

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

CRIMINAL APPLICATION NO.1474 OF 2018

- | | | |
|----|---|--------------------|
| 1] | Kalpesh Ramnath Saroj @ Chhotu |] |
| | Aged about 25 years, |] |
| | Residing at Room Nos.2 and 3, |] |
| | Adarsh Nagar, behind Datta Wadi |] |
| | Ner krishna Grocery Store, |] |
| | Bhim Nagar, Boisar, District Thane |] |
| | |] |
| 2] | Ravindrakumar Ramhatai Yadav |] |
| | Aged about 21 years |] |
| | Residing at Behind Kajari Hotel |] |
| | Marughar Industrial Estate, |] |
| | Gala No. B116, B. P. Road |] |
| | Bhayender, District Thane |] |
| | |] |
| | Both are at present in judicial custody |] |
| | and lodged at Thane Central Prison, Thane |]..... Applicants. |

Versus

The State of Maharashtra	]
At the instance of	]
Senior Inspector of Police,	]
Kashimira Police Station	]
C. R. No.I-229 of 2012	]..... Respondent.

Mr. Nitin Sejpal for the Applicants.
Mr. A R Patil, APP for the Respondent/State.

CORAM	:	S. S. SHINDE, J
Reserved on	:	21 st June 2019
Pronounced on	:	27 th June 2019

JUDGMENT :

1 Rule, with the consent of the learned counsel for the parties made returnable forthwith and heard.

2 The Applicants by this Criminal Application challenge the order dated 18th December 2018 passed by the learned Additional Sessions Judge, Thane by which order the application (Exhibit 137) filed by the prosecution for examining two witnesses came to be allowed and accordingly witness summons came to be issued to Police Hawldar Bhagvat and Police Constable Rupesh Patil. By the impugned order, it is made clear that the I.O. or in-charge of concerned police station is required to record statements of said witnesses under Section 161 of Cr.PC. and supply copy of the same to the defence in advance.

3 The facts giving rise to filing of the present Criminal Application can in brief be stated thus :-

 It is the prosecution case that on 13th August 2012 two unknown persons abducted one Ganesh Ramchandra Shriram and demanded ransom Rs.8 lacs for his release. Initially offence was registered under Sections 363, 385, 387 of the Indian Penal Code vide C.R. No.I-229 of 2012. During investigation dead body of said Ganesh was found and therefore offence under Section 302 of the Indian Penal Code was added. The Applicants were arrested in the present case and produced before the Judicial Magistrate, First Class, Thane who remanded the Applicants initially to police custody and subsequently judicial custody. Upon completion of investigation, the Investigating Officer filed chargesheet against the Applicants in the Court of

JMFC Thane, who in turn committed the case to the Sessions Court for trial which is numbered as Sessions Case No.743 of 2012 and the same is pending before the learned Additional Sessions Judge for final disposal.

4 It appears that the Applicants had earlier preferred an application for bail after filing of the chargesheet before the Sessions court. However, the said bail application was rejected by the Sessions Court. Thereafter Applicant No.1 preferred an application for bail before this High Court vide Criminal Application No.356 of 2013. This Court by an order dated 10th April 2013 rejected the said application. The Applicant No.1 preferred another bail application No.2455 of 2014 before this Court, however, the same was allowed to be withdrawn vide order dated 3rd December 2014. By the said order dated 3rd December 2014 this Court also directed the trial Court to complete the trial as early as possible. The Applicant No.1 thereafter preferred third application for bail No.219 of 2017 before this Court. That bail application was disposed of by this Court vide order dated 20th April 2017 with direction to the concerned Additional Sessions judge to conclude the trial within 6 months from the date of receipt of the said order.

5 It is stated in the present Criminal Application that the charge against the Applicants was framed on 14th December 2014. Plea of the both applicants were recorded separately. The concerned IO was examined by the

prosecution and his evidence was completed on 22nd February 2018. The District Government Pleader filed closure pursis vide Exhibit 125. Thereafter the statements of the Applicants under Section 313 of the Criminal Procedure Code were recorded and the case was adjourned to 27th March 2018. It is stated that on 27th March 2018 the District Government Pleader prayed for time for arguments. Thereafter the DGP has filed application for recalling two prosecution witnesses viz. Nodal officers. The learned Additional Sessions Judge allowed the said application and recalled the said witnesses and re-examined. The case was adjourned from time to time. Thereafter the evidence of the prosecution was completed on 30th August 2018 and accordingly a evidence closure pursis was filed by the learned DGP. Again the statements under Section 313 of the Applicants were recorded on 28th September 2018. Thereafter the case was adjourned for arguments.

6 It is stated that the learned DGP filed present application (Exhibit 137) for examining two more prosecution witnesses, referred herein above. The Applicants opposed the said application on the ground that the said application was nothing but an attempt to fill up lacunae in the prosecution's case and to prolong the trial. The learned Additional Sessions Judge, Thane allowed the said application and permitted the prosecution to examine the said witnesses by order dated 18th December 2018 which is taken exception to by way of this Criminal Application.

7 The learned counsel appearing for the Applicants contended that the applicants are in custody since 7th August 2012 and allowing the application (Exhibit 137) filed by the prosecution for examining two more witness after the evidence closure pursis was filed is nothing but permitting the prosecution to fill up the lacunae in the prosecution case. He also contended that the prosecution has clearly adopted tactics to prolong the trial on one pretext or another. It is the contention of the learned counsel for the Applicants that the concerned Investigation Officer has been examined and both the witnesses were also not cited as prosecution witnesses in the list of witnesses filed by the prosecution. He also submitted that the matter has been expedited and it is a time bound matter, as this Court has already directed to complete the trial within six months. He therefore submitted that the impugned order is unjust, perverse and against the principles of equity and deserves to be quashed and set aside.

8 Per contra, the learned APP submits that the said two witnesses are prime witnesses on the point of incident as well as identification of accused persons as they helped the Investing Officer in catching the accused and the statements of those witnesses were remained to be recorded under Section 161 of the Criminal Procedure Code, and therefore, witnesses summons were not issued to them. He further submitted that for arriving at proper conclusion in

the case, the evidence of the said two witnesses is important and therefore the trial Court has rightly allowed the prosecution to examine the said witnesses. He, therefore, submitted that the Criminal Application may be rejected.

9 It is required to be noted that since 7th August 2012 the Applicants/Accused are in custody. It appears that the charge-sheet against the Applicants has been filed by the Investigation Officer and the trial Court has framed the charge against the Applicants. The Plea of the accused were recorded. The Trial Court thereafter recorded evidence of the prosecution. The learned DGP has filed evidence closure pursis. The Statements of the applicants under Section 313 Cr.P. C. recorded and the case was closed for arguments. It is thereafter that the prosecution has filed an application for recalling their witnesses i.e. nodal officers. The trial court has allowed the said application and the said witnesses i.e. nodal officers were re-examined. It is pertinent to mention at this stage that again the learned AGP filed evidence closure pursis and again the statement of the applicants under Section 313 of Cr.P.C. were recorded and the case was closed for arguments. As indicated herein above, thereafter the present application (Exhibit 137) came to be filed by the prosecution for examining the two witnesses mentioned in the said application. The Investigating Officer has already been examined. It appears tha the I.O. has not recorded the statements of the said witnesses under Section 161 of Cr.P. C. for the reasons best known him, and therefore their

statements are not forming part of charge-sheet. As indicated herein above, the applicants/accused are in jail since August 2012, and the three bail applications filed by the Applicant No.1 before this Court were rejected, however, considering the fact that the applicant is in jail since August 2012, this Court (Coram : A. S. Gadkari, J) by order dated 20th April 2017 made the matter time bound and directed the trial court to conclude the trial within 6 months. The said directions were issued by this Court in April 2017, Earlier also this Court directed the trial court to complete the trial as early as possible. Thereafter in the month of November 2018 the prosecution has filed the present application (Exhibit 137) i.e. after a period of one and half year after the aforesaid direction to conclude the trial within six months were given by this Court. It is in the context of the said directions, the trial court should have concluded the trial in time bound period. If the prosecution has examined the Investigating Officer, no prejudice is going to be caused by not examining the said witnesses. Allowing the application under Section 311 of the prosecution to examine the witnesses whose names are not in the list of witnesses is nothing but prolonging the matter. Considering the fact that the applicants accused are in custody since August 2017 and, also considering the fact the prosecution wants to examine new witnesses, whose names were not listed in the witnesses list, after a long period of time, it is nothing but to prolong the matter which is time bound. The impugned order dated 18th December 2018 is required to be quashed and set aside.

10 In the result, the impugned order dated 18th December 2018 passed by the learned Additional Sessions Judge, Thane allowing the Application (Exhibit 37) in Sessions Case No.743 of 2012 is quashed and set aside. The concerned learned Additional Sessions Judge, Thane is directed to strictly adhere to the directions given by this Court (Coram : A.S.Gadkari, J,) vide order dated 20th April 2017 in Bail Application No.219 of 2017 and conclude the trial forthwith. This Criminal Application is accordingly allowed. The Rule is made absolute to the aforesaid extent.

[S. S. SHINDE , J]