

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

CRIMINAL BAIL APPLICATION NO. 2950 OF 2022

Dhananjay Braj Narayanlal Srivastav

..Applicant.

Versus

Union of India & Anr.

..Respondents

Mr. Taraq Sayed a/w. Advait Tamhankar a/w. Ashwini Achari i/b.
Lochan Chandka for Applicant.

Mr. Advait M. Sethna a/w. Ms. Ruju R. Thakker a/w. Mr. Rangan
Majmudar a/w. Sandeep Raman for Respondent No.1 (D.R.I.).

Smt. M. R. Tidke, APP for State/Respondent No.2.

CORAM : SARANG V. KOTWAL, J.

DATE : 31 JANUARY 2023

PC :

1. The Applicant had earlier approached this Court for his release on bail vide Criminal Bail Application No. 748 of 2021. That application was disposed of vide order dated 10/02/2022 which reads thus:

1. After arguing for some time, when I expressed my disinclination to grant relief in this application, learned counsel for the Applicant prays for unconditional withdrawal of this application.

2. However, he submitted that since the Applicant is in custody since 05/08/2017, the trial Court be directed to complete the trial within a time bound manner.

3. I have considered this request. The application is allowed to be withdrawn unconditionally. However, since the Applicant is in custody since 05/08/2017, it is necessary that the trial is commenced at the earliest and is concluded within a reasonable time.

4. Hence, the following order :

ORDER

- (i) The application is allowed to be withdrawn unconditionally on merits.
- (ii) The trial Court is requested to commence the trial immediately and conclude it as far as within a period of one year from today.
- (iii) With these observations, the application is disposed of.”

2. As is recorded in the order, the applicant is in custody since 05/08/2017. More than five and half years have passed and there is no progress in the trial. The same order recorded that the trial was made time bound and it was directed to be completed within a period of one year from 10/02/2022. Since there was no further progress in the trial, the applicant has again approached this Court by way of the present Bail Application No. 2950 of 2022. On the last occasion i.e. on 09/12/2022, I had called for a report from the learned Principal District Judge, Thane and it was expected that some explanation was offered as to why the order passed on 10/02/2022 could not be complied with and as to why the trial had not commenced.

3. Now a report is received from the Principal District Judge, Thane. The report is dated 25/01/2023. The report mentions that the order dated 10/02/2022 was received by the Sessions Court on 28/02/2022. At that time, the case was pending before the Court presided over by Shri. R. S. Gupta, District Judge-5 and Additional Sessions Judge, Thane. In the Annual General Transfers he was transferred and then the case was assigned to

Shri. P. S. Vithalani, District Judge-5 and Additional Sessions Judge, Thane. After that, two District Judges retired and therefore, the ranking of the Judicial Officers had changed and, therefore, the case was assigned to Shri. A. N. Shirsikar, District Judge-3 and Additional Sessions Judge, Thane, on 25/07/2022. After that, it was assigned to Shri. P. M. Gupta, District Judge-5 and Additional Sessions Judge, Thane on 21/10/2022 and since then at present, the case is before the same learned Judge Shri. P. M. Gupta. The report itself mentions that, within a span of four months the case was assigned to three Judicial Officers for trial. It is also mentioned in the report that, due to heavy workload of bail applications before the Sessions Judges and because of shortage of Judges, the existing strength is not enough to deal with the large number of pendency.

4. Apart from the report of the learned Principal District Judge, Thane, there is a report of learned Judge Shri. P. M. Gupta himself. He has mentioned that, he had taken all efforts to dispose of the case as early as possible. He has also given the details of the pending cases and bail applications before him.

5. The reasons mentioned in these reports do show practical difficulty in deciding the cases. However, some way will have to be found to complete the trials of the accused who are under trial for a long period and who are facing the charges of commission of serious offence like in the present case. In this case, the applicant is in custody since 05/08/2017. Therefore, all the reasons given by learned Principal District Judge, Thane and the Presiding Officer of the Court before whom the case is pending cannot wipe out the fact that the applicant is in custody for over five and half years without commencement of the trial. Therefore, some balance will have to be struck; so that the trial can proceed. Till today, even the Charges are not framed, though this Court had directed to commence the trial immediately vide order dated 10/02/2022. There was complete disregard to that order.

6. The report of Shri. P. M. Gupta also mentions that, neither the complainant nor its advocate were regularly appearing in the Court and, therefore, predecessor of the present Presiding Officer had to issue notice to the complainant. Only after that, on 04/11/2022, Advocate Ms. Vibhavari Pathak was appointed and

appeared in the case. Therefore, it does appear that some serious efforts are required to be taken on the part of prosecuting agency, as well, so that the matter proceeds smoothly and expeditiously. It is mentioned that the case is kept for framing of Charge on 01/02/2023.

7. Considering this background and the practical difficulty, following order is passed:

O R D E R

- i) The trial is made time bound.
- ii) The trial Court shall complete the trial on or before 31/05/2023.
- iii) Learned Principal District Judge, Thane shall ensure that the trial is assigned to a Judge who will be in Thane for the next four months to complete the trial.
- iv) Either the present Trial Judge or any other Judge to whom the case may be assigned as per the

directions of learned Principal District Judge, Thane, shall ensure that some time during the day is kept aside for this particular case.

- v) The prosecuting agency shall ensure that the Prosecutor who is looking after the case is present before the Court on every date and he goes on with the trial.
- vi) Both the sides shall cooperate for expeditious disposal of the trial.
- vii) If the trial is not concluded or is not within a reasonable sight of being concluded on or before 31/05/2023; the applicant is at liberty to prefer an application for bail on the ground of long incarceration.
- viii) With these directions, the application is disposed of.

(SARANG V. KOTWAL, J.)