



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO. 63 OF 2024

Kiran Mohan Ajabe

VERSUS

The State Of Maharashtra And Others

...

Mr. S. S. Jadhav h/f Mr. A. N. Barhate Patil, Advocate
for Appellant

Mr. S. B. Narwade, APP for Respondents

Ms. S. G. Sonawane, Advocate for Respondent No. 3

WITH

CRIMINAL APPEAL NO. 489 OF 2024

Rupesh Ashok Wadekar

VERSUS

The State Of Maharashtra And Another

...

Mr. S. S. Gangakhedkar, Advocate for Appellant

Mr. S. B. Narwade, APP for Respondents

Ms. S. G. Sonawane, Advocate for Respondent No. 2

CORAM : R.M. JOSHI, J

DATE : OCTOBER 25, 2024

PER COURT :

1. These appeals are for regular bail in connection with Crime No. 103/2015 registered at Shirdi Police Station, District Ahmednagar for offences punishable under Sections 364, 302, 201, 143, 147, 149 of Indian Penal Code and under Sections 3(1)(III)(X), 3(2)(V) of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act.

2. These appeals are filed essentially on the ground that the appellants are incarcerated for over period of 9 years without their trial being concluded. Learned counsel for the appellants have drawn attention of the Court to the fact that Division Bench of this Court by order dated 28.06.2022 passed in Criminal Appeal No. 415/2022 had directed trial against the present appellants and the co-accused to be completed within a period of 5 months. Inspite of the same, trial was not concluded in time. Another order came to be passed on 07.06.2023, wherein it is stated that in all 79 witnesses are to be examined and only one witness was examined by then. In view of this, direction was issued for day to day conducting of the trial to be completed before December 2023. It is their submission that the prosecution has not proceeded with the trial and due to the same, the appellants herein are languishing in jail for almost 10 years.

3. They relied upon judgment of Hon'ble Supreme Court in case of Javed Gulam Nabi Shaikh vs. State of

Maharashtra and another, **AIROnline 2024 SC 497** to contend that the accused has a right to speedy trial and that bail cannot be withheld as punishment. It is their submission that the Hon'ble Supreme Court even in cases where there is conviction recorded against accused and where the accused are incarcerated over period of 10 years or more, bail is granted and therefore, appellants cannot be kept behind bars without conviction.

4. They drew attention of the Court to the observations recorded by the trial court as well as by this Court indicating no effort being taken by the Special Public Prosecutor to conduct said trial expeditiously and to complete the trial at least in a reasonable period of time. It is submitted that the present appeals are filed in May 2024 and since then, at the instance of prosecution, under the assurance that three eye-witnesses would be examined within stipulated period, time was sought by the prosecution as well as from the side of the informant. It is their contention that on the basis of making such misleading

statement, on one hand, prosecution is neither completing the trial and nor allowing the application to be heard. It is also argued that the intention of the prosecution in delaying the trial can be ascertained from the fact that the application in respect of acceptance of CCTV footage which was rejected by trial Court and against which Writ Petition is pending before this Court, is reagitated before the trial Court to kill time. They also relied upon order of Hon'ble Supreme Court in **Criminal Appeal No. 4164/2024** in case of Rup Bahadur Magar @ Sanki @ Rabin vs. State of West Bengal.

5. Learned counsel for informant opposed grant of bail on the ground that the offence is of murder and appellants have criminal history behind them. It is also alleged that during the grant of temporary bail, they have committed other offences. It is also claimed that if the appellants are released on bail they are likely to tamper with the evidence.

6. Learned APP opposed the appeal by citing

seriousness of crime. It is contended that delay is not attributable to the prosecution solely. He submits on instructions from the Special Public Prosecutor appearing before the Trial Court that the trial would be concluded in a short period of time. He relied upon judgment of Hon'ble Supreme Court in case of Narayan Ghosh @ Natu vs. State of Orissa, 2008 DGLS(SC) 154, to oppose appeals.

7. This Court is conscious of the fact that though there is right of the accused guaranteed under Article 21 of the Constitution of India of speedy trial but at the same time, the right of the prosecution and informant/victim needs to be considered and balanced. It is necessary to note that these appeals are pending since May 2024. Only on the assurance given by prosecution of completing examination of eye witnesses in stipulated period, this Court did not pass any order of grant of bail keeping in mind the interest of the prosecution and need of a fair trial. It is however, painful to note that the prosecution is not serious in completing the trial expeditiously despite of

directions of Division Bench of this Court to conduct the trial on day to day basis. Even statements made before this Court are not adhered to. As recorded in order dated 02.08.2024, the Special Public Prosecutor was absent on 19 occasions during period from 20.07.2023 to 19.12.2023. Even the order passed by the trial Court indicates that Special Public Prosecutor used to remain absent on various dates of hearing and which has resulted in non-prosecution of the trial. This clearly indicates that there is total disregard to the directions issued by Division Bench of this Court to conduct trial on day to day basis. Ordinarily, the Courts incline to grant time to the prosecution provided such request is bonafide. The statements made before this Court seem to be not made with seriousness but aimed at seeking postponement of hearing. This Court, therefore, now finds no reason to accept the contention of the prosecution about the trial to be completed in short period of time.

8. There are total 79 witnesses to be examined, out of which, still 30 witnesses remained to have been

examined. Thus, there is no possibility of the trial being getting over in reasonable time. The right of accused/appellants of speedy trial are violated.

9. In case of Javed Gulam Shaikh (supra), the Hon'ble Supreme Court has discussed the manner in which prosecution agency has infringed the right of the accused to have speedy trial which violates Article 21 of the Constitution. It was therefore held that accused therein was entitled for bail. As far as judgment relied upon by learned APP in case of Narayan (supra) it is pertinent to note that the accused therein were arrested on 30.03.2007 for offence punishable under Section 302 read with 34 of Indian Penal Code and the order passed by the Hon'ble Supreme Court is on 04.02.2008. However, in the instant case, the appellants are arrested in June 2015. In respectful view of this Court, the said judgment therefore does not help the prosecution in any manner.

10. As recorded hereinabove, while considering the right of speedy trial of the accused, possibility of

tampering evidence also needs to be considered. Such apprehension can be taken care of by imposing stringent conditions by preventing the entry of the appellants in Ahmednagar district till conclusion of trial. Further direction can be issued that the appellants shall record their presence before the concerned police station while entering the area for the purpose of attending the trial and that they can be directed to record attendance even while leaving the district. Further direction can be issued to the PI of the concerned police station to ensure that while the appellants attend the trial, a police personnel to accompany them to ensure that there is no any act committed by them causing interference in the evidence of the prosecution.

11. Hence appeals are allowed with following order :-

O R D E R

- (i) Appellants in both Appeals in connection with C.R. No. 103/2015 registered with Shirdi Police Station, Dist. Ahmednagar for the offences punishable under Sections 364, 302,

201, 143, 147, 149 of the Indian Penal Code and Sections 3(1)(iii)(x), 3(2)(v) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, they shall be released on bail on executing PB and SB of Rs. 30,000 (Rupees Thirty Thousand Only) each with one solvent surety in the like amount.

- (ii) They shall attend the concerned police station as and when required.
- (iii) They are prevented from entering Ahmednagar district till conclusion of trial in Sessions Case No. 62/2015, except for attending the dates of hearing before the trial Court.
- (iv) If accused remain absent before trial Court, and/or they involve themselves in any other crime, this order of bail shall stand cancelled without reference to the Court.
- (v) Appellants are directed to appear before the concerned police station before attending the trial before the Special Court and PI of the said police station is directed to ensure that the appellants are accompanied by atleast one police personnel till the time they return to the police station, before leaving area.
- (vi) Appellants to forthwith leave the district forthwith after recording their attendance in police station.
- (vii) They shall not contact the witnesses directly or indirectly.
- (viii) They shall not interfere with the evidence in any manner whatsoever.

(ix) If any conditions of this order is found to be breached, it will result into cancellation of bail of these Appellants.

(R.M. JOSHI, J.)