

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

BAIL APPLICATION NO.2938 OF 2017

Yogesh Praful Ponde		Applicant
<u>Vs.</u>		
The State of Maharashtra		Respondent

Mr. Abhishek Yende i/by Mr. Prakash L. Shetty for the Applicant.
Mr. Vidya Kastle, Special P.P. a/w Mr. S.S. Pednekar, APP for the State.

Coram : Smt. Sadhana S. Jadhav, J.
Date : 18th June, 2018

P.C.:

1 Heard. This is an application under Section 439 of Cr.P.C. The earlier application filed by the present applicant being No.1520 of 2016 was withdrawn before this court on 23rd January 2017 only after the Court was not inclined to allow the application. The matter was heard at length at that stage also. This Court had requested the learned Sessions Court seized with Sessions Case No.543 of 2015 and 88 of 2016 to expedite the trial as far as possible and shall not give any adjournment either to the prosecution or to the accused, who are enlarged on bail.

2 The present application is filed on 18th December 2017 mainly on the ground that there is delay in trial and the prosecution has examined only three witnesses till now. Learned counsel for the applicant vehemently submits that the another change in the circumstance is that after framing of the charge and even before the application was withdrawn before this Court (Smt. Sadhana S. Jadhav, J.), three accused were enlarged on bail and original accused no.6 is enlarged on bail on 18th September 2017 i.e. after the commencement of the trial. Similarly, accused no. 7 is also enlarged on bail subsequently. It is further submitted that this Court (Shri. Justice P.D. Naik) by an order dated 21st August, 2017 has been pleased to allow the criminal application thereby permitting the applicant Suresh who is on bail to file an application under Section 91 of Cr.P.C. restricting his prayer to prayer clause (b) to call for the C.D.R. The said application has been allowed by an order dated 6th December 2017. Upon considering the papers of investigation, it is clear that as far as the evidence in the form of C.D.R. is concerned, the applicant would not be concerned by the same as the applicant

was the member of the raiding party wherein it is alleged that they had taken the complainant into the custody.

3 Learned APP, who also happens to be the prosecutor in the trial court has submitted that there is delay in proceeding with the trial for the simple reason that the accused who are enlarged on bail files an application seeking exemption which is granted and thereafter the applications are filed to recall the witnesses who have already been examined in their absence.

4 In fact in the order dated 23rd January 2017, this Court had made it clear that no adjournments shall be granted either to the prosecution or to the accused, who are enlarged on bail. The trial is delayed and simultaneously the applications under Section 439 Cr.P.C. are filed before the Sessions Court as well as the High Court on the ground of parity. Today the principal reason for seeking enlargement on bail is delay in trial. It is the matter of record that the delay is being caused at the behest of the accused by one or the

other. Learned Sessions Court shall not grant any exemption application filed by the accused persons and shall secure their presence by issuing non-bailable warrants and make every endeavour to conclude recording of evidence as far as possible by 30th December 2018.

The application stands rejected.

(*Smt. Sadhana S. Jadhav, J*)