

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

WRIT PETITION NO. 3312 OF 2019

Jawahar Chellaram Bijlani @ Suresh BijlaniPetitioner
versus
State of Maharashtra (At the instance of DCB, CID,
Unit-1, Mumbai)Respondent

with

CRIMINAL APPLICATION NO. 344 OF 2019

IN

WRIT PETITION NO.3312 OF 2019

Sandeep Sunil Kumar LahoriyaIntervenor/
Org. Complainant

In the matter of :

Jawahar Chellaram Bijlani @ Suresh BijlaniPetitioner
versus
State of Maharashtra (At the instance of DCB, CID,
Unit-1, Mumbai)Respondent

with

CRIMINAL APPLICATION NO. 347 OF 2019

IN

WRIT PETITION NO.3312 OF 2019

Surjit Singh KalraIntervenor/
Org. Complainant

In the matter of :

Jawahar Chellaram Bijlani @ Suresh BijlaniPetitioner
versus
State of Maharashtra (At the instance of DCB, CID,
Unit-1, Mumbai)Respondent

Mr. Vikram Choudhary, senior counsel along with Dr. Sujay Kantawala
i/b. Mr. Sebin Michael Joseph, advocate for the petitioner.
Mr. Sunny Punamiya i/b. Ms. Anjali Patil, advocate for the
applicant/intervenor in criminal application No. 344 of 2019.
Mr. Himanshu Kode i/b. Mr. P. D. Patil, advocate for the
applicant/intervenor in criminal application No.347 of 2019.
Mrs. Aruna S. Pai, Special Public Prosecutor for the State.

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

DATE OF RESERVATION : **29th JULY, 2019.**

DATE OF PRONOUNCEMENT : **9th AUGUST, 2019.**

P. C. :

1. Heard, Mr. Choudhary, learned senior counsel for the petitioner, Mr. Punamiya and Mr, Kode, learned counsel for the repective intervenors and Mrs.Pai, learned SPP for the State.

2. The petition is filed seeking directions to the Trial Court to forthwith comply with the mandate of the ratio decidendi and guidelines issued by the Hon'ble Apex Court in **State of Kerala versus Rasheed in Criminal Appeal No.1321 of 2018** read with the directions of this Hon'ble Court passed in orders dated 18th December, 2018 and 26th April, 2019 in true spirit and substance. The petitioner is also seeking release on regular bail pending completion of trial as well as seeking interim directions to the Trial Court to examine 9 star prosecution witnesses, out of those 11, who were named in affidavit dated 2nd April, 2018 filed by the Investigating Officer to oppose the petitioner's bail application No.1493 of 2017 in this Court, on day to day basis.

3. On 16th February, 2013, FIR came to be registered as CR.No.1-67 of 2013 for offences punishable under Sections 302, 201,

120B of the Indian Penal Code and Sections 3(25), 3(27) and 4(25) of the Arms Act against the petitioner and others. On 22nd July, 2013, the petitioner surrendered before the Sessions Court at Thane, after dismissal of his applications for Anticipatory Bail. The petitioner, thereafter, filed number of regular bail applications before the Sessions Court, this Court and also the Hon'ble Apex Court. However, the same have been rejected.

4. One – Anurag Garg, co-accused in the subject CR had approached this Court seeking regular bail by filing criminal bail application No.1332 of 2017. However, the same was dismissed on 12th January, 2017. The said co-accused – Anurag Garg challenged the above said order of the High Court dated 12th January, 2017 by filing SLP and this SLP was dismissed on 13th October, 2017 by Hon'ble Apex Court by making following observation:

“ We decline to entertain the present Special Leave Petition. However, we direct the trial to commence forthwith and grant liberty 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.

We expect the aforesaid exercise to be completed with utmost expedition.”

5. Thereafter on 30th October, 2017, the learned Judge, Sessions

Court framed the charges qua the accused including the petitioner. Meanwhile, the petitioner had also filed a fresh bail application before this Court being criminal bail application No.1493 of 2017 which is pending. This bail application is opposed by the prosecution by filing an affidavit dated 2nd April, 2018. In this affidavit, the investigating officer heavily relied upon the deposition of 11 star prosecution witnesses, while alleging apprehension of the petitioner threatening or tampering the witnesses, if released on bail.

6. The petitioner, thereafter, filed criminal writ petition No.4617 of 2018 before this Court for direction to the prosecution to examine all 11 star prosecution witnesses in time bound manner so as to enable him to apply for fresh bail before the Trial Court. On 18th December, 2018, the Court noted the submission of the learned Special Public Prosecutor that since the case is based on circumstantial evidence, the evidence of all the witnesses would be material and, therefore, it is not possible to pinpoint which witnesses are main witnesses and which are are not main witnesses. The Court, taking note of the fact that the petitioner is behind bar since last more than 6 years, directed the Sessions Court to conduct trial on day-to-day basis. The petitioner was also granted liberty to apply for grant of bail as and when according to him the situation as provided in the above referred order of the Apex Court dated 13th October, 2017, arises.

7. Despite above directions dated 18th December, 2018 passed by the Division Bench of this Court, there is no progress in the trial. Therefore, the petitioner again approached this Court for seeking the reliefs stated hereinabove.

8. Mr. Chaudhary, learned senior counsel for the petitioner, gave a chart of Roznama in Sessions Case No.281 of 2013 from 13th October, 2017 i.e. the date on which the charges were framed against the accused in the subject CR. He pointed out that from 13th October, 2017 till 26th July, 2019, there were 145 dates, however, on 93 dates, the Special Public Prosecutor in the Trial Court was absent. He submitted that since the order of this Court passed on 18th December, 2018 directing the Trial Court to conduct day-to-day trial, only 23 witnesses have been examined and the prosecution wants to examine approximately 70 material witnesses. The grievance of Mr. Chaudhary, learned senior counsel for the petitioner, is that the trial is proceeding at a very slow pace and, if this continues, it will take years to examine the material witnesses, thereby depriving the petitioner, the liberty, to apply for bail in terms of the Apex Court order and order of this Court dated 18th December, 2018, passed in criminal writ petition No.4617 of 2018. He also pointed out that though the hearing in the Trial Court is taken on day-to-day basis, the learned Judge is hardly giving any time to the subject case.

9. Mrs. Pai, learned Special Public Prosecutor (SPP) for the State and Mr.Punamiya and Mr.Kode, learned counsel appearing for the intervenors, opposed the petition. Mrs. Pai, learned SPP, does not dispute the absence of learned SPP before the Trial Court on many occasions as contended by the petitioner. However, she submitted that this was due to the fact that earlier father of SPP expired and thereafter he met with an accident. She, however, does not dispute the petitioner's right of expeditious hearing of the trial.

10. We have considered the rival submissions and have also gone through the record of the petition. So far as the relief claimed in prayer (a) is concerned, we are of the opinion that, in the light of the provisions of Article 141 of the Constitution of India, the Trial Court is duty bound to follow the aforementioned decision of the Hon'ble Supreme Court **State of Kerala versus Rasheed in Criminal Appeal No.1321 of 2018.** We also find that by the order dated 26th April, 2019 passed in criminal writ petition No.2233 of 2019, this Court directed the Trial Court to decide the petitioner's application under Section 231(ii) of the Code of Criminal Procedure, 1973, in the light of the decision of the Apex Court in **State of Kerala versus Rasheed in Criminal Appeal No.1321 of 2018.** It is to be noted that the petitioner had on number of occasions approached the Sessions Court, this Court and even the Hon'ble Apex Court. However, bail was not granted to him. In terms of the order of the Division Bench of

this Court passed in writ petition No. 4617 of 2018, the petitioner would be entitled to apply for bail before the Trial Court in the circumstances mentioned in the said order. We, therefore, at this stage, are not inclined to grant bail to the petitioner.

11. As far as day-to-day hearing of the subject sessions case is concerned, we find some substance in the argument advanced by Mr.Chaudhary, learned senior counsel for the petitioner. The record, as stated above, reveals that though day-to-day hearing is ordered, the Trial Court is hardly giving any time to the subject sessions case. We also find that on number of occasions the Special Public Prosecutor was absent. This is evident from the order of the Trial Court dated 24th July, 2019, below pursis filed by accused No.23.

12. The learned Trial Judge in the above referred order has mentioned that his Court is specially designated Court for MCOC cases and being Principal Judge for MCOC cases, his Court has to conduct remand work, as well as other applications and report for cancellation of bail of other accused persons, reports seeking extension of time to file charge-sheets, bail applications, discharge applications in MCOC matters. In addition to that, his Court is having assignment of bail applications of 5 police stations viz. Mumbra, Kapurbawadi, Sanpada, A.P.M.C. and Bhoiwada. The learned Judge has also mentioned that

there are another two cases being M.C.O.C. Case No.10/2010 and Sessions Case No.745/2012 which are being conducted on day-to-day basis pursuant to the orders of the Hon'ble High Court. The learned Judge has also mentioned that he has also been assigned 202 Sessions Cases, 24 Special Cases under A.C.B., 34 cases under POCSO Act etc. The learned Sessions Judge further recorded that out of 60 MCOC cases, some are 5 years old and 26 cases are part-heard for evidence. A grievance is also made that the under trial prisoners in other cases are making similar request of day-to-day hearing. The learned Sessions Judge has also mentioned that he is conducting cases assigned to him even during the recess at the cost of lunch break and some times, even after court hours. Lastly the learned Judge recorded that if the accused has any grievance that the court is not giving priority to their case, then, they can apply for transfer of the case to any other Court or to make any other suitable arrangement, so that sufficient time as per their wish can be given to their case.

13. In the light of above, we find that Court of the learned Sessions Judge is designated Court for MCOC cases and it is overburdened. The learned Judge is taking day-to-day hearing in respect of other cases in pursuance of the orders of the Hon'ble High Court and probably that is the reason why he cannot devote more time to the subject special case.

14. In our considered opinion, the orders of the Apex Court as well as this Court will have to be complied with in letter and spirit. However, at the same time, we also find that the learned Sessions Judge is overburdened. When we asked Mrs. Pai, learned SPP, regarding transfer of the subject case to another Court, she submitted that she has no objection for the same. Mr. Pai also assured the Court about co-operation of the SPP on day-to-day basis in the Trial Court in the subject case.

15. In the above facts and circumstance, though we are not inclined to grant any relief claimed in the petition, however, in exercise of extraordinary jurisdiction conferred upon this Court under Article 226 of the Constitution of India, we are inclined to transfer the Sessions Case No. 281 of 2013 from Shri V. Y. Jadhav, District Judge-4 & Additional Sessions Judge, Thane to Shri R.R.Vaishnav, District Judge-2 & Additional Sessions Judge, Thane.

16. Needless to mention that learned Session Judge, to whom, the subject case is now transferred, shall hear the said case on day-to-day basis and comply with the orders of the Apex Court and this Court from time to time.

17. In light of above, the writ petition stands disposed off.

18. In view of disposal of the writ petition, civil application Nos.344 and 347 of 2019 will not survive for consideration and the same are also disposed off.

[SMT. BHARATI H. DANGRE, J.]

[RANJIT MORE, J.]