

ORDER BELOW EXH.39

1. This is an application for separation of trial filed on behalf of accused no.3 & 4.

2. Read application. Perused record. Heard Ld. Advocate for accused and Ld. A.P.P. for the State

3. Ld. Advocate for accused no.3 and 4 submitted that accused no.3 and 4 is present regularly in the Court and accused no.1 is died. Accused no.2 and 5 is absent since from 3 to 4 years and warrant has been issued against them. The present case is 7 years old. Therefore, accused no.3 and 4 want to proceed the present case separately. Hence, prayed for allowing the application.

4. Ld. A.P.P. filed his say on the present application and submitted that appropriate order should be passed.

5. Present chargesheet is filed under Section 3 r/w 25 of the Indian Arm Act. Roznama shows that several times N.B.W. is issued against accused no.2 & 5, but their presence cannot be secured by police machinery. It seems that accused no.2 & 5 are deliberately concealing themselves to avoid execution of the process of Court. There is no possibility to secure the presence of the accused no.2 & 5 in near future. This

case is pending since 2015. Accused no.3 & 4 are attending the case regularly. Their right to speedy justice is violated due to absence of accused no.2 & 5. Therefore, this application is deserves to be allowed. At the same time prosecution evidence against accused no.2 & 5 has to be preserved. Hence, this court proceeds to pass following order.

ORDER

1. The application is allowed.
2. Trial of accused no.3 & 4 separated to proceed.
3. Evidence recorded during trial be treated and read against accused no.2 & 5.

Date: 01/11/2023

sd/-
(Smt.U.P.Koli)
Judicial Magistrate First,
Court No.2, Badnapur.