

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

CRIMINAL WRIT PETITION NO.2233 OF 2019

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

**WITH
CRIMINAL APPLICATION NO.232 OF 2019
IN
CRIMINAL WRIT PETITION NO.2233 OF 2019**

Sandeep Sunil Kumar ..Intervenor

IN THE MATTER BETWEEN

Jawahar Chellaram Bijalan
@ Suresh Bijlani ..Applicant
V/s.
The State of Maharashtra ..Respondent

Mr.Vikram Chaudhri, Senior Advocate a/w Dr.Sujay Kantawala i/b
Sebin Michael Josphe for the Petitioner.

Mrs. A.S. Pai, APP for the Respondent-State.

Mr.Tanvi Nizam i/b Mr.Ameya Lambhale for the Intervenor.

**CORAM : RANJIT MORE &
SMT.BHARATI H. DANGRE, JJ.**

DATE : 26th APRIL 2019

P.C.

1. Heard Mr.Chaudhri, learned Senior Counsel for the
petitioner and Ms.Pai, learned APP for the Respondent-State.

2. Perused the order dated 18.12.2018 passed in Criminal Application No.549 of 2018 with Criminal Application No.459 of 2018 in Writ Petition No.4617 of 2018. By the said order the Division Bench of this Court directed the Trial Judge to conduct the Trial of the Sessions Case on day to day basis.

3. Mr.Chaudhri, learned Senior Counsel submitted that the hearing of the Sessions Case was held on 68 dates. Out of these 68 days, the Sessions Case was adjourned 48 times on the ground that Special PP is not available. From 18.12.2018, till now only 16 witnesses are examined. He heavily relied upon the decision of the Apex Court in Criminal Appeal No.1329 of 2018 which is annexed at Exhibit-B, Page 155. The learned Special PP Ms.Pai do not dispute that as on 18.12.2018 only 16 witnesses are examined. She however, state that she is not in a position to verify the contentions of the Mr.Chaudhri, learned counsel for the petitioner. She also submitted that the report may be called for from the Trial Court requesting the Presiding Officer to give explanation about the delay.

4. After hearing the matter for some time, Mr.Chaudhri, learned Senior Counsel submit that the liberty may be granted to

the petitioner to prefer an application under Section 231(2) of the Code of Criminal Procedure, 1973 and Section 135 of the Indian Evidence Act and the Trial Court be directed to decide this application in light of the decision of the Apex Court in case of State of Kerala V/s. Rasheed in Criminal Appeal No.1321 of 2018 and order dated 11.03.2019 in Petitions (s) for Special Leave to Appeal (Crl.) No.1264 of 2019. Ms.Pai, has no objection if the said request of Shri.Choudhary is granted.

5. In light of above, we dispose of the petition giving liberty to the petitioner to prefer an application under Section 231(ii) of the Criminal Procedure Code and Section 135 of the Indian Evidence Act and such application should be decided by the trial Court in Sessions of the Trail on its own merit and needless to State, in light of the decision of the Hon'ble Apex Court.

6. It is expressly made clear that all the points and contentions of respective parties are kept open. If the application is preferred within a period of one week, it shall be decided within a period of two weeks.

7. In view of the disposal of the Writ Petition, Criminal

Application No.232 of 2019 do not survive and the same is disposed of accordingly.

(SMT.BHARATI H. DANGRE, J.)

(RANJIT MORE, J.)