

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

B.A. No. 755/2017

(FIROZ KHAN SHOUKAT ALI -vs- THE STATE OF MAHARASHTRA THROUGH POLICE
STATION OFFICER, POLICE STATION WARDHA CITY)

Office notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.

Court's or Judge's Orders.

Shri R.M. Daga, counsel for applicant.
Ms. T.H. Udeshi, APP for respondent.

CORAM: S.B. SHUKRE, J.

DATE : AUGUST 21, 2017.

Heard Shri R.M. Daga, learned counsel for the applicant and Ms. T.H. Udeshi, learned APP for the State. Perused the charge sheet and reply of the prosecution.

2] On 18th July, 2016, this Court allowed the applicant to withdraw his bail application with liberty to file a fresh bail application before the trial court, if the trial was not commenced, within three months from the date of the order.

3] The applicant filed a fresh application for grant of bail on 18/04/2017, which was rejected by the trial court on 08/05/2017.

4] On going through the order of the trial court, one can see that the last witness of the prosecution

examined in this case by the trial court, appeared before the trial court on 21/01/2017 and on the same day his evidence was recorded. It is further seen from this order that after 21/01/2017, the trial of the case against this applicant is stand still. No progress, whatsoever, is being made in conclusion of the trial of the case against this applicant. The order dated 08/05/2017 takes a note of the fact that some of the prosecution witnesses are from the State of Uttar Pradesh, and therefore, witness summons could not be served upon them. It also makes a mention that this applicant is resident of the State of Uttar Pradesh and then it goes on to find that as the trial has already commenced, the prosecution can be directed to expedite the trial. It expresses an apprehension that there is every chance of this applicant not making himself available for the trial, if he released on bail.

5] Today, we are in the month of August-2017 and this month is also coming to an end in about 10 days. The reply of the prosecution does not show as to whether or not what was put into black and white by the trial court was really translated into action by the trial court. The trial court has noted in the order dated 08/05/2017 that prosecution could be directed to expedite the trial. But the fact remains that nothing has been done to achieve this goal in reality. Only two witnesses were examined, one of them being the last witness examined in this case on 21/01/2017, and thereafter, there is a total silence from the side of the prosecution and to an extent from that of court as well

in the instant case. If the trial court had directed that the trial be expedited, it ought to have been expedited in the spirit of that order and some concrete steps should have been taken in that regard by the trial court, but that is not the case. The applicant is in jail since 25/01/2016 i.e. for about 19 months. Even the trial did not commence at the earliest, as the charge itself was framed in December-2016, though ideally that should not have been the case when this court allowed the applicant to withdraw his previous bail application on 18/07/2016. In fact, according to this order, the trial was expected to be commenced on or before November-2016. The trial, however, commenced in December-2016 and it has commenced in a manner that it's end is nowhere in site. It is informed by learned counsel for the applicant that the other co-accused being juveniles are already on bail.

6] In these circumstances, I am of the view that there has been a delay in conclusion of the trial against this applicant and when this is considered in the backdrop of nature of evidence available against the applicant, which appears to be prima-facie weak and the nature of the charge against this applicant being what it is, I do not find that any purpose would be served by keeping the applicant in jail for any longer period of time in as much as these facts constitute change in circumstances. Learned counsel for applicant, on instructions, submits, when asked by this court, the applicant is willing to furnish local surety.

7] Application is, therefore, allowed.

8] It is directed that the applicant be released on bail on his furnishing P.R. Bond of Rs.50,000/-, together with one solvent surety in the like amount, who shall be from District Wardha, on conditions that, (i) the applicant shall regularly attend the dates fixed in the case by the Sessions Court, (ii) shall co-operate with the Sessions Court for the speedy disposal of the case and (iii) shall not influence in any manner the prosecution witnesses.

JUDGE

Yenurkar