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

**CRIMINAL APPLICATION NO. 549 OF 2018
WITH
CRIMINAL APPLICATION NO. 459 OF 2018
IN
WRIT PETITION NO. 4617 OF 2018**

Jawahar Chellaram Bijlani @ Suresh Bijlani ... Petitioner
V/s.
State of Maharashtra ... Respondent

Mr. Vikram Chaudhary, Senior Advocate with Ms. Neha Ahuja and
Ms. Aishwarya Kantawala i/b. Sebin Michael Joseph for the
Applicant / Petitioner.

Mrs. A.S. Pai, Special P.P. for Respondent – State.

Mr. Himanshu Kode, with Mr. Ameya Lambhate for the Intervenor
in APPW No. 459 of 2018.

**CORAM: B.R. GAVAI, &
RIYAZ I. CHAGLA, JJ.
DATE: 18TH DECEMBER, 2018.**

PC:-

1. The present Writ Petition has been filed by the Petitioner for
the following reliefs :-

***“(i) Read down, deliberate upon and expound the
ambit and scope of Section 309 Cr.P.C. so as to
harmonize the same with the right of the accused
to a speedy trial which is a necessary concomitant
of Article 21 of the Constitution of India;***

***(ii) Issue directions to the trial court at Thane in
case FIR No.67 dated 16th February, 2013
registered under Sections 302, 201, 120-B of IPC
and Section 3(25), 3(27) and 4(25) of the Arms Act
at P.S. Vashi, Navi Mumbai, to forthwith comply
with the order dated 13th October, 2017 passed by***

the Hon'ble Supreme Court in SLP (Criminal) Diary No. 27220 of 2017 filed by the Co-accused namely, Anurag Shivmohan Garg, and for that purpose to direct the Trial Court to first examine forthwith on day-to-day basis, all star prosecution witnesses (total 11) mentioned in the affidavit dated 2nd April, 2018 filed by the Investigating Officer to oppose petitioner's Criminal Bail Application No.1493 of 2017;

(iii) To permit the Petitioner to renew his Bail Application before the Trial Court after competition of examination of these eleven star prosecution witnesses, for disposal thereof by the Trial Court within one week thereafter as per general directions of Hon'ble Supreme Court in Hussain's case."

2. Since, the learned counsel appearing on behalf of the Petitioner submits that, the Hon'ble Apex Court in the application filed by Mr. Anurag Shivmohan Garg has declined to entertain the Special Leave Petition and while doing so, the Hon'ble Apex Court has directed the trial to be commenced forthwith and granted leave to the Petitioner to approach the learned Trial Court for grant of bail, if charges are framed and after the main prosecution witnesses are examined.

3. The Division Bench of this Court in its earlier order directed the prosecution to file an Affidavit giving the details about the main witnesses. In response to the said directions the Affidavit has been filed by one Shri Vinayak B. Mer stating therein the reason that the prosecution intends to examine 70 witnesses.

4. Smt. Pai, the learned Special P.P. for the Respondent – State submits that, since the case is based on circumstantial evidence, the evidence of all the witnesses would be material. She, therefore, submits that it is not possible to pinpoint as to which witnesses are main witnesses and as to which witnesses are not main witnesses.

5. In so far as the prayer clause (i) is concerned no doubt that the accused are entitled for speedy trial and specially when he is behind the bar for a prolonged period.

6. In so far as the prayer clause (ii) is concerned, the Petitioner has approached this Court for directing the learned Trial Court to first examine 11 witnesses which were mentioned in the Affidavit dated 2nd April, 2018.

7. We are of the considered view that as to in what manner the prosecution is to be conducted is a sole prerogative of the prosecutor. We find that any direction as sought in prayer (ii) would affect right of the prosecution to prosecute the case in the manner it proposes. But however, we find that the prayer for speedy disposal can be granted, if the learned Trial Judge is directed to conduct trial on day today basis.

8. Taking into consideration the fact that the Applicant is behind the bar since long, we direct the learned Trial Judge to conduct the trial on day today basis.

9. In so far prayer (iii) is concerned, the Applicant would be at liberty to apply for grant of bail as and when according to the Petitioner the situation as provided in the order passed by the Apex Court dated 13th October, 2017 arises. Needless to state that on such application being made, the same shall be disposed of as expeditiously as possible.

(RIYAZ I. CHAGLA J.)

(B.R. GAVAI,J.)