

the said request is rejected, for reasons which set out hereinunder.

4. The applicant is original accused No.5 in Special MCOC Case No. 5 of 2015 which is pending before the Additional Sessions Judge, Pune. The said applicant is presently in custody. The prosecution faced by the applicant alongwith others is for the offences punishable under Sections 302, 143, 147, 148, 149, 201, 352, 120(B) of the Indian Penal Code, under Sections 4, 25 of the Arms Act, under Sections 37(1) r/w 135 of the Maharashtra Police Act and under Sections 3(1)(i), 3(1)(ii), 3(2), 3(4), 4 of Maharashtra Control of Organised Crime Act.

5. It is not in dispute that the trial of the applicant has been expedited by this Court, since the applicant is in custody since 2014. After the trial was expedited, the examination of the first witness commenced on 1st February, 2020 and was over in 2021. It appears that three witnesses have been examined till date. It appears that PW4 – an eyewitness was examined on 10th January, 2022 and that, after his examination-in-chief was over on the said date, the Advocate for the accused instead of proceeding with the cross-examination of the said witness, filed an application seeking adjournment, on the ground that his father Advocate Mr. A. F. Basit was suffering from cough and cold and had temperature. The said application

was allowed by the learned Trial Judge. The adjournment was sought on the ground of the health of Advocate Mr. Basit. It appears that two other Advocates also suspected that they were COVID positive and therefore, adjournment was granted to the Advocates who suspected that they were COVID positive.

6. It appears that the Advocate Mr. Dushing appearing for the accused Nos.1 and 2 was present before the Court. Instead of cross-examining the witness - PW4 who was present in the Court, the concerned Advocate filed an application seeking an adjournment. It appears that at that time, the witness – PW4 expressed his fear that he had been approached by the accused persons and was also threatened. The learned Judge, considering the situation, granted adjournment of two days subject to cost of Rs.1000/-. The learned Judge, by the said order dated 10th January, 2022 also directed the Sr. Police Inspector, Hadapsar Police Station to provide appropriate protection to the witness – PW4 for the entire month. The said officer was also directed to take necessary steps to avoid tampering of evidence in the case and take help of Intelligence Bureau for this purpose. The operative part of the said order is reads as under :

“ORDER

- (1) Applications are granted subject to cost of Rs.1000/-.*
- (2) Senior Police Inspector, Police Station Hadapsar is hereby directed to provide appropriate protection to witness Manoj Maruti Kadam for this entire month.*
- (3) Senior Police Inspector, Police Station Hadapsar is hereby directed to take necessary steps to avoid tampering of evidence in the case. He may take help of Intelligence Bureau for this purpose.*
- (4) If any movement on behalf of accused to threaten the witnesses, to approach them, directly or indirectly is noticed it be reported to the Court and appropriate action be taken including detention of any person, as provided by Law.*
- (5) It is hereby directed that no friend, well wisher or more than one relative of accused should enter the premises of Shivajinagar District Court on the date fixed for hearing in this case.*
- (6) Copy of this order be forwarded to Senior P.I., Police Station, Hadapsar.*
- (7) The matter is kept on 13/1/2022.”*

7. After the matter was kept on 13th January, 2022, the accused Nos.1,2,3 and 5 (applicant) filed an application stating therein, that they wish to appoint Advocate Shri. Somnath Laddha as their Advocate and that Shri. Laddha has stated that he will not be in a position to appear before the said Court and hence, the case should be transferred to some other MCOC Special Court. The learned Sessions Judge rejected the said application vide order dated 13th January, 2022. The said order reads thus :

“ORDER BELOW EXH.404

- 1. Read application and say filed. Heard applicants/accused who are produced on video conferencing from jail. The matter has been expedited by the Hon’ble High Court vide order dated 27/2/2021. Ten accused are*

under-trial prisoners. They are in jail since year 2014.

2. Having regard to the pendency of the case and having regard to the fact that the matter has been expedited by the Hon'ble High Court, despite of surge of Covid-19, the trial of the case has been proceeded. Eye-witness, namely, Manoj Kadam was summoned by the prosecution. His examination-in-chief has been recorded on 10/1/2022 in the morning session. Learned Advocate for accused Mr. Dushing firstly assured to conduct the cross-examination in afternoon session. Then he moved an application for adjournment and sought time of two days. Detail order came to be passed by this Court granting adjournment subject to cost of Rs.1000/- and issuing directions to the concerned police station to give protection to the witness, as the witness had expressed fear from the accused persons. The matter was scheduled for cross-examination today.

3. Today, when the witness arrived for cross-examination, the application is submitted by accused Nos.1,2,3 and 5 for adjournment, for the reason that they want to engage advocate S.G.Ladda from Aurangabad. It is mentioned that Mr. Ladda cannot appear before this Court as the undersigned belongs to his chamber. Transfer of the case has been also prayed in the application.

4. Learned Spl. P.P. Smt. Ujwala Pawar has submitted that the application has been moved with mala fide intention only to drag the trial. It is submitted that only because the eye-witness has given all the details in examination-in-chief, the accused are using tactics so that the case is delayed and the evidence is hampered. It is submitted that the application be rejected.

5. At this point of time, learned advocate Mr. Dushing submitted his retirement pursis for accused Nos.1 and 2.

6. Overall conduct of accused in this case is highly objectionable. It is seen that they are making every attempt to get verdict in their favour. There is resistance to examine witness. There is avoidance to conduct cross-examination, when it is noticed that the witness is stick-up to the prosecution. There are efforts to stop the trial by hooks or crooks. Approaching colleague advocate to the undersigned to conduct this matter is nothing but one of the mode adopted

by the accused to delay the trial and to get rid of the witnesses. No doubt, engaging the advocate of choice is the right to the accused. But when it is noticed that the accused are misusing the right, serious note has to be taken by the Court.

7. Apart from the above facts, the undersigned has joined judicial service before 22 years. No nexus is remained with the chamber of senior advocate or colleagues. It is a matter of professional ethics for advocate Mr. Ladda whether he would choose to appear in the case or not. Being it is a tact played by the accused only to hamper the justice, the request cannot be allowed. The application is therefore rejected.

8. As learned advocate Mr. Dushing for the accused has expressed inability to conduct the cross-examination, adjournment is granted for fifteen days so that the accused will be able to make necessary arrangements to represent themselves.

9. The matter is being adjourned again because of the application moved by the accused, therefore, the accused to pay cost of Rs.5000/- (Rs. Five Thousand only) to the witness today itself.

Matter is kept on 3/2/2022.”

8. As noted above, the trial of the applicant has already been expedited by this Court. As rightly noted by the learned Judge, the accused were misusing their right to engage an Advocate of their choice. By the said order, the learned Judge granted 15 days time to the accused to make necessary arrangements to represent themselves as Mr. Dushing Advocate for the accused had expressed his inability to conduct cross-examination on 13th January, 2022 and as, the applicant had filed an application stating therein that they want to appoint Mr. Laddha as an Advocate to appear

before the said Court. The intention of the accused is writ large. It appears that the applicant's intention is only to delay the trial on some pretext or the other. Such tactics cannot be countenanced at any cost. Hence, no infirmity can be found in the impugned order dated 13th January, 2022. The matter is posted for examination of PW4 – an eyewitness.

9. Learned Counsel for the applicant informs that the matter is now kept on 5th March, 2022. It is expected that the accused proceed with the cross-examination of the PW4, on the said date without fail. No adjournment application, on such frivolous grounds be entertained by the trial Court.

10. Considering the conduct of the applicant and in order to send a strong message to the accused, that such conduct cannot be countenanced, the present application is dismissed with costs of Rs.25,000/-. The said costs to be paid to the District Legal Services Authority within three weeks from today. Needless to state, that the witness who is yet to be cross-examined should be protected till his evidence is completed or as directed by the trial Judge. The trial Court to proceed with the case as expeditiously as possible and preferably on day-to-day basis. Adjournment applications if filed ought not to be entertained on frivolous grounds.

11. The application is disposed of on the aforesaid terms.
12. The case to proceed on 5th March, 2022.
13. Learned APP assures to produce the aforesaid order passed today, before the learned Judge as well as on the learned Prosecutor appearing in the trial Court.
14. All parties to act on the authenticated copy of this order.

REVATI MOHITE DERE, J.