

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

CRIMINAL BAIL APPLICATION NO. 2940 OF 2022

Sunil @ Bhairu Dagadu More ... Applicant

Versus

The State of Maharashtra ... Respondent

Mr. Kuldeep Patil i/b Ms. Saili Naresh Dhuru for the Applicant

Ms. P. P. Shinde, A.P.P for the Respondent-State

***CORAM : REVATI MOHITE DERE, J.
FRIDAY, 19th JANUARY 2024***

P.C :

1 This is the second bail application preferred by the applicant seeking his enlargement on bail in connection with C.R. No. 23/2018 registered with the Karveer Police Station, Kolhapur, for the alleged offences punishable under Sections 302, 201, 386, 346, 120B and 34 of the Indian Penal Code. After noting that there was no progress in the case despite orders being passed by this Court, this Court in paras 5 to 8 of the order dated

15th December 2023 passed in Criminal Bail Application No. 1098/2019, had observed as under :

“5. Having regard to the same, the following order was passed by this Court on 28th February 2023:-

“1. Pursuant to the order dated 25th January 2023, the prosecution has examined only one witness, till date. Perused the report of the learned Principal District and Sessions Judge, Kolhapur, who is seized of the case i.e. Sessions Case No.115 of 2018. The learned Judge has assured that the aforesaid case will be decided expeditiously.

2. Considering that the case is based on circumstantial evidence, the evidence of some of the witnesses is crucial and hence it would be appropriate that the said witnesses are examined at the earliest by the learned Judge, so that thereafter the bail application of the applicant can be considered. The trial Court to give short dates to ensure that the main witnesses in the said case are examined first.

3. Stand over to 5th June 2023. To be listed at 4:30 p.m.

4. Registry to forthwith forward a copy of this order, to the learned Principal District and Sessions Judge, Kolhapur, who is seized of the case i.e. Sessions Case No.115 of 2018.

5. *The applicant is at liberty to seek preponment of the aforesaid date, if the important witnesses in the said case are examined.”*

6. *Despite the said order having been passed on 28th February 2023, this Court is informed that only 2 witnesses have been examined, till date. This can hardly be said to be any progress in the said case. More particularly, despite the order dated 28th February 2023, asking the trial Court to give short dates to ensure that the main witnesses in the said case were examined first, it appears that no summons have been even issued to the said witnesses. Infact, by the very same order, we had applicant liberty to seek preponment before this Court, in the event important witnesses in the said case are examined by then.*

7. *It is extremely unfortunate that despite the said direction and despite the assurance to the learned Principal District & Sessions Judge, Kolhapur, no steps have been taken by the learned Judge to complete the trial, much less, examine the material witnesses. The applicant is languishing in jail for over 5 years. This Court had rejected the first bail application of the applicant, having regard to the manner in which the incident had taken place, on merits, however, this Court cannot be oblivious to the right of the applicant to an expeditious trial guaranteed to him under Article 21 of the Constitution of the India.*

8. *Considering that the learned Judge has failed to comply with the order dated 28th February*

2023, despite a direction to give short dates to ensure that the main witnesses in the said case are examined first, which has admittedly not been done (we are informed that summons have also not been issued to the main witnesses), the learned Principal District & Sessions Judge, Kolhapur, to submit a report as to why the order dated 28th February 2023, has not been complied with. The learned Judge to give reasons in the said report. The learned Judge to submit the said report in a sealed envelope, in the registry of this court, on or before 12th January 2024.”

2 Pursuant to the said order, the learned Judge has submitted a report in a sealed envelope. The envelope is opened. The learned Judge, in her report dated 11th January 2024, has given the reasons why the witnesses remained to be examined. She has requested further time of three months to conclude Sessions Case No. 115/2018 by giving short dates. The said report is taken on record.

3 Considering the assurance given by the learned Principal District and Sessions Judge, Kolhapur in her report

dated 20th January 2023, learned counsel for the applicant does not press this application and as such, seeks leave to withdraw the same.

4 The application is accordingly disposed of as withdrawn.

5 It is made clear that this Court has not heard the application on merits and that the applicant has withdrawn the application, having regard to the assurance given by the learned Judge to complete the trial within three months, by giving short dates. Accordingly, we expect the learned trial Judge to conclude the trial as expeditiously as possible and in any event, not beyond four months from the date of receipt of this order.

6 Needless to state that the applicant is at liberty to file a fresh application for bail, in the event, for no fault of the applicant, the trial does not conclude within four months.

7 Application stands disposed of on the above terms.

8 Registry to communicate the above order to the
learned Principal District and Sessions Judge, Kolhapur, who is
seized of the said case.

REVATI MOHITE DERE, J.