

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.539 OF 2020

WITH

INTERIM APPLICATION NO.315 OF 2021

Sandeep Sunil Kumar Lahoriya]
 Aged 27 years, Occ : Business]
 having office at Plot No.16, Sector 28,]
 Vashi, Navi Mumbai – 400 703] .. Petitioner
]

VERSUS

1. **State of Maharashtra**]
 (Through the Crime Branch, Unit-1,]
 Mumbai)]
]
2. **Venkatesh Shettiyar**]
 R/o Room No.103, Vikas Apartment,]
 Sainath Nagar, Virar (West), Thane, Pin-]
 401303]
 (Presently lodged at Taloja Jail)]
]
3. **Emanuel Amolik**]
 R/o 8/12, Meera Society,]
 Shankar Sheth Road, Swargate,]
 Pune]
 (Presently lodged at Taloja Jail)]
]
4. **Wajid @ Zahir Nabi Qureshi**]
 R/o Room No.210, Hillpark Building,]
 Deori Pada, Kausa, Mumbra, Thane]
 (Presently lodged at Taloja Jail)]
]
5. **Sumeet Bacchewar**]
 R/o Plot No.155, Santushti Bungalow,]
 Behind Tilak College, Sec.28, Vashi,]

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|---|---|
| Navi Mumbai – 400703 |] |
| (Presently on bail) |] |
| |] |
| 6. Altaf Khan |] |
| R/o Room No.204, Aman Apartment, |] |
| Sonaji Nagar, Kausa Mumbra, Dist. |] |
| Thane |] |
| (Presently on bail) |] |
| |] |
| 7. Mohd. Anis Nasir Ansari @ Bhaijan |] |
| R/o Housing Board, Shastrinagar, |] |
| Near TMS High School, Beri Chawl, |] |
| Ambernath (West), Thane |] |
| (Presently on bail) |] |
| |] |
| 8. Francis Chauri |] |
| R/o Flat No.1852, C-Block, 926, Kurla |] |
| Camp Road, Ravindra Nagar, |] |
| Ulhasnagar, Thane |] |
| (Presently lodged at Thane Central Jail) |] |
| |] |
| 9. Kailash Ghumane |] |
| R/o Room No.824, Dinesh Chawl, |] |
| Shastrinagar Housing Board Slum, |] |
| Near Indian School, Ambernath (West), |] |
| Dist. Thane |] |
| (Presently lodged at Taloja Jail) |] |
| |] |
| 10. Bhupesh Gupta |] |
| R/o Room No.602, Building No.25, NRI |] |
| Complex, Seawoods, Nerul, Navi |] |
| Mumbai – 400 603 |] |
| (Presently on bail) |] |
| |] |
| 11. Suresh @ Jawahar Chellaram Bijlani |] |
| R/o B-Bungalow, M.G.Complex, Sector |] |
| 14, Vashi, Navi Mumbai- 400 703 |] |
| (Presently on bail) |] |
| |] |

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|---|---|-----------------------|
| 12. Arif Gulam Dastagir Sheikh |] | |
| R/o Flat No.104, 1 st Floor, B-Wing, |] | |
| Hamja Apartment, Kausa, Mumbra, |] | |
| Thane |] | |
| (Presently lodged at Thane Central Jail) |] | |
| |] | |
| 13. Anurag Garg |] | |
| R/o Flat No.1202, Building No.20, |] | |
| NRI Complex, Plot No.56, 57, 58 |] | |
| Seawoods, Nerul, Navi Mumbai – 400 |] | |
| 603 |] | |
| (Presently on bail) |] | |
| |] | |
| 14. Mahesh Bijlani |] | |
| R/o Flat No.803, B-Wing, Kshitij Tower, |] | |
| Sector 19, Sanpada, |] | |
| Navi Mumbai 400 705 |] | |
| (Presently lodged at Thane Central Jail) |] | |
| |] | |
| 15. Anil Peter D'Souza |] | |
| R/o Room No.A/117, 88, CIDCO colony, |] | |
| Near Datta Meghe College, |] | |
| Sector 19, Airoli, Navi Mumbai |] | |
| (Presently on bail) |] | .. Respondents |

Mr.Himanshu V. Kode with Ms.Janhavi S. Karnik i/b Mr.Amey Lambhate for the Petitioner.

Smt.Aruna Pai, Special Public Prosecutor for Respondent No.1/State.

Mr.Girish Agarwal for Respondent No.8.

Mr.Ashwin Thool for Respondent No.11.

Mr.D.V.Sawant with Mr.Priyank P Kulkarni, Mr.Abhishek Sawant i/b Ms.Sudha Dwivedi for Respondent No.12 in the Writ Petition and for the Applicant in IA/315 of 2021.

Mr.Rajiv Chavan-Senior Advocate i/b Mr.Akshay Mehta, Ms.Priyanka Chavan for Respondent No.14.

**CORAM : S.S.SHINDE &
MANISH PITALE, JJ.**

**RESERVED ON : 10th FEBRUARY, 2021
PRONOUNCED ON : 01st MARCH, 2021**

JUDGMENT (PER MANISH PITALE, J.)

1. Rule. Rule made returnable forthwith. With the consent of learned counsel appearing for the parties, heard finally.
2. By this petition, the petitioner is seeking a direction from this Court for transferring Sessions Cases pending before the court of Judge R.R.Vaishnav, District Judge-1, Sessions Court, Thane to any other Court. The petitioner is the son of Sunil Kumar Lahoriya, who was murdered in front of his office on 16th February, 2013. A First Information Report (“**FIR**”) bearing No.67 of 2013 was registered, pursuant to which investigation was undertaken and chargesheet was filed against the accused persons. The accused were arrested after their anticipatory bail applications were rejected and it is an admitted position that the accused persons have continued in custody till date, except a few, who were granted bail recently.
3. On 30th October, 2017, charges were framed before the Sessions Court. During the pendency of the proceedings before the Sessions Court, various applications were filed on behalf of the accused persons and the writ petitions arising out of the orders passed in such applications came up before this Court. The orders passed by this Court were challenged before the Hon’ble Supreme Court and there were certain orders passed by the Hon’ble Supreme Court also. It is relevant that on 18th December, 2018, in one such proceeding before this Court, an order was passed by the Division

Bench of this Court directing the proceedings before the trial court to be expedited and to be taken up on day-to-day basis.

4. Thereafter, a writ petition came to be filed before this Court arising out of certain orders passed by the Sessions Court wherein prayers were also made for grant of bail to the accused persons, considering the slow pace at which, the trial was being conducted. Although this Court was not inclined to grant any relief in the said writ petition, considering the fact that this Court had by its earlier order directed day-to-day proceedings before the Sessions Court and it was found that the presiding Judge was overburdened with other work also, by exercising extraordinary jurisdiction under Article 226 of the Constitution of India, the Division Bench of this Court by its order dated 9th August, 2019, directed as follows :

“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.”

5. Accordingly, the trial stood transferred to the court of Judge R.R.Vaishnav at Thane. One of the accused filed Special Leave Petition challenging the said order but, on 17th December, 2019, the counsel appearing for the said accused made a statement before the Hon'ble Supreme Court in the Special Leave Petition that he did not

wish to pursue the petition, but an application for grant of regular bail would be filed before the Sessions Court. On this basis, the Hon'ble Supreme Court directed that if such an application is filed, the Sessions Court shall ensure that the application will be disposed of within a period of four weeks. It is also an admitted position that the petitioner herein i.e. the son of the deceased also challenged the aforesaid order dated 9th August, 2019 passed by the Division Bench of this Court whereby the trial was transferred to the court of Judge R. R.Vaishnav at Thane. The said Special Leave Petition was also dismissed. In other words, the aforesaid order dated 9th August, 2019, passed by the Division Bench of this Court, transferring the trial to the specifically named Judge, stood confirmed by dismissal of the aforesaid Special Leave Petitions filed before the Hon'ble Supreme Court.

6. It has come on record that although the list of witnesses to be examined is a larger number, but the material witnesses to be examined by the prosecution are about 71. In pursuance of transfer of the proceedings to the aforesaid Judge, the trial was undertaken and 52 witnesses stood examined. It is at this stage that the petitioner moved an application before the Principal District and Sessions Judge at Thane under Section 408 of the Criminal Procedure Code, 1973 (for short, "**the Cr.P.C.**") seeking transfer of the said sessions trial pending before the Court of aforesaid named Judge R.R.Vaishnav to the Court of any other Judge. On 25th January, 2020, the Principal District and Sessions Judge, passed an order recording that the learned counsel appearing for the petitioner was required to satisfy the said court regarding *locus standi* to file such an application. But it was also recorded that since the trial had

been transferred by this Court to the specifically named Judge, entertaining any further application for transfer of the trial by the Principal District and Sessions Judge, Thane, would amount to judicial indiscipline. The application stood disposed of in that light.

7. It is at this stage that the petitioner filed the instant writ petition before this Court on 27th January, 2020 for the aforementioned prayer. The principal grounds raised in the instant writ petition are that the manner in which Judge R.R.Vaishnav has been conducting the trial, an apprehension is created in the mind of the petitioner that the Judge is biased and he is in a hurry to wrap up the trial, as a result of which, procedural and substantive errors are being committed while conducting the trial, which is prejudicial to the prosecution. Specific instances have been stated in the writ petition to claim that the aforesaid Judge has not been conducting the trial properly and that this has resulted in frequent skirmishes between the Special Public Prosecutor (for short, “SPP”) and the Judge, which is detrimental to the trial. It is also claimed that vital applications like the application filed under Section 173(8) of the Cr.P.C. by the SPP have been kept pending and instead, evidence is being hurriedly recorded. The complaints made by the witnesses about threat and pressure from the accused are being routinely ignored by the Judge. It is also claimed that vital CCTV footage, required to be shown to the witnesses, is not being shown despite availability of facility in the Court. It is further claimed that bail applications of two accused persons were hurriedly considered and allowed by the aforesaid Judge. It was submitted that although the said order granting bail is already subject matter of challenge before this Court, a perusal of the same would show that glaring factual

errors have been committed by the Judge, indicating the predetermined mind of the Judge.

8. This Court issued notice in the writ petition wherein the accused were directed to be arrayed as parties. On 24th February, 2020, this Court granted stay of further proceedings in the aforesaid trial i.e. Sessions Case No.281 of 2013, pending before the said Judge at Thane. Some of the accused (respondents) entered appearance through counsel. It appears that the writ petition remained pending due to the situation created by Covid-19 pandemic. An interim application bearing Stamp No.3196 of 2020 was moved by respondent No.12 (original accused No.11) before this Court, seeking vacation of stay and in the alternative, a direction to release the said respondent/applicant on bail on such terms and conditions that this Court may deem fit. In this backdrop, the aforesaid interim application alongwith the writ petition, were taken up for hearing.

9. Mr.Kode, learned counsel appearing for the petitioner, submitted that the writ petition deserved to be granted and the trial was required to be transferred from Judge R. R.Vaishnav to any other Judge in the Court at Thane. It was submitted that the manner in which the proceedings were conducted before the Court of said Judge had led to a reasonable apprehension in the mind of the petitioner that the said Judge is proceeding in a biased manner and that he is in a hurry to complete the trial, thereby causing grave injustice to the case of the prosecution. It was specifically submitted that vital CCTV footage required to be shown to the prosecution witnesses during recording of evidence, particularly

P.W.No.33, was not permitted to be shown. This was despite requests made by the SPP. The applications made in that regard were being rejected, as a result of which, vital evidence to prove the prosecution case could not be brought on record. This was not only during recording the evidence of P.W.No.33, but also of P.W.No.43. These pieces of CCTV footage were vital to prove that the victim was alive when he had reached the hospital from the place of incident.

10. It was further submitted that such a request for playing the CCTV footage was also made when the evidence of Tejas Janjurne, an eye-witness, was being recorded and a specific request made by the SPP in that regard by way of an application was not considered. It was further submitted that even during the deposition of the said eye-witness, there was an error committed by the Judge, but when the mistake was pointed out by making a specific application (Exhibit 1412) by the SPP, the Judge rejected the application, without assigning any reason. An application at Exhibit 1462, moved by SPP for taking evidence on record under Section 173(8) of the Cr.P.C. has been kept pending and it has not been decided. By keeping the said application pending and allowing the applications for bail by two accused persons, the aforesaid Judge has exhibited bias in favour of the accused and against the prosecution. It was further submitted that due to the said approach of the Judge, there were heated arguments between the SPP and the Judge and on one occasion, it went to a stage that the Judge left the Dais and rejected the applications from his chamber. The said state of affairs were brought to the notice of the Department of Law and Judiciary by specific letters addressed by the SPP and that therefore, all this was a matter of record.

11. It was further submitted that the complaints made by the witnesses about the threats from the accused persons were not even recorded by the aforesaid Judge and no remedial steps were taken in that regard. On this basis, it was vehemently submitted by the learned counsel appearing for the petitioner that the present writ petition deserved to be granted in the interest of justice.

12. Mr.Chavan, learned senior advocate appearing on behalf of respondent No.14 (original accused No.13), opposed the contentions raised on behalf of the petitioner. It was submitted that the present petition has been moved before this Court only with a view to further delay the proceedings before the court below. The only interest of the petitioner appeared to be to prolong the matter so that the accused persons continue to languish in jail. It was submitted that the Division Bench of this Court had specifically directed as far back as on 18th December, 2018, that the trial should be conducted on day-to-day basis. This was reaffirmed by the directions given by the Hon'ble Supreme Court and yet, the trial was still pending and it was being dragged at the instance of the petitioner herein. It was submitted that the allegations made against Judge R.R.Vaishnav, specifically appointed by this Court to conduct the trial, were imaginary and fanciful. It was submitted that the petitioner, who at best could only assist the prosecution, was seeking to delay the proceeding on one pretext or the other. It was submitted that the apprehension expressed on behalf of the petitioner regarding bias of the aforesaid Judge was mischievous, deliberate and only with a view to delay the proceedings before the court below. Each of the allegations made on behalf of the petitioner was refuted by the learned counsel, by referring to copies

of depositions of witnesses, recorded till date. It was submitted that the said Judge had been taking the trial as expeditiously as possible, despite the fact that the SPP had remained absent on a number of dates.

13. It was submitted that application after application were being moved on behalf of the prosecution and the petitioner herein, only with a view to delay the proceedings so as to increase the duration for which the accused remained behind bars as undertrials. As regards the CCTV footage, it was submitted that the same was shown for a long period of time during recording of evidence of P.W.No.16 and that therefore, the grievance raised on behalf of the petitioner was without any basis. It was submitted that the petitioner was not justified in asking this Court to look at the order passed granting bail to two of the accused persons because the same was already the subject matter of challenge before this Court in different proceedings. It was submitted that when the delaying tactics of the petitioner had not succeeded, he had approached this Court with imaginary grievances. It was specifically submitted that the SPP had written letters regarding the manner in which the trial was being conducted, only after the order was passed granting bail to two of the accused persons on 14th January, 2020, because there were certain observations made by the aforesaid Judge with regard to the conduct of the SPP also.

14. Learned senior advocate relied upon the judgment of the Hon'ble Supreme Court in the case of *Asian Resurfacing of Road Agency Pvt. Ltd. & Ors. Vs. Central Bureau of Investigation*¹ to

¹ (2018) 16 SCC 299

contend that stay of trial proceedings ought not to be routinely granted and in any case, such order of stay of trial can remain alive only for six months. Reliance was also placed on the judgment of the Hon'ble Supreme Court in the case of *Usmangani Adambhai Vahora Vs. State of Gujarat and Ors.*² to contend that the Court must see as to whether the apprehension expressed against a Judge is reasonable or not and that a trial could be transferred from one court to the other only if it was found that there was a reasonable apprehension that justice would not be done unless such transfer was granted. In this regard, reliance was also placed on the judgment of the Hon'ble Supreme Court in the case of *Captain Amarinder Singh Vs. Prakash Singh Badal & Ors.*³. It was also vehemently submitted that when this Court had specifically transferred the trial to Judge R. R.Vaishnav and day-to-day trial was being conducted and such an order was confirmed by the Hon'ble Supreme Court also, the present writ petition deserved to be dismissed.

15. Learned counsel Mr.Sawant appearing for respondent No.12 and for applicant in interim application, learned counsel Mr.Agarwal appearing for respondent No.8 and learned counsel Mr.Thool appearing for respondent No.11, made submissions on same lines as advanced by Mr.Chavan, learned senior advocate appearing for respondent No.14.

16. Mr.Agarwal, learned counsel appearing for respondent No.8, specifically relied upon the judgment of the Hon'ble Supreme Court

² (2016) 3 SCC 370

³ (2009) 6 SCC 260

in the case of **Braj Kishore Thakur Vs. Union of India & Ors.**⁴ wherein it was reiterated that even if orders of courts below are modified or some of them are set aside by the higher courts, it would be improper to attribute motives to Judges of the courts below, particularly when such Judges cannot defend themselves and ultimately it leads to wounding the institution of judiciary. Reliance was also placed on the judgment of Gujarat High Court in the case of **Imtiazkhan Saeedkhan Pathan & Ors. Vs. State of Gujarat & Ors.**⁵ wherein it was held that the higher courts ought not to draw adverse inference of bias against Judges of the courts below, only because few adverse orders were passed against a party.

17. Mr.Thool, learned counsel appearing for respondent No.11, relied upon the judgment of the Hon'ble Supreme Court in the case of **Rekha Murarka Vs. State of West Bengal & Anr.**⁶, to contend that it is the Public Prosecutor, who leads the prosecution and it is the Public Prosecutor, who makes a strategic call of examining some witnesses or leaving others out. A victim's counsel can only assist the Public Prosecutor because if the victim's counsel is given a free hand, there is every possibility of a vindictive battle between the victim's counsel and the accused in a sessions trial. On this basis, it was submitted that the concerns expressed on behalf of the petitioner in the present case were without any substance and, therefore, the writ petition deserved to be dismissed.

18. Mrs.Aruna Pai, learned Special Public Prosecutor appearing for the State in this writ petition, submitted that there were certain

4 AIR 1997 SC 1157

5 2010 Cri.L.J. 4510

6 (2020) 2 SCC 474

remarks made against the SPP appearing before the court below, by the learned Judge, but such remarks were not justified. It was submitted that the SPP before the court below could not remain present on some dates due to the fact that he had suffered an accident. It was submitted that the applications filed by the SPP were being rejected by the court below in a hurry and that the manner in which, the evidence was being recorded was not desirable. It was submitted that the aforesaid Judge while conducting the trial appeared to be in a hurry, thereby causing grave damage to the prosecution case. It was submitted that the instances highlighted on behalf of the petitioner justified the prayer for transfer of the trial to another Judge.

19. We have heard learned counsel appearing for the rival parties. There can be no doubt about the fact that an order transferring trial from a Judge to another is not an exercise routinely undertaken. Section 408 of the Cr.P.C. gives such powers to a Sessions Judge when it appears to him that it would be expedient for the ends of justice to be met that such an order of transfer needs to be issued. Therefore, it becomes necessary that when a prayer for transfer of trial is made on behalf of any party, the entire set of circumstances concerning the trial is taken into consideration. In the present case, it is significant that the trial stood transferred to the court of Judge R.R.Vaishnav, not by an order of the Sessions Court under Section 408 of the Cr.P.C., but by an order of this Court dated 9th August, 2019, while specifically exercising its extraordinary jurisdiction under Article 226 of the Constitution of India.

20. While passing the aforesaid order, this Court took note of the

fact that the Judge before whom the trial was being conducted was over burdened and that the trial was progressing at a very slow pace. It was for this reason and in the light of the earlier order dated 18th December, 2018 passed by the Division Bench of this Court, reaffirmed by the Hon'ble Supreme Court, for conducting trial on day-to-day basis, that this Court transferred the trial specifically to the court of Judge R. R. Vaishnav. It is also significant that Special Leave Petitions filed on behalf of one of the accused as also the petitioner before this Court, were dismissed by the Hon'ble Supreme Court, thereby confirming the order dated 9th August, 2019 whereby the trial stood transferred to the court of Judge R.R.Vaishnav. This have to be borne in mind while considering the prayers made in the present writ petition.

21. We are of the opinion that acceding to the prayers made on behalf of the petitioner in this writ petition would amount to reopening the consideration on the basis of which the order dated 9th August, 2019 was passed by the Division Bench of this Court, which significantly stood confirmed by the Hon'ble Supreme Court also. It is only if glaring circumstances are demonstrated by the petitioner that such an exercise can perhaps be undertaken. But, before embarking on that aspect of the matter, it would be appropriate to refer to the judgments placed before this Court on the question as to the circumstances in which order for transferring trial from one court to the other could be passed.

22. In the judgments in cases of Usmangani Adambhai Vahora (supra) and Captain Amarinder Singh (supra), the Hon'ble Supreme Court has categorically laid down that transfer of trial from one

court to the other at the behest of a party can be ordered only if a finding is reached that there is a reasonable apprehension that justice will not be done in the matter, but for such order of transfer. It has been emphasised that such an apprehension has to be seen from the state of mind of the person or party who entertains such an apprehension, but at the same time, the court must come to a conclusion that such an apprehension is a reasonable apprehension. The judgment of the Hon'ble Supreme Court in the case of **Braj Kishore Thakur** (supra), specifically shows concern as to why higher courts ought not to routinely reach conclusions against the Judges of the courts below or attribute improper motives to them, only on the basis that certain adverse orders have been passed against a party, which may appear to be erroneous, requiring modification or setting aside. In this context, the role of the Public Prosecutor has been highlighted in the judgment of the Hon'ble Supreme Court in the case of **Rekha Murarka** (supra) wherein it has been emphasised that the Public Prosecutor occupies a prime position in the conduct of a criminal trial as he/she has to act as an independent officer of the Court. Although the counsel representing the victim or relative of the victim is entitled to assist the Public Prosecutor, if free hand is given to such a counsel, there is possibility of the trial being reduced to a vindictive battle between the victim or his relative on the one hand and the accused on the other.

23. Thus, it becomes clear that transfer of a criminal trial from the court of one presiding officer to the other, cannot be a routinely passed order and the apprehension expressed on behalf of the parties, seeking transfer have to be reasonable and based on sufficient material on record. In this context, the role of the Public

Prosecutor becomes extremely significant. In the present case, there is reference to certain letters written by the SPP to the Department of Law and Judiciary for challenging the order of bail granted to some accused, wherein certain remarks have been made about the manner in which the trial has been conducted by the aforesaid Judge. Therefore, it becomes necessary for this Court to consider the specific allegations made on behalf of the petitioner.

24. The principal grievances raised on behalf of the petitioner are that vital CCTV footage was not played by the aforesaid Judge during the proceedings of the trial, despite requests made by the SPP. It was claimed that CCTV footage pertaining to a hotel where the accused had allegedly hatched the conspiracy was not permitted to be played when the evidence of P.W.No.43-Harish Shetty was being recorded and similarly it was claimed that CCTV footage pertaining to the hospital was not played at the time when evidence of relevant witnesses was being recorded.

25. In this regard, we find that admittedly CCTV footage pertaining to the place of incident was played when evidence of P.W.No.16 was recorded. There was an objection sought to be raised on behalf of the learned counsel appearing for the respondents/accused persons that CCTV footage could be played only when there was requisite certificate under Section 65-B of the Information of Technology Act, 2000 (for short, **“the IT Act”**) and not otherwise. It was also claimed that since the witnesses whose depositions were being recorded were not the authors of the said document (CCTV footage), the grievance raised in this regard on behalf of the petitioner, supported by the SPP, was not justified.

26. The next grievance raised on behalf of the petitioner pertains to an alleged mistake in recording of a particular word in the evidence of P.W.No.52-Tejas Janjurne and that the application moved by the SPP at Exhibit 1412, seeking correction of the said mistake was deliberately rejected by the aforesaid Judge. Further grievance of the petitioner pertains to failure of the said Judge in passing an order on application at Exh.1462, preferred by the SPP for producing evidence under Section 173(8) of the Cr.P.C. Then, a reference is made to the heated exchanges between the SPP and the aforesaid Judge when a prayer for re-examination of a particular witness was denied by the said Judge.

27. On the other hand, much emphasis has been placed by the learned counsel appearing for the respondents on the fact that the SPP had been absent on many occasions, leading to delay in proceedings before the court below. An attempt was made on behalf of the petitioner and also on behalf of the State to claim that the manner in which the bail applications of two accused persons were allowed, demonstrated the biased approach of the aforesaid Judge and that he was allegedly not aware about the basic facts.

28. Insofar as the merits of the order allowing the bail applications of two accused persons are concerned, we are of the opinion that since the same is subject matter of challenge in this Court in an appropriate proceedings, we refrain from going into the merits of the said order. Yet, it appears that the SPP was not happy with certain observations and remarks made by the said Judge in the aforesaid order, allowing the bail applications. It is pertinent that the order granting bail to two of the accused persons was passed on

14th January, 2020, while the SPP addressed a letter to the Department of Law and Judiciary on 16th January, 2020, making request to challenge the said order. In the said letter, certain statements have been made, indicating that the SPP was not happy with the approach of the learned Judge.

29. Be that as it may, we are of the opinion that the role of the court presided over by the learned Judge and that of the Public Prosecutor is to ensure that the accused are brought to book and that proceedings are conducted in a fair manner so as to ensure that justice is done, both to the accused as well as to the victim. The endeavour of the proceedings is to ascertain as to who is guilty of the alleged crime and it can neither be an approach giving an impression that there is a bias, either in favour of the accused or the victim. Neither can a Court be perceived to be accused centric nor can it be perceived to be victim centric in its approach. Therefore, this Court expects the SPP representing the prosecution in the court below as well as the learned Judge conducting the trial to ensure that the trial is conducted in a manner, which is fair and proper. The role of the counsel representing the accused is also crucial because they are expected to perform their duties as officers of the Court.

30. In this backdrop, the question that arises for consideration is, as to whether the material brought on record by the petitioner and the grievances raised on his behalf would justify an order directing transfer of the trial from the Judge presently conducting the same to another Judge. As noted above, such an order cannot be passed in a routine manner and substantial grounds, based on sufficient material, need to exist for passing such an order transferring the

trial. On an over all appreciation of the material on record, we are of the opinion that a case for passing such an order is not made out, on the basis of the material on record. It cannot be said that the petitioner has placed sufficient material before this Court to revisit its own earlier order dated 9th August, 2019 whereby the trial was transferred specifically to Judge R. R.Vaishnav. It is significant that the said order stood confirmed by the Hon'ble Supreme Court, as Special Leave Petitions filed by one of the accused as well as the petitioner were dismissed.

31. Nonetheless, the grievances raised on behalf of the petitioner need to be addressed by giving appropriate directions. We are of the opinion that the proceedings before the trial court need to be conducted expeditiously and, without disturbing the flow of the proceedings, appropriate direction can be given so that the grievances of the petitioner are addressed.

32. Therefore, it is directed that the court below shall address the grievances of the petitioner by entertaining applications in that regard towards the end of the trial and, if such applications are moved, the same may be considered liberally. This would include playing of CCTV footage of various places concerning the chain of events pertaining to the subject matter of the trial. Wherever, such CCTV footage has been proved in accordance with law, *inter alia*, on the basis of certificate issued under Section 65-B of the IT Act, such CCTV footage may be permitted to be played towards the end of the trial and if necessary, relevant witnesses may be permitted to be recalled.

33. We expect the court below to conduct the trial with utmost expedition and on day-to-day basis, as already directed by this Court as far back as on 18th December, 2018. Due to the interim order passed in the present writ petition and intervening loss of work due to Covid-19 pandemic, the trial had been further delayed. Therefore, the court below presided over by Judge R.R.Vaishnav is expected to take up the proceedings expeditiously, preferably with effect from 4th March, 2021. It has to be kept in mind that barring a few accused persons, all other accused have been in jail for about seven years by now and this factor needs to be taken into account while ensuring that trial is completed at the earliest. The Principal District and Sessions Judge to ensure that workload in the court of Judge, R.R. Vaishnav is reduced, so that day-to-day trial of the present case is facilitated.

34. With the aforesaid observations, the writ petition is disposed of by rejecting the prayer made on behalf of the petitioner for transfer of Sessions Cases bearing Nos.281 of 2013, 379 of 2013, 481 of 2013, 118 of 2014, 452 of 2014 and 24 of 2015 pending on the file of the court presided over by the Judicial Officer R. R.Vaishnav to the court presided over by any other Judicial Officer. However, we expect the court below presided over by the Judicial Officer R.R.Vaishnav to scrupulously observe the directions given here-in-above so as to ensure that the trial is completed at the earliest and in a fair and proper manner.

35. In view of the disposal of the writ petition, the interim application No.315 of 2021 stands disposed of. Copy of this order be sent to the Principal District and Sessions Judge, Thane, forthwith

and preferably during the course of the day.

36. Upon pronouncement of the judgment, Mr.Kode, learned counsel appearing for the petitioner, prays for continuation of interim stay granted by this Court on 24th February, 2020 for a period of two weeks. Learned counsel appearing for the respondents have vehemently opposed the prayer for continuation of interim stay.

37. Since we have directed in our order that the trial shall be conducted on a day-to-day basis expeditiously, we are not inclined to grant the aforesaid prayer. Hence, the said prayer stands rejected.

(MANISH PITALE, J.)

(S.S.SHINDE, J.)