

ORDER BELOW EXH.1 IN CRIMINAL CASE NO.4329/2003

1) Perused the record. The matter is of the year 2003 and the offence/s alleged against the accused are punishable under Sections 66-B, 65-A-E, 116-B of the Bombay Prohibition Act, which are summons triable in nature. The record indicates that the accused is not traceable and the case has remained pending because of absence of accused. It is also revealed that the matter is at the stage of service of process upon the accused since its inception. The record further indicates that periodically processes have been issued against the accused. The endorsements thereon indicate that whereabouts of the accused are not known and the accused is not traceable. It is also pertinent to note that the Court had while issuing the processes also taken care to see that the sufficient time is available to the process serving agency and all sincere attempts are made to serve the process upon the accused. However, the fact remains that the presence of the accused could not be secured.

2) At this stage, it is advantageous to refer to the observations made by Hon'ble High Court of Bombay in the case of **Mulchand Motilal Raka vs. State of Maharashtra – 1996(1) BomCR 316**. It has been served in the said judgment that Section 258 of the Code which empowers to stop the proceedings in certain cases is intended to meet with certain situations, where the presence of accused persons cannot be secured or presence of any important witness cannot be secured by the prosecution, which is necessary for the trial of the case. Therefore, where the Magistrate does not find it possible to dispose of the matter by adopting normal procedure contemplated by the Code for one reason or other as hereinabove stated, in such situation it would be open to the Magistrate to stop further proceedings of the case. Section 258 of the Code can be resorted to where the special or unusual circumstances exists, such as non-appearance of the accused before the Court for considerable time or of the important witness of the prosecution, which make it difficult or impossible for the Magistrate to proceed with the case in normal way. Therefore, in such situation, where the Magistrate finds it difficult to decide the case on merit, without any hindrance, in the normal manner, as per procedure under the Code, the provisions of Section 258 of the Code can be resorted to. Likewise, it has also been observed by Hon'ble Supreme Court of India in the case of **P. R. Rao vs. State of Karnataka – 2002(2) GLR 1549** that the Criminal Courts should exercise their available powers such as those under Section 309, 311, 258 of the Code of Criminal Procedure 1973 to effectuate the right to speedy trial. Thus, taking into consideration the observations made by the Hon'ble Supreme Court in the case of **P. R. Rao vs. State of Karnataka (supra)** and Hon'ble High Court of Gujarat in the case of **Mulchand Motilal Raka (supra)**, this Court finds that there are no reasonable reasons to keep the case pending as whereabouts of the accused are not known and he/she is not traceable since long period of time.

4) Considering the aforesaid facts and circumstances of the case and the fact that the accused is not traceable since long time and his/her exact whereabouts are not known at present as well as the nature of offences alleged,

trial procedure and punishment provided for the offence alleged, left with no hope of getting progress in the present case in the near future, further proceedings are required to be stopped under Section 258 of the Code of Criminal Procedure, 1973. Hence, in the larger interest of justice, the following order is passed:

:: ORDER::

- a) The proceedings against the accused are hereby stopped under Section 258 of the Code of Criminal Procedure, 1973. However, liberty is reserved in favour of the prosecution to reopen the case in case the accused is found.
- b) The bail-bond of the accused is hereby cancelled and the surety is hereby discharged.
- c) Cash bail bond, if any, is hereby forfeited and money of cash bond be deposited in Government Fund.
- d) Non-valuable muddamal, if any, be disposed of in accordance with the provisions of the Criminal Manual after the lapse of appeal period.

Signed and pronounced in the Special Sitting of Magistrates held today i.e. on the 12th day of November, 2022.

Date: 12.11.2022
Place: Ahmedabad

[Kamlesh N. Prajapati]
Addtl. Chief Metropolitan Magistrate,
Court No.19, Ahmedabad
(Code: GJ00886)