

rajshree

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
BAIL APPLICATION NO.511 of 2021
ALONGWITH
INTERIM APPLICATION NO.3074 OF 2021
IN

BAIL APPLICATION NO.511 OF 2021

Abhijit Anant Bhosale] .. Applicant

vs.

State of Maharashtra] .. Respondent

WITH

BAIL APPLICATION NO.2669 of 2022

Birbal Singh & Anr.] .. Applicants

vs.

State of Maharashtra] .. Respondent

WITH

BAIL APPLICATION NO.2684 of 2022

Harun Ibrahim Shaikh & Anr.] .. Applicants

vs.

State of Maharashtra] .. Respondent

Ms.Swapna Kode, for the Applicant in BA No.511/2021.

Ms.Manali Sohoni for the Applicants in BA No.2669/2022.

Ms.Amita Chaware h/f Suvarna Avadh Vast for the Applicants in BA No.2684/2022.

Mr.S.V. Gavand, APP for the State.

I.O. Pravin More present.

CORAM : BHARATI DANGRE, J

DATE : 19th OCTOBER, 2022.

P.C.

1] On 27.09.2022 a common order was passed in three Bail Applications. The Applicants in all these Applications were seeking release on bail in Sessions Case No.161/2017. Long incarceration of all these Applicants was one of the ground and I have noticed that they came to be arrested a decade back.

2] Referring to the directions issued by the Hon'ble Apex Court in the case of **Sonadhar vs. The State of Chhatisgarh (Special Leave to Appeal (Cri) No.529 of 221 decided on 15.09.2022**, I deemed it appropriate to call roznama of the proceedings so as to ascertain progress of the trial.

3] My attention was invited to a glaring fact that after the 26 witnesses were examined, prosecution moved an application for examining four more witnesses, which was granted and recording of statements under Section 313 of the Cr.P.C. was deferred. On the date when the order was passed, 27th witness was under cross-examination. Thereafter, some confusion was created about accused No.5 i.e. Applicant in BA No.511/2021 as his trial came to be separated. Hence, by order dated 17.10.2022, the learned APP was sought to seek certain instructions in order to have some clarity about the procedure that was followed.

4] Today, the learned APP states with clarity that as far as Applicant in BA No.511/2021 is concerned he was granted pardon under Section 306 of the Cr.P.C. on 19.09.2016 and he was treated as approver. He stepped into witness box on 12.11.2021, but since he did

not support the case of the prosecution, the SPP moved an application vide Exhibit No.323.

The entire examination of the said witness is placed before me and on going through the same, it is apparent that he did not support the case of the prosecution and therefore, he was subjected to cross-examination by the SPP for the State.

It appears that, thereafter, the learned SPP submitted a certificate under Section 308 of the Cr.P.C. and since he resiled from the pardon by willfully concealing essential of crime and by giving false evidence and failed to comply with the condition on which the pardon was tendered, he was sought to restore to his position of the accused.

The Additional Sessions Judge, Court 10, Dindoshi, Mumbai, was convinced with the certificate issued under Section 308 of the Cr.P.C. and by looking to his evidence, treated him as accused in CR No.174/2012, which was registered with Borivali Police Station.

5] A glaring fact is noticed by me that while examining of the PW 26 proceeded, the learned Judge had included Para Nos.19 to 21 as a part of re-examination of the said witness by the SPP.

In fact Para 19 to 21 cannot be said to be a part of evidence and this is a part of the order which the learned Judge has passed.

The concerned Judge is requested to rectify the said mistake and treat it as order passed on the application filed by the SPP.

6] The position now becomes clear that the trial of accused No.5 is separated from Sessions Case No.161/2017 in the wake of statutory contents of Section 306, 307 and 308 Cr.P.C and he will be tried separately.

7] As far as his application i.e. BA No.511/2021 is concerned, it is not in dispute that he remained incarcerated for more than 10 years, but apart from this, I would like the APP to go through the evidence available against him, before I deal with his application.

Therefore, let the learned APP apprise himself of the material available against him in the charge-sheet and apprise this Court.

8] As far as other two Applications are concerned, , the learned APP has made a specific statement that 29th witness i.e. the Investigating Officer is in the dock and his examination is scheduled on 21.10.2022. It is also submitted that after his examination is over, another Investigating Officer, the 30th witness of the prosecution would also be examined.

It is made clear that the learned Judge shall earnestly proceed with the examination of these two witnesses and record evidence of 29th witness on 21.10.2022 and immediately schedule the trial for further proceedings on re-opening of the Court after Diwali Vacation.

In any case, examination and cross-examination of these witnesses shall be concluded on or before 05.11.2022. Immediately thereafter, from 07.11.2022 the Court shall start recording statements of accused under Section 313 of the Cr.P.C.

9] The prosecution agency shall ensure presence of accused persons, who are in custody, on the said dates and the Court shall conclude with the recording of statements on or before 11.11.2022. In the week commencing 14.11.2022 to 16.11.2022.

Thereafter, arguments shall be heard forthwith.

With this time bound programme being chalked out, the Sessions Court, shall conclude the trial on or before 30.11.2022.

10] The aforesaid directions are issued despite being aware of the position that the trial Courts shall be granted free play in conduct of the trial, however, I am constrained to impose fixed/ time bound schedule since it is noticed that for one or the other reason trial is lingering and though it was likely to be over in the month of April, 2022, the prosecution came up with additional evidence and that is how trial got held up . Now, the trial of Accused No.5 being separated, four accused remained to be tried who are incarcerated for more than a decade and that has prompted me to issue above directions.

The learned Judge is requested to strictly adhere to the aforesaid directions for the sake of justice being accorded to the accused persons and they may either convicted or acquitted as per material available available on record, but the only anxiety of the Applicant is the trial to be concluded within the time bound schedule.

11] In the wake of above BA No.2684/2022 and 2669/2022 are disposed off.

12] List BA No.511 of 2021 on 20.10.2022 at 2.30 p.m.

[BHARATI DANGRE, J]