

(2010) 03 BOM CK 0185

Bombay High Court

Case No: Criminal Application No. 4943 of 2009

Rajdev Kumar Mathura Yadav @
Pappu

APPELLANT

Vs

The State of Maharashtra

RESPONDENT

Date of Decision: March 9, 2010

Acts Referred:

- Immoral Traffic (Prevention) Act, 1956 - Section 3, 4, 5, 6
- Penal Code, 1860 (IPC) - Section 366A, 372, 373

Hon'ble Judges: D.G. Karnik, J

Bench: Single Bench

Advocate: Prabhanjay R. Dave and Sachin P. Dalvi, for the Appellant; D.N. Salvi and Mandar Goswami for CBI and A.S. Gadkari, APP, for the Respondent

Judgement

D.G. Karnik, J.

Heard.

2. By this application, applicant seeks bail in connection with C.R. No. RC 2/S/2008 registered by CBI Special Crime Branch, Mumbai for offence punishable u/s 366A, 372, 373 of IPC r/w Section 3, 4, 5 and 6 of The Immoral Traffic (Prevention) Act 1956.

3. The short question that arises for consideration in this matter is whether the constitutional right of a fair and expeditious trial on the applicant has been violated entitling him to be released on bail. One of the grievances of the applicant is that though applicant has been arrested nearly 18 months ago on 30th September 2008, the trial is not being held and that too on account of the lapses solely attributable to the State. The applicant is languishing in jail without trial on account of neglect of the State.

4. Learned Counsel for the CBI points out that the lapses, if any, are not attributable to the CBI but are attributable to the State police or the jail authorities. Applicant

cannot therefore get the benefit of the lapses on behalf of the State Government. Article 21 confers a right of a speedy trial. That right is not affected whether the prosecuting agency responsible for prosecution is Union or the State Government. Both must act in co-ordination with each other to ensure that the constitutional right of an accused for speedy trial is not violated.

5. By an order dated 8th February 2010, a report was called from the learned District & Sessions Judge as to why the trial was delayed and even a charge had not been framed. The learned District Judge-4 and Addl. Sessions Judge before whom the case is pending has submitted his report vide letter dated 23rd February 2010. He has attributed four causes for the delay. They are:

(1) On some dates, charge could not be framed because the application for bail by some of the accused were pending.

(2) On some dates all the accused were not produced and in the absence of the accused charge could not be framed.

(3) On some dates advocate for the CBI ♦ the prosecuting agency was absent.

(4) On some dates, advocates for some of the accused were absent and therefore charge could not be framed.

The first three causes are attributable to the State.

In this regard, a reference can be made to the following dates, mentioned in the report of the Sessions Judge.

(i) 17/4/2009 - Only accused Nos. 2, 3, 6 and 7 were produced and the other accused were not produced from the jail.

(ii) 15/5/2009 - None of the accused were produced from jail.

(iii) 29/5/2009 - Only accused Nos. 2, 4 and 5 were produced and the other accused were not produced from jail.

(iv) 3/8/2009 - Accused were produced, but Spl.P.P for CBI was absent.

(v) 29/8/2009 - Accused were not produced from jail.

(vi) 10/9/2009 - Accused were not produced from jail.

(vii) 7/10/2009 ♦ Spl. P.P for the CBI as well as Officer of the CBI were absent.

(viii) 15/10/2009 - Spl. P.P for CBI was absent.

(ix) 5/11/2009 - Spl. P.P for CBI was absent.

(x) 11/11/2009 - Spl. P.P for CBI was absent.

(xi) 24/11/2009 - Accused were not produced from jail and the Spl. P.P for CBI was also absent.

(xii) 30/11/2009 - Spl. P.P for CBI was absent.

(xiii) 22/12/2009 - Accused were produced but the Spl. P.P for CBI was absent.

(xiv) 6/01/2010 - Spl. P.P for CBI was absent.

(xv) 20/2/2010 - Only accused Nos. 1, 4 and 5 were produced and other accused were not produced from jail.

7. The dates mentioned above are as reported by the learned Addl. Sessions Judge. They clearly demonstrate that the trial could not be proceeded and even a charge could not be framed against the applicant, though applicant is in custody for nearly 18 months. The report of the Sessions Judge discloses that the major, if not the sole, reason for the delay in the trial is attributable to the prosecution whether it be the CBI or State Government. This has resulted in infringement of the fundamental right of the applicant for the speedy trial. In the circumstances, irrespective of the merits of the case, the applicant is entitled to be released on bail. Hence, I pass the following order:

ORDER

Applicant be released on bail on his executing P.R. Bond of Rs. 20,000/- with two sureties for the like amount subject to the following conditions:

(i) Applicant shall not threaten the prosecution witness.

(ii) Applicant shall report his presence in the office of CBI, Special Crime Branch New Mumbai once a fortnight i.e. to say on 1st or 2nd and 15th or 16th of every British Calendar Month.

(iii) Within 48 hours of his release, the applicant shall inform to the CBI, SCB his present residential address, residential telephone number and cell number and shall intimate any change therein within 48 hours of the change.

Any breach of the condition shall result in cancellation of the bail.