

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE SIDE JURISDICTION
CRIMINAL BAIL APPLICATION NO. 1471 OF 2016

Nazir Sardar Khan

.....Applicant

V/s.

The State of Maharashtra

....Respondent

Mr. Bhavesh Thakur i/b Mr. Rahul Arote Advocate for Applicant.

Ms. Veera Shinde APP for the State.

CORAM : SMT. SADHANA S. JADHAV, J.

DATED : 13th FEBRUARY, 2017.

PC :

1) Heard. The learned counsel for the applicant vehemently submits that in the present case, i.e. Sessions Case No. 203 of 2013, by an order dated 30/01/2015, this Court (Coram: P.D. Kode, J.) had granted liberty to the applicant to renew the prayer for bail in the eventuality that the trial is not concluded by the end of June 2015. The learned Sessions Judge had then sent a communication to the High Court requesting extension of time which was granted by Hon'ble Justice A. S. Gadkari on 24/11/2015 and the trial was extended for 6 months. The learned counsel for the applicant submits that till today, only 3 witnesses have been examined and the trial is proceeding at a

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snail's pace and therefore applicant is praying for enlargement on bail. Once again it is noticed that the trial is being protracted as accused are not being produced before the Court on the stipulated dates. Jail Authorities have not sent the accused on the stipulated dates of trial and the justice delivery system is collapsing because of the same as trials are protracted.

2) The learned counsel for the applicant submits that justice delayed is justice denied. It is true that there is huge pendency before the Sessions Courts and most of the delay in imparting justice can be attributed to the jail authorities. It is seen from the Rozanama that on 15/11/2016, the learned Sessions Court observed that Advocate for accused have filed application for accused nos. 2 & 4 to direct the Superintendent of Police, Taloja Jail to transfer the accused to Taloja Jail from Arthur Road Jail as they are not being produced before the Court since last several dates. There are reports on records of Superintendent of Taloja Jail why the above said accused are transferred from Taloja Jail. The case is made time bound and required to be decided at the earliest. Due to non-production of accused from Taloja Jail, trial is prolonging. Thus, the concerned jail authority is directed to transfer the accused to Arthur road Jail or see that those accused are produced in the court

on each date by calling necessary police escort from concerned office.

3) On 15/11/2016, evidence of P.W. 2 was recorded through video conference at 1.35. The examination-in-chief as well as cross-examination was completed. On 24/11/2016 also, accused were not produced before the Court. On 08/12/2016 as well as 20/12/2016 also, accused were not produced before the Court. On 08/12/2016 as well as on 20/12/2016 also, accused were not produced, similarly on 06/01/2017, accused nos. 1 & 3 were not produced from Thane Jail. Besides protraction of trials, it is harassment to the witnesses also as they have attended each and every date and wasted their time, sometime even losing their daily wages for the said day. Such practices by the jail authorities as well as the department has been deprecated for the last three years. This Court (Coram: Smt. Sadhana S. Jadhav, J.) had also taken Judicial note of this fact and brought it to the notice of the Commissioner of Police, Mumbai and Thane time and again about the lapses on the part of jail authorities. However, it appears that they do not pay any heed to the orders of the Court or to the procedure of trials and justice delivery system.

4) The learned APP submits that in Criminal Public Interest Litigation No. 8 of 2011, the Hon'ble Division Bench of this Court

(Coram: Naresh H. Patil & Prakash D. Naik, JJ) vide order dated 30/08/2016 had directed the State to make submissions on the issues of :

- “a)
- b) *Assignment of escort officers/constables for presenting prisoners before the court for various purposes, including remand, attendance during trial etc. and assigned vehicles for the said purposes.*
- c) *Data regarding delay in serving summons, notices to accused and witnesses in the criminal cases by the police.*
- d) *Data regarding delay in conducting trial due to want of service of summons on prosecution witnesses by police”.*

The Hon'ble Division Bench vide order dated 21/09/2016 has observed that:

“5. *Learned Amicus Curiae Mr. Nitin Pradhan submitted that in accordance with the provisions of Cr.P.C. and in exercise of discretion of a Judge, the prisoner, if directed, shall have to be produced before the court. In every situation, video conferencing inquiry with the prisoner by the court is not possible. Such distinction will have to be borne in mind by the parties, according to the learned Amicus Curiae.*

6. *Learned APP would take instructions as to whether concerned department of the State would consider directing the Investigation Officers or the officers presently in-charge of the concerned police stations to attend the sessions trial at least when the important witnesses are being examined and also to monitor whether summons*

are duly served on material witnesses and they are produced before the court on the given dates”.

Vide order dated 14/10/2016, Criminal Public Interest Litigation No. 8 of 2011 was to be listed on 23/11/2016.

5) It is clear that despite several observations and instructions it appears that there is no compliance and the trials are being protracted for want of any action on the part of the concerned department.

6) Once the trial is commenced and the witnesses are being examined, this Court is not inclined to consider the application for enlargement on bail and therefore, accused are in incarceration without trial for years together. In the interregnum, witnesses turn hostile or lose their interest or change their place of residence. All these aspects result into the acquittal of the accused.

7) In the present case, the learned Sessions Court shall make every endeavour to conclude the recording of evidence as far as possible within 6 months from the date of this order. The learned Sessions Court shall not grant unwarranted adjournments to the prosecution. The learned Sessions Court shall ensure that the accused are produced on the stipulated dates. Upon failure, the learned Sessions Court may take appropriate action.

- 8) Application stands disposed of.
- 9) Office to communicate this order to the Commissioner of Police, Mumbai, Thane and also Secretary, Home Department, Government of Maharashtra as well as Secretary, Law and Judiciary Department, Government of Maharashtra for compliance.

(SMT. SADHANA S. JADHAV, J.)