

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL BAIL APPLICATION NO. 2018 OF 2015

Virendra Ajay Naidu	...	Applicant
vs.		
The State of Maharashtra	...	Respondent

Mr. Aniket Vagal i/b. Mr. Ramprasad V. Gupta, Advocate for the applicant.
Ms. A.A.Mane, APP, for the State.
Shri P.R. Pawar, Deputy Commissioner of Police, Headquarter, Thane, present.
Shri M.L.Zodge, API, Thane Headquarter present.

CORAM: SMT. SADHANA S.JADHAV, J.
DATE : 20th April, 2016.

P.C.

Pursuant to the directions given by this Court in Criminal Application No.214 of 2014, the learned APP Mrs. Mane has placed on record a communication to the Home Secretary, Home Department, State of Maharashtra by the Deputy Commissioner of Police, Thane City.

2. In the very opening paragraph, the communication reads that in important cases, where the accused are languishing in jail without being produced for the purpose of framing of charge or recording of evidence, it is necessary to take effective steps. It is clarified that the question is not just of important cases or important accused. This reflects upon the

fundamental right of every accused to have an expeditious trial. It cannot be delayed on administrative grounds such as lack of police escort. Mrs. Mane has orally submitted that there used to be communication gap between the jail authorities and the administrative authorities and therefore, the accused could not be produced before the Court on the scheduled date. It is stated in the communication that a joint meeting was attended by the Superintendent of Jail Authorities and Kalyan Central Prison, Thane Central Prison and the DCP of Thane Zone. In the said paragraph, there is a reference to important accused persons As far as accused are concerned, there is no question of giving any privilege to any particular accused or the case. It is the bounden duty of the police administration to see that there is an effective communication between the jail authorities and the police administration to see that all the accused, irrespective of the fact whether the accused are important or the case is important shall be produced before the Court on the scheduled dates.

3. Non-production of the accused, who are in custody, also reflects upon the administration of the Sessions Court as the trials are fixed on a particular date and they have to be adjourned due to absence of the accused as they are not produced.

4. **In Husainara Khatoon and others vs. Home Secretary, State of Bihar AIR 1979 SC 1369**, the Hon'ble Apex Court held that the State cannot avoid its Constitutional obligation to provide speedy trial to the accused by pleading financial or administrative inability. The State is under a Constitutional mandate to ensure speedy trial and whatever is necessary for this purpose, has to be done by the State.

5. The learned APP, upon instructions from API M.L.Zodge, from Headquarter-2 submits that it is decided in the said meeting dated 28.3.2016, that a Court clerk has been appointed and necessary steps have been taken to see that the trials are not delayed for want of production of accused. It is expected that this is not a temporary arrangement pursuant to the directions given by this Court in Criminal Application-No.214 of 2014.

6. The Commissioner of Police, Mumbai as well as the Commissioner of Police, Thane shall personally supervise as to whether the said decision is being followed regularly, in **all cases**, where the accused are languishing in jail without trial. The learned APP shall file an affidavit of the Commissioner of Police, Mumbai, as well as the Commissioner of

Police, Thane. to that effect by 5th May, 2016.

7. The report dated 18.4.2016 is hereby taken on record and marked “X” for the purpose of identification.

8. This is an application under Section 439 of Cr.P.C. The applicant herein is arrested on 21.10.2013 in Crime No.194 of 2014 registered at Shivaji Nagar Police Station on 17.10.2014. The previous application seeking enlargement on bail was withdrawn before this Court on 5.8.2015 i.e. after filing of the charge-sheet on 17.1.2015. Initially, this Court has considered the application for bail mainly on the ground that the learned counsel for the applicant had demonstrated before this Court that despite the fact that this Court had requested the learned Sessions Court to make an endeavour to expedite the trial as far as possible. The trial could not be expedited since the accused was not produced before the Court on the scheduled date. The applicant was produced before the Court on 28.3.2016. On that day, the learned counsel appearing for the accused before the trial Court had filed an application which is marked at Exhibit 14 contending therein that an application under Section 439 of Cr.P.C. Is pending before the High Court and that charge should not be framed till the application is decided.

9. It is a matter of record that the application has been filed on 9.10.2015. The learned counsel for the applicant has therefore chosen to argue the application on merits. The learned counsel for the applicant submits that this is a case of circumstantial evidence and that there is no direct evidence as such against the accused. It is a case of prosecution that on 17.10.2014, at about 4.20 p.m., the present accused along with a juvenile in conflict with law had been to the house of Vivek Harishchandra Umrotkar and had caused the homicidal death of his wife Snehal after entering into the house on the false pretext of seeking her son's cellphone number.

10. The gist of the charge sheet would reveal that the present applicant along with original accused no.3 and a juvenile in conflict with law had hatched a conspiracy in the basement of the said building. There are several witnesses to that effect. That original accused No.3 had taken guidance from one Sureshkumar Madanmohan Singh as to how he should commit the theft. That original accused Nos. 1 and 3 had initially attempted to commit theft in a similar matter in Royal Park A-6, first floor. That accused No.1 entered into the house of the deceased and asked her for cellphone number of Aditya i.e. son of the deceased and thereafter they had committed theft and caused homicidal death of Snehal Umrotkar. The

compilation of the charge-sheet would show that there is a recovery at the instance of the accused persons and that the accused are passing over the blame on each other. That the present applicant had made an extra-judicial confession before his friend Siddhesh Mahesh Bane.

11. The learned counsel for the applicant submits that the recovery of the articles has been foisted upon the accused persons and that recovery is not conducted in accordance with law. The learned counsel for the applicant further submits that there are several lacunas in the investigation and that the accused deserves to be enlarged on bail on the said ground. According to the learned APP, the accused is not entitled to be enlarged on bail.

The application being sans merit, stands rejected.

(SMT.SADHANA S.JADHAV, J.)