikant Purohit

.. Appellant

Vs.

Union of India, Through National
Investigation Agency and anr.

.. Respondents

Mr. Shrikant Shivade i/by Yogini Ugale for appellant.

Mr. Sandesh D. Patil, Spl. P. P. for respondent no.1 – NIA.

Mr. D. P. Adsule, APP for State.

CORAM: NARESH H. PATIL &
P. D. NAIK, JJ.

JUNE 09, 2016.

P.C.

1. Appellant – Lt. Col. Prasad Shrikant Purohit has filed two appeals bearing Criminal Appeal No. 138 of 2016 and Criminal Appeal No. 277 of 2016. Criminal Appeal No. 138 of 2016 has been filed against common order dated 12/10/2015 passed by the learned Spl. Judge under MCOC & NIA Act, City Civil & Sessions Court, Gr. Bombay below Bail Applications at Exhibit 2082, 2295, 2320 and Bail Application No. 42 of

2008 in MCOC Special Case No. 1 of 2009. The impugned order is at Exhibit “B” (Page 26 of the paper book). We are concerned with the application filed by the present appellant i.e. Exhibit 2295 and Bail Application No. 42 of 2008. All these applications were decided by a common order by the learned Special Judge.

2. The case of the prosecution is that in the month of September, 2008 a bomb explosion took place between Anjuman Chowk and Bhiku Chowk at Malegaon, District – Nashik, in which six persons were declared dead and more than hundred persons got injured. On 20/1/2009, the Anti Terrorist Squad (ATS) filed charge-sheet against the appellant and 11 other accused persons. It is submitted by the learned Spl. P. P. that supplementary charge-sheet was filed by the ATS on 24/1/2011. On 13/4/2011, the First Information Report was registered by the NIA in respect of the said incident as Crime No. 5 of 2011 at Delhi. On 6/7/2011, NIA filed an application invoking Section 21(7) of MCOC Act in Special Court MCOC for police custody of the appellant. On 19/7/2011, the Special Court granted police custody of appellant and others for eight days. On 21/7/2011, aggrieved by order dated 19/7/2011, appellant filed Criminal Writ Petition No. 2136 of 2011 before this court. On 20/10/2011,

this court dismissed the said writ petition. On 9/11/2011, this court rejected bail application of the appellant i.e. Criminal Bail Application No. 333 of 2011 filed against order dated 30/12/2010 passed by the trial court.

3. By an order dated 15/4/2015, Supreme Court set aside the judgment and order dated 9/11/2011 passed by this court and restored the Bail Application No. 42 of 2008 on the files of the Special Judge. On 12/10/2015, Bail Application No. 42 of 2008 was dismissed, which is the subject matter of challenge in the present appeal. Present appeal was filed on 15/1/2016.

4. With the assistance of the learned counsel appearing for the appellant and the respondents, we have gone through the relevant material placed on record.

5. Learned counsel appearing for the appellant and the learned Spl. P. P. submitted that the NIA has filed charge-sheet on 13/5/2016. One of the issues, which was canvassed and discussed during the hearing was as to whether the appellant could prefer a fresh bail application before the trial court in view of filing of a charge-sheet by NIA during the pendency

of this appeal before this court.

6. During the hearing, broadly, the distinctive features of the investigation carried out by the ATS and the NIA in their respective charge-sheet were high-lighted by the learned counsel. Learned Spl. P. P. submitted that in view of charge-sheet filed by NIA, the accusation and charges levelled against the appellant under the MCOC Act have now been withdrawn. We find that this is a material development emerging out in the charge-sheet filed by NIA. This could also be termed as material change in circumstance. During the course of hearing, learned counsel for the appellant referred to the judgment delivered by the Apex Court in Special Leave Petitions (Cri) filed by appellant – Prasad Shrikant Purohit vs. State of Maharashtra and anr. reported in **(2015) 7 SCC 440**. In para 99, the Apex Court observed as under :-

“99. Since the occurrence is of the year 2008 and nearly seven years have gone by, it is imperative that the Special Court commence the trial at the earliest and conclude the same expeditiously. We direct the prosecuting agency to ensure that the necessary evidence i.e. oral, documentary as well as other form of evidence placed before the Court to enable the

Special Court to commence the trial early and conclude the same expeditiously. It is stated that no officer has been posted for the Special Court as on date. We, therefore, request the Chief Justice of the High Court of Bombay to pass appropriate orders either for posting these cases before a learned Judge by way of special order or appoint a Presiding Officer exclusively for deciding these cases in order to ensure speedy trial. We also direct the Presiding Officer of the Special Court to dispose of the bail applications expeditiously, preferably within one month from the date of his/her assumption of office as Special Judge. The Registry is directed to transmit the records forthwith”.

7. It is informed to the court that some of the accused have preferred fresh bail applications after filing of charge-sheet by NIA. Taking into consideration the facts and the attending circumstances and the subsequent development, which have taken place, we are of the opinion that the appellant is entitled to file a fresh bail application before the Special Judge now. Learned counsel appearing for the appellant submitted that the fresh bail application, which the appellant would be preferring, shall not be kept pending for a long time for whatsoever reasons, as according to the learned counsel, the appellant is behind the bar since last more than seven and half years without trial. It was submitted that the

NIA took near about six years to complete the investigation. Learned Spl. P. P. submitted that the entire blame cannot be shifted on NIA for consuming this much of time for conducting investigation. One of the reasons, according to the learned Spl. P. P., is that the SLPs were filed and the original record was called by the Apex Court in the meantime. We need not address these issues and express any opinion on the contentions raised in this regard.

8. We grant liberty to the appellant to file a fresh bail application before the learned Special Judge in connection with the subject crime. Learned Spl. P. P. assures us that after receipt of the copy of the fresh bail application, necessary reply, if any, would be filed at the earliest. In the peculiar facts and circumstances of the case, we direct the learned Special Judge to dispose of the fresh bail application, in case filed by the appellant, as expeditiously as possible, preferably within six weeks from the date of filing of the said application. The learned Special Judge would deal with the said application without being influenced by the observations made by the learned Special Judge in the earlier order passed on the bail application of the appellant on 12/10/2015, which is impugned in the present appeal.

9. It is clarified that we have not expressed any opinion on the merits of the matter. All issues on merits are kept open.

10. Appeal stands disposed of accordingly.

(P. D. NAIK, J.)

(NARESH H. PATIL,J.)