

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

CRIMINAL BAIL APPLICATION NO.3231 OF 2021

Mohammad Mustafa Matiullah Khan ...Applicant
Versus
The State
(at the instance of D.N. Nagar P. S.) and Anr. ...Respondents

Mr. R. V. Gupta, for the Applicant.

Ms. M. M. Deshmukh, A.P.P for the Respondent No.1- State.

Ms. Sandhya Mailagir i/b Ms. Megha Bajoria, Appointed Advocate for the Respondent No.2.

Mr. Pradeep Jadhav, PSI, D. N. Nagar Police Station, Mumbai, is present.

CORAM : REVATI MOHITE DERE, J.

DATE : 15th JULY 2022

P.C. :

1. This is the second bail application preferred by the applicant. The first bail application of the applicant was withdrawn, as this Court was not inclined to enlarge the applicant on bail. The said order is dated 23rd September 2019. Vide the said order, the trial of the applicant was expedited and the trial Court was directed to

conclude the case within six months from the date of receipt of the aforesaid order, having regard to the peculiar facts of the case, in particular the age of the prosecutrix, who at the relevant time was 12 – 14 years of age.

2. Learned Counsel for the applicant submitted that despite the trial having being expedited and made time bound, even charge has not been framed in the said case, leave alone, examination of the witnesses. Considering the same, a report was called from the learned Special Court before whom the case was pending, as to why the trial could not conclude, despite the direction given by this Court vide order dated 23rd September 2019.

3. Pursuant to the said order, the learned Judge has submitted his report dated 1st April 2022. From the said report, it appears that the case was transferred from one Court to another, however, there was no reflection or specific noting in the roznama that the case was made time bound by this Court. It is stated that it was inadvertent

mistake. It is further stated that thereafter, there was Corona Pandemic and S.O.P's in operation since March 2020 till February 2022 and that the Courts before whom the case was transferred inadvertently or mistakenly did not apply for the extension of time after expiry of the six month period. It is stated that the mistake is bonafide and that the case will be decided expeditiously by keeping it on day-to-day basis. The report also reflects that despite production warrant being issued to the jail authorities time and again, to produce the applicant/accused, the jail authority failed to produce the accused before the Court, as a result of which charge could not be framed. The learned Judge has also expressed his readiness to take up the case on day-to-day basis.

4. Learned APP assures that the applicant will be produced on the dates given by the trial Court either physically or through video conferencing, as may be directed by the trial Court. She submits that the prosecution will also keep all its witnesses present on the dates given by the trial Court and will not cause impediment in the

conduct of the trial.

5. Since this Court is inclined to give directions to the learned Judge, to take up the case on day-to-day basis, learned counsel for the applicant does not press this application. Learned Counsel for the applicant also assures to co-operate in the conduct of the trial, by not seeking adjournment.

6. It appears that till date, only 2 witnesses have been examined by the prosecution and that the prosecution intends to examine 9 more witnesses.

7. Considering the aforesaid, the learned Judge to conclude the case, as expeditiously as possible and in any event, within 3 months from the date of receipt of this order. The learned Judge as far as possible to take the case on day-to-day basis.

8. The applicant is at liberty to file a fresh application seeking his enlargement on bail, in the event the trial does not conclude within 3 months, from the date of receipt of this order.

9. Application is accordingly disposed of as not pressed, with the aforesaid directions.

10. The advocate for the applicant to place the aforesaid order before the learned Judge conducting the trial, so as to enable him to comply with the aforesaid order.

11. All concerned to act on the authenticated copy of this order.

REVATI MOHITE DERE, J.