

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL WRIT PETITION NO.2010 OF 2019

Sandip s/o Shantaram Gaikwad
Age: 19 Yrs., occu. Nil
R/o Gavandgaon, Tq. Yeola,
District Nashik

= **PETITIONER**
(Orig.Accused No.2)

VERSUS

The State of Maharashtra
Through its Kopargaon Police
Station, Tq. Kopargaon,
District Ahmednagar.

= **RESPONDENT**

Rashmi S.Kulkarni & Adv.Monali P.Patil, Advocates
for Petitioner;

Mr.AA Jagatkar, APP for Respondent-State

CORAM : SMT.VIBHA KANKANWADI,J.

DATE : 5th February,2020.

ORAL JUDGMENT

1. Rule. Rule is made returnable forthwith
by consent of learned Advocate for the parties.

2. Present petition has been filed by
original accused No.2 for issuing directions to
learned Additional Sessions Judge, Kopargaon to
decide Sessions Case No.51/2017 within three
months.

3. The present petitioner (original accused No.2) is facing the said trial for the offences punishable under Sections 394, 395, 397, 504, 506 read with 34 of Indian Penal Code and Sections 3 and 5 punishable under section 25 of Indian Arms Act. Charge sheet has been filed against in all eight accused persons. Present petitioner was arrested and is in jail since 28.3.2017, waiting for his trial and only the charge has been framed by the learned Sessions Judge on 9.4.2018.

4. Heard learned Advocate Rashmi Kulkarni for the petitioner and learned APP Mr. AA Jagatkar for Respondent-State.

5. It was submitted on behalf of the petitioner that, the Hon'ble Supreme Court has, time and again, reiterated that accused has right to get speedy trial and it is the part of the fundamental right to life and liberty enshrined in Article 21 of the Constitution of India. The petitioner is waiting for his trial and perusal of the Roznama would show that the prosecution has not

made much progress from 23.4.2018, i.e. after the charge was framed, till today. The only request that the petitioner is making is, the learned Trial court may be directed to decide the Sessions Case within time frame. The petitioner is presently shown aged 23 years in the charge sheet and, therefore, with the request of expediting the trial, no more prayer the petitioner intends to make.

6. Status report from the concerned court was called. It appears that the learned Judge has wrongly mentioned that the charge was framed against accused Nos.1 to 6 on 26.3.2018; whereas copy of the Roznama shows that it was framed at Exhibit-14 on 9.4.2018. It was stated that the charge sheet has been filed against some of the accused under Section 299 of Cr.P.C., i.e. accused No.7 and then it is stated that accused No.8 is absconding. Non-bailable warrant has been issued against him and notice to surety has also been issued. Reports of the Non-bailable warrant as well as notice to surety are awaited. It is also stated that if presence of the accused is not

secured in couple of months, proclamation would be issued and the trial will be separated in respect of remaining accused persons, against whom the charge is framed. It was also stated that it will take around 6 to 9 months, as there are good number of civil and criminal cases on the file of the said court. The copy of the charge sheet shows that the charge sheet was filed as against accused No.7 under Section 299 of Cr.P.C. and when the order of committal has been made by the learned JMFC, Kopargaon on 30.11.2017, at that time also, accused No.8 was absconding or was not present. He could not be traced out in spite of issuance of summons and Non-bailable warrant. Even the proclamation order was passed against accused No.8 on 26.9.2017 and the report has been filed at Exh.27. Thereafter, attachment warrant was also issued under Section 83 of Cr.P.C. to accused No.8 and the office copy is stated to be at Exh.28. Therefore, when already the said procedure has been undergone in respect of accused No.8, the learned Additional Sessions Judge can rely upon the same. When once the proclamation is issued, there was no necessity for issuing Non-bailable warrant again for securing

presence of accused No.8. The another fact that is required to be noted is that, charge was framed by the predecessor of the present Presiding Officer. But, thereafter, since 31.10.2018, the present Presiding Officer is looking after the Sessions Case. The warrant has been issued against accused No.8 only on 13.6.2019. The Roznama is silent as to why immediately from 31.10.2018, no such order was passed for securing the presence of accused No.8. The Roznama, in fact, discloses that the prosecutor has not taken steps for bringing the witnesses, i.e. for hearing and the matter was, in fact, shown to be adjourned from time to time for recording evidence. Now, as per the status report and the Roznama, it appears that the learned Judge is waiting for the report in respect of NBW as well as notice to surety. All those steps were already taken by the learned Magistrate when he had committed the case for trial. Even the proclamation as well as attachment warrant have also been issued by him. Under such circumstance, it is not necessary for the learned Additional Sessions Judge to wait for the reports. He may proceed with the matter.

7. Definitely, in catena of judgments, the Hon'ble Supreme Court has stated that the accused has right to speedy trial and the speedy trial is one of the fundamental rights of the accused as enshrined under Article 21 of the Constitution of India.

8. When the matter can proceed as the charge has been framed long back in this matter on 9.4.2018 and since then, it was shown by the concerned court that the matter is for recording of evidence, then the learned Judge is required to be directed to proceed with recording of evidence and, therefore, further directions are required to be given as follows.

9. The learned Additional Sessions Judge, dealing with Sessions Case No.51/2017, is hereby directed to expedite trial of the Sessions Case and he shall dispose it of as early as possible within a period of six months from the date of receipt of the writ of this Court.

10. The writ petition stands allowed in
aforesaid terms.

(SMT. VIBHA KANKANWADI, J.)

BDV