

ORDER BELOW EXH.184 IN SESSIONS CASE NO.26/2013 :

(The State of Maharashtra Vs Ramashish Yadav & others)

1) Application for bail by accused Ramashish Yadav is filed on the ground that the prosecution is delaying the trial.

2) The Learned Public Prosecutor has filed say vide Exh.185 and opposed the application on the ground that the Hon'ble High Court has already rejected the bail on merits. During the trial, the accused has seek adjournments on different grounds and therefore the trial is prolonged. The accused himself is responsible for prolonging the trial. Prosecution has already examined four witnesses and is proceeding at the earliest. The prosecution is ready to conduct the trial as early as possible. The accused is from Uttar Pradesh and he will abscond, if released in the midst of the trial. It is also possible that he may pressurize the witnesses. In such circumstances the application is fit to be rejected.

3) It is submitted that there is no intention to murder. There is no mens-rea. At the most, for knowledge of likelihood to cause death, the punishment is ten years. The Hon'ble High Court has passed order on 1-10-2016 to complete the trial as early as possible within the period of nine months. The accused is in jail from five years.

The accused is having five children. His father has passed away due to shock. His mother is on death-bed. The prosecution is prolonging the trial by not keeping the witnesses present. It is submitted that there is no likelihood of completion of the trial for six months more. The accused is having Ration-card and Aadhar Card to show that he is residing permanently at Satara, though he hails from different State. His wife and children are in Satara. There is no likelihood of him to abscond.

It is further submitted that the accused is ready to remain out of Satara and proceed with the examination of the witnesses, by filing exemption application. It is submitted that only three witnesses i.e. the Doctor who treated the deceased, the Doctor who performed the Post Mortem and the Forensic Expert are left to be examined. P.W.1 and 3 were re-called on 8th January, 2018, but they are not present. Hence, the accused be granted bail.

4) The Learned Advocate for the accused relied on the citation in the case of *Mohammad Chand Mulani Vs Union of India*, reported in *2006 Law Suit (SC) 772* wherein it is held that offence of MCOC Act and Section 7 and 13 (1) (d) of the Prevention of Corruption Act – Stamp Scan, the trial is likely to take several years as there are more than 800 witnesses to be examined. Having regard to the nature of involvement alleged and the role attributed to the appellant in the charge-sheet, bail granted with conditions.

Learned Advocate for the accused relied on the citation in the case of *Hussain Vs Union of India* reported in 2017 CJ (SC) 256 wherein it is held that accused in custody for a long period, timely delivery of justice is a part of human rights, denial of speedy justice is threat to public confidence in administration of justice, bail application to be disposed of normally within one week.

Learned Advocate for the accused relied on the citation in Criminal Bail Application No.1232 of 2016 before the Hon'ble High Court Bombay wherein it is observed that on account of delay in trial, the applicant deserves to be enlarged on bail.

5) It is seen that the accused is tried for the offence punishable under Section 302 of the IPC, which is punishable with Life-imprisonment or death. After the complainant and the eye-witnesses were examined, the accused has changed his Advocate and new Advocate was appointed on 9-11-2017. Earlier the accused has seek time for appointment of new Lawyer. Hence, trial was prolonged. Earlier Advocate of accused has cross-examined two witnesses at length. Thereafter the new Advocate has prayed to re-call the complainant and eye-witnesses, hence the Expert witnesses were not summoned. Had the Learned Advocate for the accused not prayed to re-call the witnesses, then only three Expert witnesses were left to be examined. The Learned Prosecutor has given application for

Bailable Warrants to the witnesses, who are re-called and are absent. The Learned Prosecutor has submitted that three Expert witnesses are not called because Advocate for the accused wanted to first proceed with examination of the witnesses, which are re-called. It is submitted that prosecution cannot be blamed for not examining the balance three witnesses, when Defence is desiring to re-call the witnesses, which are already examined. Thus it is bound to take some time to secure the presence of the witnesses, who are re-called and thereafter summon the Expert witnesses. There is weightage in the submissions of Learned Prosecutor.

The Learned Prosecution has already applied for Bailable Warrants to the re-called witnesses, as the defence wants to further cross-examine them, due to change of Advocate, who is desirous of putting questions, which were not put by the earlier Advocate of accused. Hence, the matter is kept for examining the re-called witnesses and thereafter for recording the evidence of Expert witnesses.

6) The Learned Advocate for the accused is pointing from the deposition of the witnesses that the deceased had no quarrel with the accused and was not known to the accused, therefore there is no mens-rea. In my view, the evidence of the witnesses will be considered and appreciated after prosecution closes the evidence. After the change of Advocate the matter has proceeded on each date till the re-call application was filed.

Learned Advocate pointed that the material questions were not put to the witnesses by earlier Advocate, hence to give opportunity to the accused the witnesses are re-called and are not present. This is not deliberate delay. It is seen that matter has proceeded since new Advocate of accused had filed Vakalatnama. The Expert witness Doctor was also present but Muddemal sent to the CA was required to be called. Also it is pointed that Expert will be examined after the eye-witnesses, who are re-called are examined by Defence. Learned PP has submitted that Experts are required to be called from Pune, the prosecution is ready to proceed with the Medical Expert witnesses till the re-call witnesses presence is secured but defence first wants presence of the complainant and eye-witnesses. It is seen that the balance three witnesses would be examined had the re-call application not given by Defence. The watching Advocate assisting the prosecution will secure presence of the complainant without delay. In these circumstances, it is not fit and proper to assume that there is no mens-rea for murder and accused will at the most get punishment of ten years if guilt is proved. I do not find that there is any deliberate delay to grant bail to the accused.

In view of above discussion, I proceed to pass the following order :

ORDER

Bail application Exh.184 is rejected.

SATARA.

6th February, 2018.

[Priti Kumar (Ghule)]

Addl. Sessions Judge, SATARA.