

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

CRIMINAL WRIT PETITION NO. 487 OF 2021

1. Mr. Kishor Shinh Bhavsinh Rathod
Age- 48 years, Occ- Business,
Indian Inhabitant, Male, Hindu,
Residing at A/3, Motisagar Society
Narayan Nagar Road,
Paldi, Ahmedabad, Gujrat.

2. Mr. Bharat Shinh @ Mama Katiya
S/o Ranjitsinh Katiya
Age- 38 years, Occ- Service/Driver
Indian Inhabitant, Male, Hindu,
Residing at Kathiyopa Vorda-3,
Muli, District, Surendra Nagar,
Gujrat.

...PETITIONERS

Versus

1. The State of Maharashtra
At the instance of Vartak Nagar
Police Station.

2. Superintendent of Prison
Thane Central Jail, Thane.

...RESPONDENTS

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Mr. Rahul Arote for petitioners.

Mr. Shishir Hiray, Special PP a/w. Mr. S.R. Shinde, APP for Respondent-
State.

...

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

**RESERVED ON : 8th FEBRUARY, 2021.
PRONOUNCED ON- 23rd FEBRUARY 2021.**

JUDGMENT [PER S.S. SHINDE, J.]:

. This petition is filed with following substantive prayer.

b) That this Hon'be court may be pleased to direct the Respondent No. 2 to transfer the Petitioners back to Sabarmati Prison, Gujrat for serving their remaining sentence.

2. It is the case of the petitioners that they were arrested by respondent in the present case for the offences punishable under Section 8(K), 9(A), 24, 25(A) and 29 of the NDPS Act, by the respondents. In March, 2017 the charge sheet came to be filed against the present petitioners. In November 2019 the petitioners came to be convicted by the NDPS Special Court, at Gujrat. On 05.12.2019, the petitioners were brought to Thane Central Prison from Sabarmati jail as per the order passed by Trial Court. In June 2020, the petitioners approached the trial court but trial court refused to entertain the petition.

3. Learned counsel for petitioners submit that the petitioners filed application to the jail authority at Thane to transfer them to Sabarmati Jail. It is submitted that since the petitioners are lodged in Thane jail, they are not able to meet their family members. The petitioners approached the Trial Court, however, their prayer was turned down by the Sessions Court. The Petitioners are not aware when the trial is likely to be commenced. Learned

counsel for petitioners invites our attention to the pleadings in the petition, annexures thereto and submit that the petition deserves to be allowed.

4. On the other hand learned Special Public Prosecutor appearing for Respondent-State invites our attention to the affidavit in reply filed by Respondent-State. Relying upon the said affidavit in reply, learned Special Public Prosecutor made following submissions.

- a. That the Trial before the Ld. Special Court is pending and the presence of the accused is still required by the learned Special Court for conducting speedy trial.
- b. That if the accused are transferred back to the authorities of Gujarat, then the present case pending before the learned Special Court, Thane will be affected and the trial will be prolonged for longer time.
- c. That there is ample evidence available against present petitioners which is sufficient to show the complicity of present accused petitioners with said offence. That role played by all the accused has to be considered as a whole.
- d. The offence is serious in nature. That said offence and its implications are spread internationally. That large scale drugs syndicate is involved in said offence. That accused are trying to prolong the trial by filing frivolous applications/petitions.

5. The prosecution has seized various documents which are registered/unregistered, from factory owned and controlled by these accused. That during the process of investigation on 15/06/2016 one of co-accused Mr. Jay Mulji Mukhi gave his statement under Section 164 of Cr.P.C. in which he clearly revealed the entire modus operandi of commission of alleged offences all accused including present petitioners.

6. This Court by order dated 08.09.2020 called the report from the Principal District and Sessions Judge, Thane regarding status of the pending trial. Pursuant to said order, report is received.

7. It appears from the reply filed by Respondent-State that, petitioners are accused in a very serious case of business of transporting contraband known as Ephedrine and they have supplied these controlled substance to unauthorized individuals and others for producing the narcotic drugs and Psychotropic substance more particularly known as Methamphetamine. It is alleged against the petitioners that such storage, supply of even controlled substance, without following due procedure of law is altogether illegal. The present petitioners have helped to transport and supply the said contraband known as Ephedrine from which narcotic drugs and Pshychotropic substances are manufactured. The confession statement of

one of the accused namely Jay Mukhimade has been recorded under Section 164 Cr.P.C. from which it is revealed that his associates from Ahmedabad (State of Gujarat) have sent drugs to Ahmedabad, Gujarat from Avon Life Sciences Ltd, company, Chincholi MIDC, Solapur in order to make it as a white power which was to be delivered to the present petitioners. It appears that the petitioners are involved in a very serious offence as it is abundantly clear from the affidavit filed by Respondent-State.

8. As already observed the present petitioners have already been convicted in a case tried before the competent Court of jurisdiction and they were lodged in Sabarmati jail. However, the Trial is pending at Thane wherein the petitioners are accused and their presence for framing charge and on subsequent dates during the trial is necessary. It appears from the reply filed by Respondent-State that in spite of number of letters written to prison authority i.e. in State of Gujarat, petitioners were not made available before the Special Court at Thane on the dates fixed by the said Court. Lastly, the Special Court at Thane was constrained to issue warrant to DIG Prison to produce accused i.e. petitioners herein before the Court at Thane. It is brought on record by the Respondent-State that, in spite of several letters sent to the jail authority at Sabarmati jail, to procure presence of petitioners, the jail authorities at Sabarmati jail was reluctant to send the petitioners.

9. In the light of discussion made herein above, in our opinion, in case the petitioners are sent back to Sabarmati Jail, it will be difficult for the Maharashtra police to bring petitioners back to Trial Court at Thane. In that view of the matter, we are not inclined to entertain this writ petition. Hence, the writ petition stands rejected.

10. We impress upon the Special Court, Thane, to expedite the trial.

(MANISH PITALE, J.)

(S. S. SHINDE, J.)