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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
BAIL APPLICATION NO.2145 OF 2023

Shishirkumar Gopalchandra Padhy] .. Applicant

vs.

State of Maharashtra] .. Respondent

Mr.Sandesh Manikhedkar a/w Anil Yadav i/b Dipika Gupta for Applicant.

Mr.S.R. Agarkar, APP for the State.

Sr. PU Uttam Pachpute, Kanjurmarg Police Station present.

CORAM : BHARATI DANGRE, J

DATE : 12th September, 2023.

P.C.

1] The present Application is but one amongst many when the Applicant approached this Court on the second occasion seeking his release on bail, as there is no compliance of the direction issued by this Court to conclude the Sessions Case No.259/2016, where he is being tried, within a time bound manner.

The Applicant was arrested on 18.01.2016 and he face the charge under Section 302, 452 of the IPC. He remain incarcerated since the date of his arrest and since the APP had stated that five witnesses are already examined and the prosecution intend to examine total 10 witnesses, the trial was directed to conclude within a period of 6 months.

I have specifically directed, that the concerned Judge shall endeavour to fix the trial on day to day basis and conclude the same.

Upon the order being passed on 30.09.2022, the concerned Judge took note of the direction issued by this Court on 19.10.2022 and fixed the trial though not on day to day basis, but spread over by a period of about a week or so and the counsel for the Applicant has placed before me the Roznama of the proceedings.

2] Perusal of the distinct dates would reveal that on most of the occasions the witnesses are absent and on some of the remaining dates when the witness is present, the accused is not produced from jail custody.

The net result of the above is that the trial has not progressed at all and it remains stand still at the same stage where it was on 30.09.2022, merely an year after the order is passed.

3] Two things are apparent; one the prosecution take the onus fixed on it too lightly, as the concerned Public Prosecutor has not ensured presence of its witnesses on the dates when the court fixed the trial and secondly court failed to secure presence of the accused on the relevant dates.

The net result is the accused continue to be incarcerated and await culmination of his trial, where he is ready to face the consequences, which may even entail a conviction, if not and if he succeed and is acquitted, the question which he ask the entire system is why he was being incarcerated pending his trial and that too almost 7 years.

4] Time and again, I have expressed that some accountability deserve to be fixed and when I say accountability it is not only procedural one but possibly on the courts, who are in seized of such

trials and particularly when the accused are incarcerated for such a long time.

In the present case, the learned Judge, on all these dates has not bothered to pass a speaking order imposing some responsibility upon the prosecution or the jail authority for non production of accused persons.

The order passed by the higher Court, when it direct that the Judge shall fix the trial on day to day basis, do not indicate that the Judge shall only fill the pages of Roznama and record the happenings that the witness are absent or the accused is not produced from Jail.

Not a single positive step has been taken by the in charge Court to ensure the presence of witnesses and also to secure the presence of accused on the concerned date.

In this scenario, a direction is issued calling upon an explanation from the learned Judge, I may receive the stereotype response, that the Court was also entrusted with time bound sessions trial, or that since the witnesses were not present, or the accused were not produced and hence the trial could not proceed.

This is one but many of the cases with the similar scenario .

For the last one year the trial has not progressed and though attempts have been made by me to call for explanation from the prisons or the concerned Judge, it definitely did not yield any result.

5] In the result, though the learned APP state on instructions that there are approximately 6 to 10 witnesses which are to be examined, with the snail-speed progress of the trial for last one year, I am unable to comprehend as to who should be blamed.

6] I deem it appropriate to release the Applicant on bail only on the

ground of long incarceration and to be concluded within the stipulated period, though an attempt was made in the past, when it was directed that considering that total 10 witnesses are to be examined, the trial shall be concluded within a period of 6 months from today.

7] Repeatedly, constitutional courts have identified right of an accused for a speedy trial, which is envisaged under Article 21 of the Constitution and no explanation being found from any of the institution, whether it is the Prosecuting Agency or the Trial Court, the only way to assure him, of his right, is a decision to release him on bail.

For the reasons recorded above, I deem it appropriate to release the applicant on bail subject to the following conditions.

ORDER

- (a) Bail Application is allowed.
- (b) Applicant ShishirKumar Gopalchand Padhy shall be released on bail in connection with C.R.No.36 of 2016 registered with Sakinaka Police Station on furnishing P.R. bond to the extent of Rs.25,000/- with one or two sureties of the like amount.
- (c) Applicant shall, on every date of the trial, remain present before the Court and his absence on two consequent occasions would entitle the prosecution to seek cancellation of bail on the ground that he is making an attempt to prolong the trial.
- (d) The applicant shall not directly or indirectly make any inducement, threat or promise to any person acquainted with facts of case so as to dissuade him from disclosing the facts to Court or any Police Officer and should not tamper with evidence.

(e) Upon release, the Applicant shall keep the Investigating Officer updated about his contact number and residential address.

[BHARATI DANGRE, J]