

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CRIMINAL APPELLATE JURISDICTION****BAIL APPLICATION NO. 501 OF 2022**

Nilesh Gangaram Doke

.....Applicant

Vs.

The State Of Maharashtra

.....Respondent

Mr. Vinod Chate a/w Adv. Kalpana Chate a/w Adv. Pratik Gunjal a/w Pawan Vadgaonkar i/by Chate & Associates for the Applicant.

Mr. S.S. Hulke, APP for the Respondent-State.

CORAM : A. S. GADKARI, J.

DATE : 11th AUGUST, 2022.

P.C.:-

This is a third successive Application for bail.

The first Application for bail bearing Bail Application No.2260 of 2018 was rejected by this Court by a speaking Order dated 14th December, 2018. The said Order was challenged by Applicant before the Hon'ble Supreme Court by filing Petition(s) for Special Leave to Appeal (Cr.) No(s).1163 of 2019. The Hon'ble Supreme Court was pleased to dismiss as withdrawn the said Petition by its Order dated 8th February, 2019.

2 Applicant thereafter preferred second Application for bail bearing Bail Application No.1947 of 2019. As this Court was not inclined to grant relief of bail to the Applicant, learned counsel for the Applicant on

instructions, withdrew the said Application on 10th February, 2021.

By the said Order dated 10th February, 2021, this Court has directed the trial Court to expedite the hearing of the said case and to make an endeavour to dispose it off, within a period of one year from the date of receipt of the said Order.

3 Record indicates that, the trial of the said case has began and charge has been framed on 23rd March, 2021. The examination-in-chief of the informant is recorded on 31st January, 2022.

In this premise, the Applicant is seeking bail on the ground that, the trial of the said case is delayed.

4 It is to be noted here that, the Order dated 8th February, 2019 passed by the Hon'ble Supreme Court in Petition(s) for Special Leave to Appeal (Crl.) No(s).1163 of 2019 was not pointed out to this Court on 10th February, 2021 when the hearing of the Criminal Bail Application No.1947 of 2019 was conducted. As noted earlier, by the said Order dated 8th February, 2019, the Hon'ble Supreme Court was pleased to dismiss as withdrawn the said Petition and Order dated 14th December, 2018 passed in Bail Application No.2260 of 2018 was not interfered with.

5 In this background, Mr. Chate, learned counsel for the Applicant submitted that, on 10th February, 2021 at the time of hearing of Criminal Bail Application No.1947 of 2019, the said fact of passing of Order by the Hon'ble Supreme Court was pointed out to this Court however, this

Court did not record it in its Order. He submitted that, the said Order of Hon'ble Supreme Court was annexed to the compilation of Criminal Bail Application No.1947 of 2019 and therefore it is presumed that, this Court was aware of the said Order. The said submission of the learned Advocate for the Applicant is dehors of record. Perusal of Order dated 10th February, 2021 does not reflect that, the said Order of Supreme Court dated 8th February, 2019 was pointed out to this Court.

The point to be considered here is that, the Applicant might have annexed the Order of the Hon'ble Supreme Court to the Criminal Bail Application No.1947 of 2019 however, the Advocate appearing on 10th February, 2021 did not point out the same to this Court is a fact on record and it is the reason the said Order dated 10th February, 2021 is silent about passing of Order of the Hon'ble Supreme Court.

6 It is to be noted here that, the Hon'ble Supreme Court in the case of *State of Maharashtra Vs. Ramdas Shrinivas Nayak & Anr.* reported in (1982) 2 SCC 463, has held that, it cannot allow the statement of judges to be contradicted by statements at the bar or by affidavit and other evidence. If the judges say in their judgment that, something was done, said or admitted before them, that has to be the last word on the subject. The principle is well settled that the statements of facts as to what transpire at the hearing recorded in the Judgment of the Court, are conclusive of the facts so stated and no one can contradict such statement by Affidavit or

other evidence. If a party thinks that the happenings in court have been wrongly recorded in a judgment, it is incumbent upon the party, while the matter is still fresh in the minds of the judges, to call the attention of the very judges who have made the record to the fact that the statement made with regard to his conduct was a statement that had been made in error. That is the only way to have the record corrected. If no such step is taken, the matter must necessarily end there.

7 As the Order dated 14th December, 2018 passed in Bail Application No.2260 of 2018 has not been interfered by the Hon'ble Supreme Court in its Order dated 8th February, 2019, there is no question of now again re-appreciating the evidence on record.

8 As far as the prolonged incarceration of Applicant is concerned, as noted earlier, the trial of the said case has already commenced on 23rd March, 2021. The maximum sentence prescribed for the offence alleged against Applicant is death sentence and therefore the provisions of Section 436-A of the Code of Criminal Procedure will not come to any help to Applicant. Perusal of record indicates that, there is no change in circumstances then on 14th December, 2018, except incarceration of Applicant for about 4 years in jail.

In view of the above, this Court finds that, the request of the Applicant for bail cannot be considered at this stage.

Application is accordingly rejected.

9 Additional Sessions Judge, Panvel-Raigad seized of Sessions Case No.61 of 2018 (New No.381 of 2019) is hereby reminded of Order dated 10th February, 2021 passed by this Court of expediting hearing of the trial and its disposal within a period of one year therefrom.

10 Registrar Judicial (I) is hereby directed to communicate the present Order to the learned Additional Sessions Judge, Panvel-Raigad seized of Sessions Case No.61 of 2018 (New No.381 of 2019).

(A.S. GADKARI, J.)

SANJIV
SHARNAPPA
MASHALKAR

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