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

BAIL APPLICATION NO.1821 OF 2022

Bhikan s/o. Girjaba Pathare,
Age 53 years, Occu. Labour,
R/o. Waghala, Tq. Vaijapur,
District Aruagabad.

.. Applicant

Versus

The State of Maharashtra
Through Police of Shivur Police Station,
Aurangabad, Tq. and Dist. Aurangabad.

.. Respondent

Mr. C. C. Deshpande, Advocate for applicant;
Mr. A. A. Jagatkar, A.P.P. for respondent/State

CORAM : S. G. MEHARE, J.

DATE : 12th December, 2022

PC.

1. Heard the learned counsel for the applicant and the learned A.P.P. for the respondent/State.
2. This is the sixth application of the applicant seeking bail. This Court and Sessions Court rejected his earlier bail applications on merit. On 24.09.2020, this Court passed the order first time on the withdrawal of the application that if the trial would not complete within nine months after the normal Court begins to function and if the applicant is not responsible for the delay, the applicant would be at liberty to file an application for regular bail before the trial Court.

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3. It is not in dispute that after the Covid-19 pandemic, the normal functioning of the courts started in the month of January 2021. Thereafter, the applicant moved an application for bail directly to this Court. Therefore, this Court, by order dated 06.10.2021, granted liberty to the applicant to apply for bail before the trial Court. The trial did not complete in the given time. Hence, the applicant again applied for bail before the learned trial Court. The learned Additional Sessions Judge, Vijapur, discussed the facts in detail and non-disclosure of the order of this Court granting leave to file a fresh application and rejected the application with reasons that one of the accused used to remain absent on the effective dates. Hence, the matter could not be progressed.

4. Thereafter, the applicant again approached this Court to seek bail. That time, two witnesses were examined. This Court, by order dated 11.03.2022, granted leave to withdraw the application at the request of the learned counsel for the applicant. However, this Court directed the trial court to dispose of the case as expeditiously as possible within a reasonable time. Thereafter, again, the applicant applied for bail before the Sessions Court. The Additional Sessions Judge rejected the application on 29.09.2022. Again the bail was claimed on the ground of slow trial. The learned Additional Sessions Judge again remarked that the accused filed discharge applications one after another, intending to consume the court time and the

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accused delayed the trial. After recording these reasons, the application came to be dismissed. However, till that time, around eight witnesses were examined.

5. The learned counsel for the applicant forcefully argued that the trial was not delayed due to the applicant, and he never sought adjournments. Therefore, in view of the orders of this Court, the applicant is entitled to bail.

6. The State has opposed the application. The learned A.P.P. has argued that the conduct of the applicant is material in this case. The applicant is coming to the Court again and again, seeking bail on the same ground. The reasons assigned by the learned Sessions Court are based upon the facts. There are other co-accused who have been granted bail. They were exercising their right to file the discharge applications. Therefore, it was beyond the control of the learned Additional Sessions Judge and the prosecution to conduct the trial. However, to date, nine witnesses have been examined, and as per the information, only two witnesses remain to be examined.

7. Perusal of the earlier orders reveals that leave was granted to the applicant to file an application for bail if the trial is not completed within nine months. However, those orders were conditional, that the trial should not be delayed at the instance of the accused. The term “accused” includes each accused facing the trial jointly. For the trial,

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the case of every accused cannot be segregated. However, the applicant is taking an opportunity time and again, claiming bail on the grounds which were rejected by the learned Additional Sessions Judge considering the conduct of all accused. The report has also been called from the learned Additional Sessions Judge. He reiterated the same statement blaming the accused for protracting the trial for one reason or another. The order dated 11.03.2022 is material. By that order, this Court directed the Sessions Court to dispose of the case as expeditiously as possible within a reasonable time. This order impliedly withdrew the condition of disposing of the trial within nine months, which was imposed in the earlier order. The said order has attained finality. Therefore, the Court is of the view that the applicant cannot claim bail on the ground that the trial has not been completed within nine months from the normal functioning of the Court after the Covid-19 pandemic. That apart, the trial court has made a factual statement that the trial has been delayed at the instance of the accused.

8. In view of the above discussion, the Court believes that the applicant has no cause of action to claim bail on the grounds discussed above. Hence, the application stands dismissed.

(S. G. MEHARE, J.)

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