

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

WRIT PETITION NO. 425 OF 2022

Aslam Mohammadhanif Badwale.

...Petitioner.

Versus

Ld. Divisional Commissioner and Others.

..Respondents.

Ms. Kiran Kale i/b Ms. Anita Wakchaure for the Petitioner.

Mr. M. H. Mhatre, APP for the Respondent-State.

CORAM : PRASANNA B. VARALE &
SURENDRA P. TAVADE, JJ.

Date : **February 15, 2022.**

P. C. :

1. A very limited grievance is raised in the present writ petition. As such the petition is forthwith taken up for hearing disposal, by consent of the parties.

2. The Petitioner was subjected to an externment proceeding and the competent authority vide an order dated 28th October 2021 externed the Petitioner from two districts, namely, Sangli and Kolhapur, for a period of one year. Being aggrieved by the said order, the Petitioner immediately on 26th November 2021 filed an appeal before the appellate authority, i.e., the Divisional Commissioner, Pune Division, Pune. Photocopy of the appeal memo is placed on record at page no. 25 of petition. On the very day, i.e., 26th November 2021, alongwith the appeal, Petitioner filed an application for grant of stay.

3. The grievance raised in the petition is of non action, i.e., non hearing of either the application for grant of stay or the appeal on merits. The submission is that the delay in decision would frustrate the object of availing the remedy. Accordingly, learned counsel appearing on behalf of the Petitioner prayed for direction to the appellate authority to decide the appeal submitted by the Petitioner as expeditiously as possible and within a time bound manner.

4. It may not be out of place to state here that raising this very issue, a petition was filed in this Court (Criminal Writ Petition No. 3535 of 2021) and the Division Bench of this Court vide order dated 8th October 2021 disposed of the writ petition. When that petition came up before the Division Bench, a query was made to learned APP as to how many appeals were pending before the appellate authority and in response, learned APP submitted the data of pending appeals before the appellate authority and it was apprised to the Division Bench that 51 appeals of the year 2020 are pending whereas 115 appeals of the year 2021 are pending before the appellate authority. The reason was also submitted before this Court for the pendency of appeals and it was covid-19 pandemic. It was submitted before this Court that due to this unfortunate difficulty, the hearing of appeals was suspended. In view of these facts, the Division Bench was of the opinion that it will not be possible for this Court to straightaway direct the early disposal of the

Petitioner's appeal as the said order will indirectly affect those who are waiting without approaching the Court. The Division Bench was pleased to further observe "There could be cases where out of turn disposal may be merited but we leave that to the discretion of the concerned Authority."

5. Subsequently on 9th February 2022 , an order was passed in Writ Petition No.320 of 2022, to which one of us (Justice Prasanna B. Varale) was party. In view of these facts, we are unable to allow the prayer of Petitioner to direct the appellate authority to decide the Petitioner's appeal within a time bound framework. However, we dispose of the present writ petition with directions to the appellate authority to consider the aspect of deciding the appeal keeping the order dated 8th October 2021 of this Court in mind. The petition is thus disposed of.

[Surendra P. Tavade, J.]

[Prasanna B. Varale, J.]