

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

BAIL APPLICATION NO.2917 OF 2017

Kishore Waman Mhatre Applicant

Vs.

The State of Maharashtra Respondent

Mr. Nitin Sejpal for the Applicant

Mr. Y.M. Nakhwa, APP for the State-Respondent.

Coram : Smt. Sadhana S. Jadhav, J.

Date : 23rd January, 2018

P.C.:

1 Heard the learned counsel for the applicant and the learned APP. Perused the papers of investigation.

2 This is an application under Section 439 Code of Criminal Procedure. The applicant is an accused in Sessions Case No.51 of 2016 pending before the Additional Sessions Judge, Mangaon. It is a matter of record that the first application under Section 439 Cr.PC., the learned counsel for the applicant has sought liberty to withdraw the application since the charge-sheet was to be filed within two weeks. This Court had granted liberty. The subsequent application

was heard on 5th December 2016. Learned counsel for the applicant had once again sought liberty to withdraw the application, which was granted in the interest of justice. This Court had requested the learned Sessions Judge to make an endeavour to conclude recording of evidence as far as possible within nine months from the date of framing of charge.

3 Learned counsel for the applicant submits that in the present case the charge was framed on 1st March, 2017. The examination-in-chief of the prosecutrix was concluded on 13th September 2017 and the cross-examination had commenced. Learned counsel for the applicant vehemently submits that after 13th September 2017, the trial is moving at a snail's pace causing great prejudice to the applicant. It appears that on 8th September 2017, the mother of the prosecutrix had filed an application seeking exemption from appearance on the ground that the prosecutrix was ill. Thereafter the trial has been protracted at the instance of the prosecutrix. Learned counsel for the applicant vehemently submits that the applicant is in custody and the prosecutrix is seeking an adjournment on frivolous grounds.

4 In fact, it would be incumbent upon the learned Sessions Judge to clearly indicate that the trial cannot be protracted to eternity for want of prosecutrix to enter into the witness box for the

purpose of cross-examination. Learned Sessions Judge shall pass coercive orders against the prosecution and not grant unwarranted adjournments to the prosecution. Learned Sessions Judge shall secure presence of the prosecutrix for the purpose of cross-examination and in the meanwhile shall proceed to record evidence of the other witnesses and continue with the trial more so, the applicant is in custody.

5 Registrar (Judicial-I), of this Court shall request the learned Sessions Judge to comply with the orders dated 5th December 2016.

6 The application stands disposed of without going into the merits of the matter and on the ground that the recording of evidence has commenced.

7 The learned Sessions Judge shall now make every endeavour to conclude the trial within six months from the date of receipt of this order.

(Smt. Sadhana S. Jadhav, J)