

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

BAIL APPLICATION NO.1723 OF 2022

ANIL HIRAMAN KATHALE
VERSUS
THE STATE OF MAHARASHTRA

...
Advocate for Applicant : Mr. Dhananjay M. Shinde
APP for Respondent : Ms. V. S. Choudhari
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CORAM : S. G. MEHARE, J.

DATE : 14-12-2022

PER COURT :-

1. Heard the learned counsel for the applicant and the learned A.P.P. for the respondent/State.
2. This is another complaint of the accused for not conducting the trial day-to-day or after reasonable intervals. The learned counsel for the applicant would submit that there appears no promptitude in securing the presence of the witnesses. The approach of the Court as well as the prosecution appears casual. The adjournments have been granted casually to complete the evidence of witnesses. The applicant is behind bar since 2020. Since the trial is not conducted expeditiously, the applicant is entitled to bail.

3. A copy of the Roznama has been placed on record. Some entries in Roznamas reflect that the applicant was requesting the Court not to frame the charges. Hence, the Court was granting him next date. The case was fixed for charge first time on 23.10.2022 and, lastly the charges were framed on 18.01.2022. The court functioning was suspended due to Covid-19 *pandemic* till January 2022.

4. The Roznama after framing the charge further reveals that either of the accused were absent. Thereafter, it was transpired that counter case is to be tried with the present case. Hence, the counter case was called. On 27.04.2022 the present applicant sought adjournment to cross-examine PW-1 and applied to engage the another lawyer. His prayer was rejected and the matter was adjourned. Thereafter, the counsel for the accused sought time to cross-examine the witness. Time was granted, subject to the cost. Thereafter, witness remained absent. Examination-in-chief of P.W.No.1 was recorded on 13.04.2022 and his cross-examination was completed on 24.06.2022. This seems that the witnesses were also harassed. Thereafter, the summons were issued to the other witnesses, but they did not appear. Hence, warrants were issued against the witnesses. Since 14.07.2022. the case was adjourned for execution of the warrant and service of summons. Again, the application for bail was filed and the matter was adjourned for deciding the bail application and completing the part

cross-examination.

5. Considering the entire business of the court from the Roznama, it appears that nobody is serious and the trial has been taken casually. The Court was trying hard to get the progress in the trial. 'Sessions' means, day-to-day conduct of the trial. So, the Government should be diligent and prosecution should also be prompt. The witnesses must be served in time as per the prescribed procedure contemplated in the Code of Criminal Procedure. It has also been brought to the notice of the Court that instead of serving the witnesses personally, the summons were sent on the *WhatsApp* and those messages were delivered at the eleventh hour. It was quite impossible for the witnesses to reach the Court on the given date. This scenario must be changed to achieve the goal of expeditious trials. The accused, prosecutor, witnesses and the police must assist the Court in achieving the goal of expeditious trial of the under-trial/prisoners. The Court is aware that the district judiciary is heavily burdened with the under-trial prisoner's cases. However, a sincere attempt would have been made.

6. As far as the second ground of the bail that the sole witness examined by the prosecution does not support, is not a ground for bail. Rule of appreciation of evidence is that the Court has to read the evidence as a whole. Therefore, the Court is of the view that

merely one witness does not support the prosecution, it is not a good ground for bail.

7. When the Court expressed disinclination to grant bail, the learned counsel for the applicant prayed to expedite the trial. Considering the slow progress in the trial, his prayer may be accepted. Hence, the following order :-

- i) The application stands dismissed.
- ii) The learned Additional Sessions Judge, Basmathnagar, is directed to expedite the trial and make an attempt to dispose of the trial at the earliest, provided the accused, prosecution and the witnesses should co-operate the Court.

(S. G. MEHARE)
JUDGE

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