

*Esha***IN THE HIGH COURT OF BOMBAY AT GOA****CRIMINAL WRIT PETITION NO. 55 OF 2026****STATE, THR. SUPERINTENDENT OF
POLICE, Anti-Corruption Branch, Goa.****... PETITIONER****~ VERSUS ~****1. SANDHYA GUPTA, Flat No. C-5 A,
Govt. Qtrs. Altinho, Panaji, Goa.****2. RAJESH @ RAJU WARANG, Police
Constable, H. No. 52, Nagzar, Pernem-Goa.****... RESPONDENTS****APPEARANCES:**

for the Petitioner

***Ms. Swati Kamat Wagh, Additional
Public Prosecutor***

for Respondent No. 1

***Mr. S.G. Desai, Senior Advocate with
Mr. Virendra Parshekar, Ms. Shalaka
Shelke and Ms. Riddhi Ajgaonkar*****CORAM : AMIT S. JAMSANDEKAR, J.****RESERVED ON : 10th APRIL 2026****PRONOUNCED ON : 15th APRIL 2026**

ORDER:

1. Heard Ms. Swati Kamat Wagh, the Learned Additional Public Prosecutor for the Petitioner. The present Writ Petition was circulated on the ground of urgency that the Trial Court has fixed the matter for final arguments on 13th April 2026. Therefore, circulation was granted and the matter was kept today for hearing. The compilations of documents tendered on behalf of the Petitioner and the 1st Respondent are taken on record.
2. By the present Petition, the State has challenged the orders dated 13th February 2026 and 9th March 2026 (**the impugned orders**) passed by the Principal District and Sessions Judge, North Goa at Merces (**the Learned Judge**). The impugned orders are passed by the Learned Judge on the Applications filed by the Petitioner i.e. (i) Application dated 30.01.2026, by which, the Petitioner prayed for summons to be issued to nine additional witnesses so that these witnesses can be examined by the Prosecution, (ii) Application dated 27.02.2026 filed under Section 311 of the Code of Criminal Procedure, 1973 (**Cr.P.C.**) for recalling the Investigating Officer, Mr. Rajendra Prabhudessai (PW-22); (iii) Application dated 27.02.2026 for recalling the expert witness, Mr. D.P. Gangwar (PW-4).
3. It is submitted on behalf of the State that the Applications are *bonafide* and made in the interest of justice. It is submitted that if the Applications are allowed, no prejudice would be caused to the

Respondents. It is further submitted that the Respondents always had notice of the evidence and the fact that the witnesses to be recalled are in the witness list submitted by the Prosecution. It is submitted by the Learned Additional Public Prosecutor that the evidence which is sought to be relied upon by the Prosecution is crucial evidence and that the Prosecution is not trying to clear the lacunas in the evidence. Even if the additional evidence is required to be relied upon, such an opportunity should be given to the Prosecution. Further, the witnesses sought to be examined are already cited in the chargesheet and are essential to prove the call records, investigation, facts and the audio recordings. If the witnesses are not allowed to be examined, it would result in a severe miscarriage of justice. It is further submitted that the findings of the Trial Court in the impugned orders would affect the Prosecution at the stage of final arguments.

4. The impugned orders are also challenged on the basis that the Trial Court has proceeded to record the statement under Section 313 of Cr.P.C. without completing the Prosecution's evidence and that there is pending material evidence to be brought on record.
5. The Petition also proceeded on the ground that the impugned orders are passed with material irregularities and the Trial Court could not have proceeded merely on the ground of delay. It is submitted that, first of all, there is no delay at all, and in any case, if there is any, it is not intentional. It is submitted that if the impugned orders are not set aside and an opportunity is not given to the Petitioner, then the trial

would not be fair. It is therefore submitted that the impugned orders are contrary to law and well settled principles of criminal jurisprudence.

6. The Petition is vehemently opposed by Mr. Desai, the Learned Senior Counsel appearing for the 1st Respondent. It is submitted that, unfortunately, the Respondents have suffered for more than 19 years only because of the delay in the trial. The Applications are filed merely to delay the final arguments scheduled on 13.04.2026. He submitted that the Applications to recall the witness or re-examine the expert witness were filed by the Petitioners only after the cross-examination of the Investigating Officer was complete. He further submitted that now, the Trial Court has also recorded the statements of the Respondents under Section 313 of Cr.P.C. Therefore, the Petition ought not be allowed at this stage.
7. Mr. Desai cited the judgments of the Hon'ble Supreme Court in the case of ***Abdul Rehman Antulay and others V/s R.S. Nayak and Another*** (1992) 1 SCC 225 and ***Vakil Prasad Singh V/s State of Bihar*** (2009) 2 SCC (Cri) 95. He submitted that the 1st Respondent has faced trial for more than 19 years and more than 15 years have passed after filing the chargesheet. It is submitted that the Prosecution is intentionally causing delay, which compromises the 1st Respondent's personal liberty and therefore, violates her rights under Article 21 of the Constitution of India. In any case, Mr. Desai submitted that when the matter is now closed for final arguments on

13.04.2026, the present Petition ought not to be heard. It is submitted that the Prosecution has delayed the trial at every stage, which has resulted in severe injustice to the 1st Respondent. He submitted that this is another attempt made by the Prosecution to delay the trial. Mr. Desai submitted that the 1st Respondent is suffering personally and professionally since 2007 and the pending case has resulted in severe damages to her professional growth. Her juniors are promoted over the years, and she has to work under her juniors. Mr. Desai submitted that the gross and inordinate delay has resulted in humiliation of the 1st Respondent.

8. Perused the record of the Petition and the compilations of documents tendered on behalf of the Petitioner and the 1st Respondent across the Bar and heard Ms. Kamat for the Petitioner and Mr. Desai for the 1st Respondent.
9. From the record, it is clear that the First Information Report came to be registered against the Respondents on 08.10.2007. The offence is registered under Sections 7, 13 (1) (d), read with 13 (2) of the Prevention of Corruption Act, 1988. The chargesheet was filed after 5½ years i.e. on 17.04.2013. Thereafter, the trial was prolonged for more than 19 years and finally, the cross-examination of the Investigating Officer came to be concluded on 23.01.2026. Out of the 51 listed witnesses, the Prosecution has examined 22 witnesses over the years.

10. The Application dated 30th January 2026 seeking summons to be issued to examine nine more witnesses is solely filed on the ground that the witnesses are vital to the Prosecution case and that the defence is not taken by surprise as eight of the witnesses are already listed in the list of witnesses appended to the chargesheet and therefore the defence will also get an opportunity to cross examine the witness. There is no justification or explanation provided in the Application by the Prosecution as to why these witnesses were not examined after the filing of the chargesheet on 17.04.2013. Since the year 2013, the Prosecution had ample opportunity to examine these witnesses.

11. First of all, the Application to examine additional witnesses cannot be entertained if there is no justification and explanation provided in the Application seeking to issue a summons to examine additional witnesses. The Application cannot be filed in a casual manner, that too after a delay of more than 13 years. If the Prosecution considers these witnesses to be vital to the Prosecution's case, then the Prosecution ought to have taken precautions to examine them in a reasonable time. The record clearly indicates that the Prosecution has taken time on various occasions since the year 2013, and the time was granted by the Trial Court, acceding to the requests of the Prosecution. If these witnesses are so vital to the Prosecution's case, then effective steps ought to have been taken by the Prosecution. The Accused cannot be made to suffer only because the Prosecution, at this stage, submits that these witnesses remain to be examined.

12.Mr. Desai has rightly pointed out that after the evidence of the Prosecution was closed, the matter was kept for recording the statements of the Accused under Section 313 of the Cr.P.C and the statements of the Respondents-Accused came to be recorded under Section 313 of Cr.P.C. on 30.03.2026 and the matter was posted for final arguments on 08.04.2026.

13.The fact that the Prosecution has closed its evidence is disputed by the Learned Additional Public Prosecutor. Therefore, Mr. Desai rightly pointed out that this fact cannot be disputed because the Roznama dated 21.01.2026 reads as follows:-

“...Further cross-examination of Pw22 IO/DySP Rajendra Prabhudessai recorded and completed.”

14.From the above Roznama, it is clear that the cross-examination of PW-22 (Investigating Officer), Dy.S.P., Mr. Rajendra Prabhudessai was recorded and completed on 23.01.2026. In view thereof, I reject this submission made on behalf of the Additional Public Prosecutor that the evidence of the Prosecution was not closed.

15.Mr. Desai rightly pointed out that normally, the Investigating Officer is the last witness and after the completion of the evidence of the Investigating Officer, the statement of the Accused under Section 313 of Cr.P.C. is recorded. I agree with the submissions of Mr. Desai that, during the course of the last 12 years, 22 witnesses of the

Prosecution were examined, including the Investigating Officer and therefore, the Prosecution is not entitled to lead any further evidence after the Investigating Officer has already been examined without making an exceptional case. In the present case, no such case is made out at all. Therefore, the finding of the Learned Judge that the Application is filed very casually is appropriate, and I completely agree with it.

16. The Prosecution has had ample opportunities since 2013. The 1st Respondent has suffered due to the inordinate delay caused solely on behalf of the Prosecution. The record clearly indicates that the Trial Court has always been fair to the Prosecution and therefore, almost 225 dates were given to examine the Prosecution witnesses. The record further indicates that time was repeatedly sought by the Prosecution to examine the Prosecution witnesses. The evidence of the Investigating Officer (PW-22) was closed after 44 dates. The Investigating Officer was absent on 17 occasions. Thereafter, on 04.03.2021, the Prosecution was directed to file a list of witnesses in the matter. The Prosecution has already examined the witnesses from the list and has also examined the witnesses that were not part of the list. There was further delay in the examination of the witnesses, and therefore, the Trial Court on 30.09.2024, directed the Prosecution to file a further list of witnesses, desired to be examined by the Prosecution. This list was submitted by the Prosecution on 04.10.2024, and the witnesses were examined by the Prosecution. There was no reason for the Prosecution not to examine the

proposed witnesses on the earlier occasions when their names were given in the list of witnesses by the Prosecution. Further, the Prosecution chose to lead the evidence of the Investigation Officer, indicating that he is the last witness because though the names of eight witnesses were in the list, they were never examined earlier.

17. While deciding the first Application dated 30.01.2026, which was made by the Petitioner seeking to issue summons to nine more witnesses, the Trial Court has rightly held that the Application was filed after the Investigating Officer was examined. Further, in paragraph 11 of the impugned order dated 13.02.2026, the Learned Judge, after going through the record, recorded that some of the witnesses who were sought to be examined by the Prosecution could not be examined as their whereabouts were not traced. It is further rightly recorded by the Trial Court that on a number of occasions, the matter came to be adjourned on behalf of the Prosecution, and the said witnesses could not be examined. Therefore, I agree with the submissions made by the 1st Respondent that all the Applications made by the Petitioner are only afterthoughts and are an attempt to delay the matter.

18. I find that the reason recorded by the Learned Judge in the impugned order that there is inordinate delay on the part of the Prosecution is correct. I also agree with the Learned Judge that there is no justification and explanation given by the Prosecution for the inordinate delay. Considering the fact that the trial was going on for

more than 19 years, I agree with the submissions made by Mr. Desai that there is not a mere delay, but the delay is inordinate which cannot be justified on any grounds. I also agree with the findings given by the Trial Court in paragraph 14 in support of the order dated 27.02.2026 to reject the Application filed by the Petitioner.

19.I do not find any justifiable reasons stated by the Petitioner in support of its Applications dated 27.02.2026 under Section 311 of the Cr.P.C. The expert witness (PW-4) who is sought to be recalled has deposed in the proceedings and his cross-examination was completed on 14.09.2017. Even in this case, the delay to recall PW-4 cannot be justified on any grounds. Therefore, it would not be fair to the Accused to call this witness for re-examination after a period of more than 9 years. I agree with all the findings and reasons assigned by the Learned Judge to dismiss the Prosecution's Application to recall PW-4.

20.The Prosecution cannot conduct the trial in the manner in which it was conducted in the present case. It took 5 and a half years for the Prosecution to file the charge sheet, and from 2013 to 2026 to conduct the trial. Therefore, I agree with the submission of Mr. Desai that the 1st Respondent had to suffer for no reason for so many years. The argument of 'fair trial' equally applies to the Accused. The rights of the Accused cannot be curtailed by merely stating that the evidence is vital, but it remained to be led earlier.

21.As far as the other two Applications dated 27.02.2026 are concerned, the same are disposed of by a common order dated 19.03.2026. Even these Applications are filed by the Petitioner after the evidence of the Investigating Officer was completed and the matter was posted for recording the statement of the Accused under Section 313 of the Cr.P.C. The Applications are not justified on any grounds. If the evidence is vital, then all the more reason the Prosecution should have led it earlier and should not have waited to realise it after the cross-examination of the Investigation Officer is over. The case of the Prosecution is that the audio recording is very vital, and therefore, PW-4, the expert witness, was examined, and his cross-examination was concluded in the year 2017. It took close to 7 years for the Prosecution to realise that PW-4 should be re-examined. I agree with the submission of Mr. Desai that this cannot be justified at the cost of the rights of the Accused.

22.As far as the Application for recalling the Investigating Officer is concerned, it merely proceeded on the ground that the cassette recording, which, according to the Prosecution, is the original audio relating to the Prosecution's case, was not played during the examination of the Investigating Officer. I find that this cannot be the justification to recall the Investigating Officer after his cross-examination is concluded and the statements of the Accused are recorded under Section 313 of Cr.P.C.

23. Ms. Kamat Wagh on the basis of the judgment of the Hon'ble Supreme Court in ***Rajaram Prasad Yadav v. State of Bihar & Anr.*** (2013) 14 SCC 461 submitted that the Court should bear in mind that no party in a trial can be foreclosed from correcting errors and that if proper evidence was not adduced or a relevant material was not brought on record due to any inadvertence, the Court should be magnanimous in permitting such mistakes to be rectified. The principle of law is absolutely binding on me. However, it is to be made applicable after examining the facts and circumstances of each case. In this case, magnanimity cannot come at the cost of the accused, who has been facing the allegations since 2007 and has had to wait more than five years to be charge-sheeted. Further, the Accused has been awaiting the outcome of the trial since 2013. It is not the case of the Prosecution that the Accused have delayed the trial or failed to co-operate with it. In this case, there is no material before me to support any submissions of the Prosecution that any injustice was caused to it.

24. It is also a settled principle of law that while advancement of justice remains the prime object of law, it cannot be understood that recall/re-examination can be allowed for the asking or for any reasons related to mere convenience. The approach to fairness in trial ought also to be viewed from the perspectives of the Accused, the victim, the witnesses, society, and the criminal justice system. No casual or mechanical approach can be adopted by the Applicant merely by stating that, if a witness is not examined/recalled/re-examined, the

trial would result in a miscarriage of justice. An Application after a considerable delay ought to be discouraged. Re-examining/Re-calling a witness cannot be done routinely, and certainly it is not a matter of right.

25. In the present case, I find that the Applications of the Prosecution filed after a prolonged trial since 2023 are merely for convenience of the Prosecution. There are no tangible reasons that support any of the Applications filed by the Prosecution in the present case. Therefore, I reject the submissions made on behalf of the Petitioner that no prejudice would be caused to the 1st Respondent if the Applications filed by the Petitioner are allowed.

26. Therefore, I reject all the submissions made on behalf of the Petitioner.

27. In view thereof, I find that the Learned Judge has considered all the facts and circumstances and has passed a well-reasoned orders. I do not find any perversity or arbitrariness in the impugned orders. The impugned orders are based on a judicious exercise of powers and is within the parameters of well-established principles of law. Therefore, there is absolutely no reason to interfere with the discretion exercised by the Learned Judge.

28. Therefore, I do not find any justification to grant any relief to the Petitioner in the present Petition. Therefore, **the Petition is dismissed.**

29. However, it is made clear that the findings given by the Learned Trial Court in the impugned orders shall not be considered while deciding the matter finally. It is further made clear that if the Trial Court decides, in its own discretion, to play the audio cassette containing the alleged conversation, allegedly relevant in the case, then the Trial Court shall do it in accordance with law.

30. The Petition stands disposed of.

31. This order will be digitally signed by the Private Secretary/Personal Assistant of this Court. All concerned will act on production by fax or email of a digitally signed copy of this order.

[AMIT S. JAMSANDEKAR, J.]