

IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL WRIT PETITION NO. 23 OF 2020

KISHORE KAKUMAL KESWANI., ... Petitioner

Versus

STATE, THR. THE PUBLIC PROSECUTOR
AND 2 ORS., ... Respondents

Shri Chaitanya Padgaonkar, Advocate for the Petitioner.

Shri Pravin N. Faldessai, Addl. Public Prosecutor for the
Respondent Nos.1 & 2.

Shri Damodar Dhond, Advocate for the Respondent No.3.

Coram:- NUTAN D. SARDESSAI, J.

Date:- 9th March, 2020

P.C.:

It has been the contention of Shri C. Padgaonkar, learned Advocate that the petitioner was the complainant who had set the law in motion and based thereon the respondent no.3 was later on arraigned as an accused in the charge sheet. He placed reliance in Rekha Murarka Vs. State of West Bengal and another, {2019 SCC Online SC 1495}, to buttress his contention that the petitioner as the intervenor could well be heard orally while participating in the proceedings before the learned Addl. Sessions Judge. He pointed out to the chequered history of the bail application and submitted that the same be heard expeditiously unlike the court record which shows that when the

matter was being heard the same was being adjourned on one ground or the other without any basis.

2. Shri Pravin Faldessai, learned Addl. Public Prosecutor submitted that the petitioner was in possession of the documents which he had still not parted with till day and that there was no independent right of the petitioner to place the same on record without taking the investigating agency into confidence. It was also his case that considering the judgment in Rekha Murarka there was no basis in the case of the petitioner that he was entitled to an oral hearing in the matter. The relief claimed in the application was for stay of the proceeding unlike the oral submissions that the hearing of the anticipatory bail be expedited.

3. Shri Damodar Dhond, learned Advocate for the respondent No.3 submitted that the application for anticipatory bail was being heard however, on account of the transfer of the judge to the Children's Court the same could not be heard. But in the meantime, the respondent no.3 was secured with the interim relief as there was a strong apprehension of arrest. He however fairly submitted that he had no objection if the arguments on bail application be heard and the same be disposed off as expeditiously as possible.

4. Having concluded their submission and looking into the judgment in Rekha Murarka (supra) it is nowhere available to the petitioner to contend that he is entitled to a right of oral hearing assuming at the highest that he was heard by the judge who was presiding over the Court as an Addl. Sessions Judge and had canvassed the submissions at some point of time. The law on the point is well settled that the petitioner is entitled to assist the prosecution in terms of Section 24(8) Cr.P.C. and that he would have no independent right of audience of placing the matter is concerned. At the highest he would be entitled to place his written submissions on record to which the learned Addl. Public Prosecutor submits that it has already been done by the petitioner.

5. In the circumstances, therefore, no doubt there has been delay on the part of the Addl. Sessions Judge in hearing the matter, some directions are required to be given to the Addl. Sessions Judge to hear the anticipatory bail application as expeditiously as possible and in any event, the petitioner to assist the prosecution by handing over whatever documents if any, thus not filed to the investigating officer to further his own interest in the case. Shri C. Padgaonkar, learned Advocate submits that all the documents have already been produced in the Court apart from the written synopsis.

6. The application is disposed off with directions to the learned Addl. Sessions Judge to hear and dispose off the anticipatory bail as expeditiously as possible and within two weeks from today.

7. It has been submitted before this Court that the hearing in the Anticipatory Bail application is scheduled on 24th instant. The learned Addl. Sessions Judge however shall reschedule the date on the 11th instant and hear and dispose off the same within two weeks from today.

8. In these terms, the application stands disposed off.

9. Parties to act on the basis of the authenticated copy of this order.

NUTAN D. SARDESSAI, J.

MF/-