



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

CRIMINAL BAIL APPLICATION NO. 339 OF 2024

Sampat Popat Chavan

Vs.

The State of Maharashtra, thr. PSO, P.S. Hinganghat & Anr.

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

None for the Applicant.

Mr. D. V. Chauhan, P.P. with Mrs. S.V. Kolhe, APP for the State.

CORAM : G. A. SANAP, J.

DATED : 24th OCTOBER, 2024.

. Heard learned Public Prosecutor Mr. D. V. Chauhan
and learned Assistant Public Prosecutor Ms. S. V. Kolhe.

2. On this important issue, which pertains to the delay in analysis of the samples sent to the Forensic Science Laboratories all over Maharashtra, the material placed on record as per the order of this Court reveals a very sorry state of affairs. The pathetic conditions on all counts placed on record with certainty have a propensity to adversely affect the criminal justice administration and, if not timely tackled, can in the long run bring the criminal administration to a standstill. This Court, while hearing Criminal Bail Application No.339/2024, was informed by the learned advocate for the applicant as well as by the learned APP that the samples forwarded to the Regional Forensic Science Laboratory, Nagpur, had not been analyzed within a reasonable time. The In-charge of the Hinganghat Police Station, after making an enquiry with the Office of

R.F.S.L., Nagpur, informed that the possibility of analysis of samples in the near future is remote, inasmuch as the R.F.S.L., Nagpur, had informed him that the analysis of the samples for the year 2017-2018 was in progress. This Court, therefore, *vide* order dated 24th July, 2024, directed the In-charge of the R.F.S.L., Nagpur, to file an affidavit for inordinate delay in analysis of the samples. The order dated 24th July, 2024 is marked as **Annexure (A)**. The Deputy Director, R.F.S.L., Nagpur, filed his affidavit dated 26th July, 2024. It is marked as **Annexure (B)**. In his affidavit, the Deputy Director has stated that there is a paucity of staff and therefore the samples could not be analyzed within time. In his additional affidavit dated 29th July, 2024, he has categorically stated the vacancy position all over Maharashtra. It is marked as **Annexure (C)**.

3. This Court, on being confronted with the horrible situation, *vide* order dated 31st July, 2024, directed the Director, Directorate of F.S.L., Home Department, Mumbai, to file an affidavit and place on record the vacancy position, the steps taken to fill up the vacancies, and the reasons for delay in analysis of the samples. The order dated 31st July, 2024 is marked as **Annexure (D)**. The Director, Smt. Sangeeta Vijay Ghumatkar, filed her affidavit on 1st August, 2024. It is marked as **Annexure (E)**. It has been stated in the affidavit that the sanctioned/approved strength as on 31st July, 2024 is 1463. All over Maharashtra, the working strength is 1016. There are 447 vacant posts. The Director, in her affidavit, has made categorical statement with regard to the steps taken to fill up the vacant posts. The Director, in her affidavit, has made a reference

to the order passed by me while sitting at the Principal Seat of Bombay High Court dated 22nd December, 2023, in Bail Application No.4209/2021 [*Vinod Banhayalal Trivedi @ Vinod Kanhayalal Trivedi Vs. The State of Maharashtra*] and stated that, after this order, the steps have been taken. The order dated 22nd December, 2023 is marked as **Annexure (F)**.

4. In order to throw appropriate light on the pendency and the delay in analysis of the samples, it was felt necessary by this Court to obtain the lab-wise pendency of the samples throughout Maharashtra. This Court, vide order dated 3rd August, 2024, directed the Director to file an affidavit with regard to lab-wise pendency of the samples throughout Maharashtra. The order dated 3rd August, 2024 is marked as **Annexure (G)**. The Director filed the affidavit on 13th August, 2024, in compliance with the order dated 3rd August, 2024. Along with the affidavit, on the basis of the information collected from various Regional Forensic Science Laboratories with regard to the pendency of the samples for analysis, a composite chart has been prepared. This chart is marked as **Annexure (H)**.

5. The Director was instructed to prepare a chart of the year-wise pendency of the samples sent for analysis to various Forensic Science Laboratories. Perusal of the chart shows that, as on 31st July, 2024, in some of the laboratories, the analysis of the samples for the year 2017-2018 is pending. The chart shows that, as on 31st July, 2024, 643242 samples are pending for analysis in 184925 criminal cases. In my view, this is a very

serious and alarming situation. It is further seen on perusal of this chart that the DNA samples in the Protection of Children from Sexual Offences Act, 2012 cases are also quite large in number.

6. The main reason given in the affidavit for the pendency is the paucity of the staff. The vacancy position has been shown in the chart at Annexure (H). The Director, via video conferencing, further submitted that, vide communication dated 13th April, 2023, a proposal has been submitted to the Additional Chief Secretary, Government of Maharashtra, Home Department, Mumbai, for creation of additional 1981 posts. Learned APP has placed on record the letter dated 13th April, 2023, with the accompanying documents to that effect. It is marked as **Annexure (I)** collectively. The Director orally submitted that certain queries have been made by the Home Department vide letter dated 2nd April, 2024. It is marked as **Annexure (J)**. The Director submitted that the proposal is pending and there is no progress.

7. It is pointed out during the course of the arguments that there is not only a paucity of staff but also a paucity of gadgets, instruments, and machineries required for the analysis of the samples. It is pointed out that on this count also the steps have been taken in coordination with the Government for upgradation of the infrastructure. It is pointed out that in the past, in some matters, directions had been given for providing proper infrastructure, namely instruments, gadgets, and machineries for the analysis of the samples. Similarly, it was

directed in the past that the practice of appointing the Chemical Analyzers on a contract basis should be stopped and the appointment of the Chemical Analyzers on a permanent basis be made. It is to be noted that the authenticity and credibility of the CA report is the most important aspect in a criminal trial. On this count also, the matter needs consideration.

8. It is to be noted that the speedy trial is the fundamental right of the accused. The delay in analysis of the samples can cause delay in disposal of the cases. It needs to be stated at this stage that the High Court has directed the learned Judges all over Maharashtra to dispose of 10 years and 5 years old criminal cases on a priority basis. It is to be noted that, in addition to the speedy trial, the accused, victim, and society have a right to a fair trial.

9. I shall now place on record some of the instances I have come across while deciding the appeals. The instances would show that, for want of timely analysis of the samples for one reason or the other, the dent was caused to the very principle of a fair trial. This may not be misunderstood as an attempt on the part of the Court to fix the responsibility, which led to the miscarriage of justice. The instance No.1 can be quoted from Criminal Appeal No.181/2019. In this case, the samples had been sent for DNA analysis. The victim was a mentally retarded, deaf, and dumb girl. The allegation of penetrative sexual assault was on the teacher. The judgment in the case was delivered by the learned Additional Sessions Judge, Achalpur, on 22nd January, 2019. By that time, the DNA

analysis report was not placed on record. The appellant/accused was sentenced to suffer rigorous imprisonment for 14 years. While hearing this appeal, I was curious to see the DNA report. I, therefore, directed the Public Prosecutor to file an affidavit of the In-charge of Asegaon Police Station. The In-charge of Asegaon Police Station filed his affidavit on 16th July, 2024. Along with his affidavit, he had produced other documents. He had also produced on record the DNA report. The document, particularly the DNA report placed on record, was negative.

10. It was shocking that the samples had been analyzed and the DNA report was prepared on 31st January, 2019. It shows that this report was prepared after nine days of the decision in the trial by the learned Additional Sessions Judge on 22nd January, 2019. The learned Additional Sessions Judge relied upon the CA reports, which mentioned that the semen and blood was detected on the knickers and the bedsheet. The Chemical Analyzer, Amravati, after analysis of the samples, forwarded the samples to R.F.S.L., Nagpur, for DNA analysis. Nobody bothered to know about the result of the analysis of the DNA samples. It is to be noted that, after taking this DNA report on record and on appreciation of the other evidence on record, the appellant/accused has been acquitted. By that time, he had served the sentence from the date of his arrest in the crime till the decision of this Court dated 23rd July, 2024. If there had been no delay in analysis of the DNA sample and this report was part of the record, then the learned Additional Sessions Judge might not have decided the case against the accused. The pursis with the affidavit and DNA report is

marked as **Annexure (K)**.

11. The second instance, which can be highlighted, is also horrible. It was noticed by me while deciding Criminal Appeal No.61/2021. It was the case of an attempt to commit murder of the victim. The victim had sustained near about 26 injuries. The weapon used was satoor. The samples had been sent for DNA analysis. Fortunately for the prosecution, there was direct evidence of the injured witness and other witnesses on record to take care of this aspect. This Court, on the basis of the oral testimony and other corroborating evidence, maintained the conviction of the appellant. When I noticed that the DNA report was not part of the record, I directed the Public Prosecutor to collect the necessary information and file an affidavit of the concerned. The Assistant Police Inspector, attached to Mankapur Police Station, Nagpur City, filed his affidavit and stated that, after the direction of this Court, an enquiry was made with the Office of R.F.S.L., Nagpur, and the DNA report was collected. It is to be noted that the appeal was decided on 22nd July, 2024. The DNA report is dated 19th July, 2024. The samples had not been analyzed from December, 2016. Again, the A.P.I. filed the affidavit dated 29th July, 2024, and placed on record the DNA report dated 19th July, 2024. It is to be noted that this DNA report is positive. The blood of the victim was detected on the cloths of the accused. The pursis with the affidavits and the DNA report is marked as **Annexure (L)**.

12. In my view, these two instances are eye-openers. These two instances could be said to be the tip of the iceberg.

There could be number of such matters all over Maharashtra. It needs to be stated that as and when the Court is confronted with such a horrible state of affairs, it is the duty of the Court to take all possible corrective measures and steps. Such a serious issue cannot be glossed over. It is the collective responsibility of all stakeholders in the criminal justice system to see that the criminal trial is not only speedy but a fair trial to the accused, victim, and society at large. On account of such a serious lapse, the culprit can go scot-free. In some cases, for want of such important evidence, an innocent person can be sent to jail or gallows. In my view, this is a very serious matter. The F.S.L. is the important stakeholder in the administration of justice.

13. At this stage, it is not out of place to mention that, in the past, on number of occasions, the High Court as well as the Hon'ble Supreme Court have expressed concern for delay in analysis of the samples in criminal trials. In number of matters, directions have been issued for timely analysis of the samples as well as for filling up the vacancies in the Forensic Science Laboratories. It would be necessary, at this stage, to make a reference to some of the decisions. The decisions are as follows:

- (i) Joshinder Yadav Vs. State of Bihar [(2014) 4 SCC 42].*
- (ii) Sahayak A Socio-Legal & Educational Forum Vs. State of Maharashtra and Others [2017 SCC OnLine Bom 6041]*
- (iii) By Courts Motion Vs. Union of India [Writ Petition(s) (Civil) No(s). 749/2018, decided on 29.11.2018].*

14. It is to be noted that the Division Bench of the Bombay High Court at Principal Seat, while hearing Criminal

Writ Petition No.3378/2023 [*Eduedge Pro Pvt. Ltd. Vs. The Senior Inspector of Police & Anr.*], has taken note of this fact as well. The said petition is pending.

15. The overall situation is very grim. If this state of affairs continue, then the administration of criminal justice may come to a standstill. The speedy trial, being the fundamental right of the accused, victim, and society, it is necessary to take concrete steps in this direction. The facts noted hereinabove are very serious. An extraordinary situation has been created. In order to tackle this extraordinary situation, the ordinary measures may not serve the purpose. The measures must be extraordinary and consistent with the fundamental principles of the law. In my view, this issue has to be taken to a logical conclusion. I have noticed this sorry state of affair while deciding a bail application. If any direction is given by me, then after change of the assignment, I may not be able to deal with this matter again. In this matter, certain directions would be necessary. In order to take care of the situation and to address all the problems, in my view, it is necessary to register this case as a *Suo Motu* petition.

16. Accordingly, the Registrar (Judicial) is directed to register this case as a *Suo Motu* petition. The Registrar (Judicial) shall place this *Suo Motu* registered petition before the learned Administrative Judge at Nagpur Bench of the Bombay High Court for further appropriate directions.

(G. A. SANAP, J.)

Vijay