

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

CRIMINAL APPLICATION (BA) 546 OF 2018

(Shobit s/o. Pramod Bhamrotwar...vs.. State, thr PSO, PS Ambazari, Dist Nagpur)

*Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's Orders.*

Court's or Judge's orders.

Shri S.K. Mishra, senior counsel for applicant.
Shri S.S. Doifode, APP for State / non-applicant.

CORAM: ROHIT B. DEO, J.

DATE: 3rd July, 2018.

Heard Shri S.K. Mishra, learned senior counsel for the applicant and Shri S.S. Doifode, learned APP for the State.

2 The applicant, who is a student of relatively tender age of 19 years, is in custody since 21.11.2016 in connection with Crime 281 of 2016 for offences punishable under section 143, 145, 147, 148, 302, 307, 427 of the Indian Penal Code and section 135 of the Maharashtra Police Act.

3 The applicant moved an application for bail which this Court disposed of by order dated 6.12.2017 which reads thus:

“After arguing for some time, the learned Senior advocate, on instructions, seeks permission to withdraw the application with liberty to move fresh application after three months if the trial does not commence.

The application is disposed as withdrawn

with liberty as prayed for.

The learned Sessions Judge is reminded of the judgment passed by the Hon'ble Supreme Court in the case of Hussain and another vs Union of India reported in (2017) 5 SCC 702 and it is expected that the Investigating Agency will take steps to see that the trial commences within three months.

The learned advocate for the applicant as well as the learned Additional Public Prosecutor shall point out this order to the learned Sessions Judge on the next date.”

4 Since the trial did not commence within three months, the applicant again moved this Court for bail and the application came to be disposed of by order dated 16.4.2018 which reads thus:

“Heard.

Earlier bail application filed by the applicant is disposed by this Court by order dated 06/12/2017, as withdrawn. This Court granted liberty to the applicant to move fresh application if trial does not commence within three months. Now, this application is filed praying that the nonapplicant be directed to release the applicant on bail as the trial has not commenced, and the coaccused are released on bail.

The application is opposed by the prosecution on the ground that the commencement of the trial is delayed by the accused who are released on bail. The learned Senior Advocate for the applicant has strongly objected to the above submission made on behalf of the prosecution.

A counter case registered vide F.I.R No. 282/2016 is also pending. It is reported that Criminal Writ Petition No. 195/2018 is filed by the complainant on whose report F.I.R. No. 282/2016 is registered and in that writ petition the Division Bench of this Court has stayed the

proceedings of Sessions Trial No. 441/2017.

The learned APP has submitted that the program for Sessions trial might be fixed within a fortnight, next date before the Sessions Court being 20/04/2018.

Considering the facts of the case and after hearing the learned Senior Advocate for the applicant and the learned APP, I find that the applicant has not been able to point out any change in the circumstances on the basis on which the prayer made in the application can be granted.

This application is dismissed however liberty is granted to the applicant to move application after six weeks, if the trial does not commence.”

5 Since the trial did not commence within six weeks, the present application is moved. During the pendency of this application, the trial has commenced and one witness is examined on 18.6.2018.

6 Right to speedy trial is a fundamental right. This Court was not inclined to release the applicant on bail at that stage and therefore sought to strike a balance between the right to speedy trial and the societal interest. It is more than apparent that the concern of this Court is not shared by the prosecuting agency and if this Court may say so even by the trial Court.

7 The detention can not be a pretrial punishment. The applicant like the victim is a student and is of relatively tender age. In view of the earlier orders, this Court would have been justified in releasing the applicant on bail solely

on the ground of delay in trial. However, as a final opportunity to the prosecuting agency, the following order is passed:

- i) The learned trial Court is directed to conclude the trial as expeditiously as possible and in any event within six months from the date this order is brought to its notice.
- ii) If the trial is not concluded for any reason whatsoever, the applicant is permitted to apply for bail on the ground of inordinate delay in the conclusion of the trial and needless to say such application shall be considered by the trial Court in the light of the observations made in this order.
- Iii) With these directions and liberty to the applicant, the application is disposed of.

JUDGE

RSB