

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL WRIT PETITION NO.1002 OF 2022

Kedar Vishnu Patil ...Petitioner/Applicant
versus
The State of Maharashtra and another ...Respondents

**WITH
INTERIM APPLICATION NO.1843 OF 2022
IN
CRIMINAL WRIT PETITION NO.1002 OF 2022**

Waman Rajaram Patil ...Applicant

IN THE MATTER BETWEEN :-

Kedar Vishnu Patil ...Petitioner
versus
The State of Maharashtra and another ...Respondents

**WITH
CRIMINAL WRIT PETITION NO.1850 OF 2022**

Shrikant Prakash Rathod ...Petitioner
versus
The State of Maharashtra ...Respondent

**WITH
CRIMINAL APPLICATION NO.242 OF 2021**

Vaman Rajaram Patil ...Applicant
versus
The State of Maharashtra and others ...Respondents

Mr.Vinay Bhanushali, Advocate for petitioner in W.P. No.1002/2022.
Mr.Rizwan Merchant with Mr.Sagar Shetye i/by Rizwan Merchant
& Associates for applicant in Appln. No.242/2021.
Mr.Rizwan Merchant for applicant in IA No.1843 of 2022 i/by
Mr.Pratap M. Nimbalkar.
Mr.Rohan N. Hogle, Advocate for petitioner in W.P. No.1850/2022.
Mr.A.R.Patil, APP, for the Respondent-State.

CORAM : PRAKASH D. NAIK, J.

DATE : 4th JULY 2022

PER COURT:

1. Criminal Writ Petition No.1002 of 2022 is preferred by the accused in C.R. No.I-74 of 2015 registered with Mumbra Police Station on 29.01.2015 for offences under Sections 302, 120-B, 143, 144, 147, 148, 149 of Indian Penal Code (for short “IPC”). The petitioner has prayed for expediting Sessions Case No.227 of 2015 pending before the Sessions Court at Thane. Interim Application No.1843 of 2022 is preferred by the original complainant seeking intervention in Criminal Writ Petition No.1002 of 2022. The intervenor has prayed that, Criminal Writ Petition No.1002 of 2022 may be rejected. Criminal Writ Petition No.1850 of 2022 is preferred by witness in the case for seeking police protection. Criminal application No.242 of 2021 is preferred by complainant seeking transfer of sessions case to another court by setting aside order dated 28.08.2021 passed by Sessions Judge, Thane.

2. The Petitioner in Criminal Writ Petition No.1002 of 2022 had preferred Criminal Application No.1622 of 2019 before this Court seeking directions to the trial Court to expeditiously hear and conclude the Sessions Case No.227 of the 2015 in time bound

manner. Vide order dated 04.12.2019, this Court recorded that, the applicant was arrested in C.R. No.I-74 of 2015 registered with Mumbra Police Station, Thane and the charge-sheet in this case was filed on 26.08.2015. The applicant is in custody from January - 2015. The applicant had preferred Bail Application No.1085 of 2016 and this Court had expedited the trial vide order dated 24.02.2017. Charges were framed on 09.10.2019. Learned A.P.P. on instructions from the Investigating Officer submitted that, although the charge sheet shows that, there are about 46 witnesses, the prosecution intends to examine about 25 to 30 witnesses. Presently the first witness is in the witness box. Learned A.P.P. assured that, they will keep the accused and the witnesses present on all dates before the trial Court. The order further records that, the complainant is also present in the Court and assured that, he will cooperate in the conduct of trial. Having regard to the fact that, the applicant/petitioner is in custody for almost 5 years and there is no substantial progress in the case despite the trial having been expedited in 2017, the trial Court was directed to conclude the trial expeditiously and within 9 months from the date of receipt of order.

3. The petitioner in Criminal Writ Petition No.1002 of 2022 preferred bail Application No.377 of 2020 before this Court. Vide

order dated 11.09.2020, the report was called from the trial Court. The report dated 21.09.2020 submitted by the District Court-2 and Additional Sessions Judge, Thane was received by this Court. Vide order dated 30.09.2020 this Court had observed that, the report submitted by the District Judge indicate that, the learned Judge has not adverted to order dated 24.02.2017 by which this Court had directed the trial Court to expedite the trial. The learned Judge had submitted report about the progress of trial from the date on which he assumed charge of the said case and has not taken into consideration the earlier period of approximate 2 years. Numerous reasons were cited for not taking the trial to its logical end. The trial Court sought extension of six months for disposal of case. Considering the request of the Court, extension of six months time for disposal of the Sessions Case was granted by this Court vide order dated 30.09.2020.

4. While hearing Criminal Writ Petition No.1002 of 2022 this Court had requested the learned Sessions Judge to submit the report on or before 11.04.2022 as to why the trial could not be proceeded/completed despite the orders passed by this Court. Pursuant to the said Order the learned District Judge-2 and Additional Sessions Judge, Thane submitted report dated

11.04.2022. In the report it was stated that, the learned Special P.P and the Advocate for the original complainant are making every attempt to protract and linger this matter either by filing various applications on the day fixed for the hearing or by avoiding procuring the presence of witnesses on the fixed dates. Inspite of summons being issued, the police are not promptly serving summons to the witnesses and on query with the concerned Police Constable as to why the summonses were unserved, unsatisfactory answers were put forth which is sufficient to infer that the police machinery must have been pressurized for not serving the summons. The Principle District Judge and Sessions Judge, Thane was informed about these tactics and it was suggested to reporting the matter to the Hon'ble High Court. The Advocate for the complainant has initially filed transfer application for transferring the case. The said application was rejected. Thereafter the complainant had moved an application before the High Court vide Criminal Application No.242 of 2021 for transfer of case to any other Court and filed Application for adjournment on the ground that, the said application for transfer is pending, without obtaining stay on the proceedings or without even making an attempt to get that matter circulated before the High Court. The Advocate for the original complainant is making every attempt of protracting the

trial in spite of having statement made before the High Court that he would cooperate in conducting the trial within time frame. The main reason for trial being delayed amongst the others are the tactics of Special P.P. and Advocate for the original complainant. The report also referred to other reasons for delay in trial. It is stated that due to pandemic, the work of Court was paralyzed. The Court was required to work under the SOP's issued by the High Court. Various directions were issued by the High Court about work to be performed by the subordinate Courts. The report also referred to date wise progress in trial pursuant to order dated 30.09.2020. The Court had made every endeavour to fix the matter on the nearest possible date for completing the trial. On many occasions Special P.P. was absent and failed to procure presence of witnesses before the Court. The Court had succeeded in recording of 14 witnesses. The Court requested for 9 months for completing the trial and that endeavour would made to complete the trial provided special P.P. and complainant's Advocate cooperated in disposing the matter within stipulated time.

5. Learned Advocate for the Petitioner in Criminal Writ Petition No.1002 of 2022 submitted that in spite of directions given by this Court, there is no progress in the trial as expected. The

complainant is delaying the trial. The Guidelines issued by the Hon'ble Supreme Court in Suo Moto Writ (Cri.) No.(S).1/2017 dated 20th April 2021 (In Re : To issue certain guidelines regarding inadequacies and deficiencies in criminal trials Vs. The State of Andhra Pradesh and others) are required to be followed, whereas learned Advocate for the complainant submitted that, the complainant had not delayed the trial. The trial has proceeded. Learned A.PP submitted that, 14 witnesses were examined. About 15 more witnesses are to be examined and within a period of about 9 months, the trial would be concluded.

6. Criminal Writ Petition No.1850 of 2022 is preferred by one of the witness in Sessions Case No.227 of 2015. It is contended that, the Petitioner has been threatened with dire consequences by one of the accused in order to not to testify before the Court. The threats were issued on 01.03.2022. The complainant and other witnesses have filed complaints on the grievance of threats at the instance of accused. The trial Court had passed the order dated 28.03.2022 on the application preferred by special PP for providing police protection to the witness and for securing the presence of that witness before the Court in protection. The Court has recorded that the witness was present before the Court on

09.03.2022. On that day he did not make any complaint having received such threats or having filed any application before the Police. The matter requires inquiry. When the matter was fixed on 19.03.2022, the witness remained absent and bailable warrant was issued against him. The warrant was executed. The witness is absent. The Court directed the Police to do the needful on the application of the witness, if the rules permit. The cost of providing such protection if necessary be recovered from concerned witness. Learned Special P.P. was directed to procure the presence of witness by seeking non-bailable warrant as the witness is absence in spite of service of bailable warrant.

7. Criminal Application No.242 of 2021 is preferred by the original complainant challenging Order dated 28.08.2021 passed by the learned Principle District and Sessions Judge, Thane rejecting the application for transfer of proceedings. Learned Advocate for the applicant submitted that, the impugned order is erroneous. The application was preferred by the complainant with apprehension expressed in the application. The son of complainant was murdered on 19.01.2015. The accused are responsible for the offence. The application for transfer was preferred as it was found that the learned Judge was biased and showing unnecessary haste

in the matter. Learned Advocate for the Petitioner/Complainant has tendered the notes of arguments and submitted that, in the event the grievances submitted therein are taken care of, the Petitioner would not press for transfer of case. The notes of arguments interalia indicate that the prosecution in Sessions Case No.227 of 2015 to be permitted by the trial Court to be conducted only when Special PP appointed by the State in the said case and not to insist on the trial being proceeded with by or through the regular PP of the Court of 2nd District Judge and Additional Sessions Judge, Thane. The directions being given to the Court to extend and ensure to the prosecution witness the protection under the Witness Protection Scheme 2018, on the application of learned Special PP or the witness directly. Any grievance or complaint made by the complainant or his advocate against accused of being subjected to intimidation, fear and threats during the conducting of the trial as and when brought to the notice of the Court, be immediately acted upon, the trial be expedited and the request of the learned Sessions Judge for extension of time to complete the trial in 9 months may be granted.

8. Learned Advocate for the Respondent/Accused submitted that, no ground is made out for transfer of investigation. The Court

is insisting for trial and directions issued by this Court. The trial is delayed by the complainant and Special P.P

9. Pursuant to order dated 06.12.2021, the learned District Judge -2 and Additional Sessions Judge, Thane has submitted the report dated 31.01.2022. The detailed explanation was given by the learned Judge and it is stated that the allegations against the learned Judge are totally false, baseless and frivolous and have been made with only aim to lower down his name and prestige which he has gained long 27 years of service as a Judge. This also appears to one of the tactics to protract the trial. The complainant by such tactics is committing breach of his own undertaking given to the Hon'ble High Court.

10. It is pertinent to note that, despite the directions to conclude the trial within stipulated time, the trial has not concluded. I have perused the previous orders passed by this Court and report dated 11.04.2022 submitted by learned District Judge -2 and Additional District Judge, Thane as well as the report dated 31.01.2022 submitted by the trial Court. The trial is required to be conducted expeditiously. The prosecution and defence are expected to co-operate with the trial. Since one of the witness has contended that the he was threatened, he needs to be provided police protection.

The prayer for transfer of investigation on the allegations reflected in the transfer application cannot be granted. The grievances made in the application for transfer are not justifiable. The allegations are devoid of substance and merits although the learned counsel for the Petitioner in Criminal Writ Petition No.242 of 2021 has tried to give concession for not taking application for transfer, in the event all his submissions are accepted, since the transfer was based on the aspersions made against learned Judge, application challenging the order rejecting the application for transfer deserves to be rejected. I do not find any infirmity in the impugned order rejecting the application for transfer.

11. Considering the aforesaid circumstances, I pass the following Order :

ORDER

- (i) Criminal Writ Petition No.1002 of 2022 is allowed to the extent of expediting trial. The Trial Court is requested to complete trial within a period of six months from the date of receipt of this order. Writ Petition is disposed off;
- (ii) The prosecution and defence shall co-operate with the Trial Court in concluding trial expeditiously;
- (iii) The Trial Court shall follow Case Management hearing in accordance with decision of Supreme Court in *Suo Moto Writ (Cri.)*

No.(S).1/2017 dated 20th April 2021 (In Re : To issue certain guidelines regarding inadequacies and deficiencies in criminal trials Vs. The State of Andhra Pradesh and others);

(iv) The intervenor in Interim Application No.1843 of 2022 is heard in Writ Petition No.1002 of 2022. Hence, Interim Application No.1843 of 2022 is disposed of;

(v) The witness Shrikant Prakash Rathod be examined on the next date of hearing before Trial Court i.e. 6th July 2022 or on any other day whenever he appears before the Trial Court upon summons being served, and on the date of recording of his evidence police protection be provided to him without cost;

(vi) Criminal Writ Petition No.1850 of 2022 stands disposed of;

(vii) Criminal Application No.245 of 2021 is rejected and disposed off;

(viii) The Trial Court is requested to give priority to this case;

(ix) In the event of any threats received by the witnesses and any application in that regard is made before Trial Court, the same shall be dealt with on merits.

(PRAKASH D. NAIK, J.)