

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

BAIL APPLICATION NO.260 OF 2023

GANESH BABURAO KHARAT
VERSUS
THE STATE OF MAHARASHTRA

...

Advocate for Applicant : Mr. S. J. Salunke h/f. Mr. A. B. Ghule
APP for Respondent/State : Mr. K. S. Patil
Advocate for first informant : Mr. D. R. Gavhad

...

CORAM : S. G. MEHARE, J.

DATE : 11.04.2023

PER COURT :

1. Heard the learned counsel for the applicant, the learned A.P.P. for the respondent/State and the learned counsel for the informant.
2. The record reveals that the trial was protracted due to an application filed by the complainant to transfer the Sessions Trial on so-called apprehension of getting no justice for him. His application for transfer of the Sessions Case was rejected. He had preferred Criminal Writ Petition before this Court against the said order, and that has also been dismissed his petition.
3. The roznama (daily order sheet) referred to by the learned counsel for the applicant reveals that the learned Public Prosecutor was absent. However, after the order passed by this Court dismissing

the Writ Petition of the complainant, around six witnesses were examined. The accused has a right to have a speedy trial. At the same time, papers reveal that few witnesses remained to be examined.

4. It appears that around 11 witnesses have been examined, and there is a possibility of completing the trial in the near future. However, Court is not oblivious that the summer vacations are approaching. Therefore, instead of granting bail, the learned Additional Sessions Judge-2, Ambad is directed to complete the examination of all the witnesses before the vacation starts, provided the prosecutor should remain present and produce the witnesses in time. The complainant, who appears to have an intention to protract the trial, should also not be unnecessarily entertained. The prosecution is also expected to cooperate with the Court. The learned Additional Sessions Judge-2 Ambad is directed to conduct the trial on day to day basis till the examination of the witnesses is over. If the examination of the witnesses is over before the summer vacation, he shall endeavour to dispose of the case before the summer vacation of 2023.

5. In the above terms, the application stands disposed of.

6. The counsel for the applicant has also submitted that since the applicant is in jail, he has no opportunity to take proper instructions from him. Therefore, conducting the trial and rendering quality

assistance to the Court is difficult for the lawyers. This may be one of the reasons for protracting the trials. Non production of the accused in the Court is a big cry of the accused. The police continuously guard the accused; hence they do not get the opportunity to meet their lawyers to have professional communication. He has raised a good question. There appears substance in the submission of the learned counsel for the applicant that the lawyer did not get the opportunity to have complete, proper and relevant confidential instructions from the under trials. Hence the trials are protracted, and they cannot render better assistance to the Court to arrive at the proper conclusion. Such a situation may result in a miscarriage of justice.

7. Speedy trial is a fundamental right implicit in the guarantee of life and personal liberty enshrined in Article 21 of the Constitution of India. It is experienced that it is difficult for lawyers to meet the under trial prisoners in jail and have a dialogue confidentially with them. The lawyers shall have reasonable instructions from the undertrials to conduct the trial and better assist the Court.

8. Section 126 of the Indian Evidence Act gives statutory recognition to the professional communication between the lawyer and the litigant. Even having such a legally recognized right, the under trials do not get an opportunity to have professional communication is

unfair. For want of sufficient instructions, injustice may be caused to the under trial prisoners. The lawyer, barrister or vakil may also have difficulties conducting the trial properly and for want of proper instructions to his lawyer, the right of the accused to put his defence correctly may be affected, which may lead to incorrect conclusions. The accused has a right to be heard.

9. It's the responsibility of the State to make an appropriate arrangement for secret professional communication with the lawyer. It is possible. The District Judiciary may ask the State (P.W.D) to build sufficient transparent glass chambers in the Court premises. Such chambers have been made available at District Court, Dhule. All the Principal District and Sessions Judges in the State shall take appropriate steps to build such chambers in the Court premises to secure the right of the under trial prisoners.

10. The Registrar (Judicial) is to circulate this order to all Principal District and Sessions Judges of the State to implement the suggestions as above.

(S. G. MEHARE)
JUDGE