

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
BAIL APPLICATION NO.3893 OF 2024

Jagdish Kailash Shejav @ Dhananjay Shinde ... Applicant

Vs.

State of Maharashtra ... Respondent

Mr. Pranay Saraf a/w. Mr. Diptendu Bose, Mr. Soutrik Kar, Mr. Puneet Fonia and Mr. Siddharth Tripathi for Applicants.

Ms. Rutuja A. Ambekar, APP for Respondent-State.

Mr. Shriram Ghodke, API, Unit-9, Crime Branch.

CORAM : MANISH PITALE, J.

DATE : OCTOBER 21, 2024

P.C. :

. Mr. Saraf, learned counsel for the applicant in this bail application emphasizes that the applicant has remained incarcerated since April 2012, when he was arrested in connection with the present case. It is submitted that the applicant has remained behind bars for almost 12 ½ years and on this sole ground, as per settled law, the application deserves to be allowed. It is submitted that the prosecution has been taking a long time to examine witnesses and there is hardly any possibility of the trial being completed within reasonable period of time. It is brought to the notice of this Court that earlier on two occasions, this Court had directed the trial to be completed expeditiously, but to no avail. Attention of this Court is invited to order dated 23.04.2024 passed by the Sessions Court, wherein the Special Public Prosecutor (SPP) was requested to furnish programme so that it could be adhered to and the trial could be completed at the earliest. It is submitted that till date, the schedule has not been placed on record of the Sessions Court, thereby indicating that there is no chance of the trial being completed in the foreseeable future. On this basis, it is submitted that the application deserves to be allowed.

2. On the other hand, Ms. Ambekar, learned APP submits that the criminal background of the applicant and his tendency to commit heinous crime, is a factor that this Court may take into consideration. Attention of this Court is invited to a report submitted in the context of the applicant and his criminal record. It is brought to the notice of this Court that when the applicant was undergoing imprisonment for life on being convicted for an offence under Section 302 of the Indian Penal Code, 1860 (IPC), which was registered in the year 1999, and the applicant was granted parole of 14 days, he jumped the parole and committed as many as three crimes, all of them involving Section 302 of the IPC. It is emphasized that the applicant jumped the parole and he could be arrested after a delay of 767 days, but during this period, he committed the aforesaid offences, including the offence leading to the present case. It is submitted that the trial proceedings in such cases are all underway and they have progressed appreciably.

3. Insofar as the present case is concerned, it is submitted that 30 witnesses have already been examined and the prosecution now intends to examine only 8 to 10 more witnesses. It is submitted that the draft schedule is ready and that the schedule shall be placed before the Sessions Court on the next date of listing i.e. 25.10.2024.

4. It is brought to the notice of this Court that the present case is being taken up by the Sessions Court every Friday at 12:30 p.m. In that context, it is submitted that if the accused persons co-operate, the recording of evidence of the remaining witnesses can be completed within three months from today. It is emphasized that the co-accused person has filed bail application, which is taking up the time of the Sessions Court and the trial, in that sense, is being delayed. It is further submitted that the accused persons are taking long period of time to cross-examine the witnesses and they are asking number of questions,

which is also a factor that this Court may take into consideration.

5. There can be no doubt about the fact that the applicant has already suffered long incarceration for a period of about 12 and ½ years. But, the stage of the trial and the likelihood of the same being completed, needs to be taken into consideration. At present 30 witnesses have already been examined and as per the statement made before this Court, only about 8 to 10 further witnesses are to be examined by the prosecution.

6. Allegations and counter-allegations have been made on behalf of the applicant and the prosecution as to who is responsible for delay in completion of trial. The order dated 23.04.2024 passed by the Sessions Court reads as follows:-

“CORAM-HIS HONOUR THE SESSIONS JUDGE,
SHRI. A. SUBRAMANIAM (C. R. NO.19)
APP Mr. S. E. Soshte for the State is present.
PSI Tawade a/w PC Kadam attached to DCB, CID, Unit-IX
présent. Accused No.1 is in Taloja Jail produced from custody.
Accused No.2 is in Arthur Road Jail produced through VC.
Accused No.3 on bail present.
Accused No.4 on bail absent.

Exemption application on behalf of accused No.4. TOR and marke as Exh,C-554, O- Granted for today only.

PC Kadam through Ld. APP submits that the Ld. SPP is in some difficulty in the morning sessions. In the afternoon sessions there are other matter of judgment, statement and evidence is fixed and hence this matter cannot be taken up in the afternoon. Accused No.1 in person seriously objects for the request of adjournment. Contending that he is facing trial for more than 12 years. It is a fact that the trial is of 12 years old and the reasons for delay are part of record. Suffice to say as already held. This trial is held expeditiously by fixing special timing exclusively for this trial at 12.30pm on the date fixed. Considering the number of cases as an working arrangement it was decided at least one day per week could be taken up at least one of the cases. In such circumstances the grievance of the accused of trial getting prolonged has some force in it. Considering the nature of trial and the other aspect involving complex issues, it is as an opportunity to the prosecution

consider these aspects, the Ld. SPP to make a statement on 02.05.2024 as to how the evidence can be recorded expeditiously. The Ld. SPP is requested to furnish programme so that same can be adhered and tentative time schedule for completion of trial can be ascertained and fixed. Multiple witnesses can be brought on date fixed between 27th May to 08th June so that the trial can be completed expeditiously. Ld. SPP to note. Adjourned to 02.05.2024 for Compliance and Evidence P/H.

The Ld. Superintendent of Jail Authorities Talaja Jail to furnish report if additional one hour per day of computer time can be provided to the accused No.1 Vijay Palande as per order dtd. 04.04.2024. Report be submitted positively by 02.05.2024.”

7. A perusal of the above-quoted order does show that the period of long incarceration and the need for expeditious trial has been emphasized upon by the Sessions Court itself, and in that light, the SPP was requested to furnish programme, so that the trial could be completed. It is unfortunate that even after six months have passed, the SPP has failed to place the schedule on record. The documents on record also show that the proceedings had to be adjourned due to the requests made on behalf of the SPP. This cannot be tolerated, particularly when the Sessions Court itself has devoted every Friday from 12:30 p.m. onwards for this particular trial. But, it is to be noted that the co-accused person has moved bail application, hearing of which, may also be consuming time of the Sessions Court.

8. As regards the allegation made by the learned APP that the witnesses are being cross-examined at great length on behalf of the accused, which is also a time-consuming factor for the Sessions Court, the learned counsel for the applicant submits that the right to cross-examine of the accused person cannot be taken away.

9. In this context, it is found that while the accused do have a right to cross-examine the witnesses, the Sessions Court must remain in control of the proceedings and unnecessary and frivolous questions

during the cross-examination should not be permitted.

10. In this backdrop, it would be appropriate that the present application is kept pending and appropriate directions are issued. Accordingly, it is directed that the prosecution shall positively and without fail, place on record the schedule before the Sessions Court, as directed in the above-quoted order dated 23.04.2024, on or before 25.10.2024. The bail applications, if any, of the accused persons pending before the Sessions Court shall be disposed of immediately and the trial Court shall take up the trial proceedings in right earnest. The statement made on behalf of the prosecution that only about 8 to 10 further witnesses shall be examined is recorded. Efforts shall be made by the prosecution to start recording evidence of the aforesaid witnesses from the next date of hearing before the Sessions Court.

11. The prosecution and the accused shall co-operate with the trial Court for adhering to the schedule that is proposed to be placed on record of the trial Court on or before 25.10.2024.

12. Since the aforesaid case is being listed on every Friday from 12:30 p.m. onwards before the trial Court, this Court is inclined to keep the present application pending, to be taken up on a future date, in order to examine as to in what manner, proceedings have taken place in the interregnum before the trial Court.

13. List the application for further consideration on 27.11.2024, First on Board.

14. The learned APP is requested to keep the *roznama* of the said Court ready for perusal of this Court as regards all future dates between today and 27.11.2024.

(MANISH PITALE, J.)