

(1994) 09 BOM CK 0063

In the Bombay High Court

Case No : Criminal Application No. 2151 of 1994

Bakul N. Shah

APPELLANT

Vs

The State of Maharashtra, N.C.P. and Another

RESPONDENT

Date of Decision : 15-09-1994

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 167(2), 267
Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS) — Section 37

Citation : (1995) 2 BomCR 557

Hon'ble Judges : M.S. Rane, J

Bench : Single Bench

Advocate : Madanbhai Barot and A.R. Khan, for the Appellant; R.Y. Mirza, Assistant Public Prosecutor for Respondent No. 1 and R.M. Agarwal, for the Respondent No. 2, for the Respondent

Final Decision : Dismissed

Judgement

M.S. Rane, J.—The petitioner is one of the accused in the offence registered under the provisions of Narcotic Drugs & Psychotropic Substances Act in NDPS Case No. 33 of 1993 pending on the file of the Special Judge, Grater Bombay. My brother Judge Shah by his order dated 22-2-1994 in Criminal Application No. 446 made by the present petitioner seeking his release on bail has directed the Special Judge to hear and dispose of the said case expeditiously within a period of six months from the date of his order and after passing of such order the request for bail was not granted.

2. It appears that the learned Special Judge could not dispose of the case within time stipulated in the order dated 22-2-1994 and as a result thereof the petitioner filed another application in this Court being Criminal Application No. 1371 of 1994 which came to be decided by my brother Judge Shah by his another order. It appears from the said order of Shah, J., that the petitioner raised various points in the said application and my brother Judge made it clear that said points would be better raised before the trial Court during the trial.

3. The petitioner has filed this application as trial of the case has not yet been concluded, seeking his release on bail.

4. This application appeared before this Court on 13-9-1994 and the Court called for the report from the Special Judge with regard to the progress of the trial of the said case before him. The report has been received being dated 14-9-1994 wherefrom it is noticed that the trial of the case has already commenced and the same is in progress.

5. It is further noticed from the said report that he could not adhere to the time of the disposal of the matter because of non-production of the accused in the said case before the Court to face the trial by the prosecution/prosecution agency. Inasmuch as it is noticed that on many occasions learned Judge issued production warrant but with no response.

6. To the Court query, Mr. Agarwal, learned Counsel appearing for respondent No. 2 i.e. Narcotic Control Bureau, stated that it is the duty of the Police and Jail Authority to ensure the production of undertrial before the Court to face trial.

7. I propose to deal with this aspect, in the light of material in this application as also what this Court generally experiences in large number of such cases wherein under trials in N.D.P.S. Cases, approach this Court with grievances of delay, at times inordinate and inexcusable, in the trial of their cases by the Special Courts.

8. It is stated that large number of unertrials, particularly involved in the offences registered under the provisions of N.D.P.S. Act have been lodged in various prisons which include in great number, foreigners. The bail provisions as far as the offences under this Act being stringent the accused involved in such offence are refused bail as done in the case of this application.

9. In many matters coming before this Court concerning undertrials, grievances are made about their miserable plight in places of detentions. It is stated that large number of undertrial prisoners involved in the cases pending in courts in Bombay are kept in various prisons all over the States at far away and different places. It is a basic and legitimate question whether such lodgment of the undertrials i.e. those whose guilty are to be established by the Competent Courts, in the prisons - the Institution meant for convict prisoners is legal or for that matter proper. Time and again this practice is deprecated. Two Commissions appointed by the Union of India, viz. of the Hon"ble Mr. Justice Khanna (Retired Judge of the Supreme Court and Hon"ble Mr. Justice Mulla have in one voice in strong words disapproved the said practice. The Commission of Inquiry appointed by the Government of Maharashtra in the year 1987 (headed by myself as being the Judge of City Civil & Sessions Court) has also recommended in the Report submitted that the undertrials should be kept in separate places and be not kept in the prisons alongwith convict prisoners. (Refer to Reports of; i) 78th Report of Law Commission of India on congestion of undertrial Prisoners in Jails, headed by Hon"ble Justice H.R. Khanna published in 1979; ii) Report of All India Committee on Jail Reforms 1980-83 constituted by Ministry of Home Affairs, Government of

India, headed by Justice A.N. Mulla; iii) Commission of Inquiry headed by Shri M.S. Rane, then Judge of City Civil & Sessions Court, Bombay to enquire into the incident of 5th March, 1987 viz. storming of the Police Lock-up at Jacob Circle, Bombay). It is also recommended that as far as possible, the places of detention of the undertrials should be near to the courts where their cases are pending, which would facilitate their production smoothly to face trials. It is also suggested that independent and/or special squad of the police be provided for the movements and transportation of the undertrials from the prisons to the courts and way back.

10. This is how at page 304 of the said Report, it is recommended :

"It is desirable that such places should be located within the complex of police station or nearby police station buildings. Certain witnesses have suggested that such places of detention should be away from crowded places and public roads, but nearby to the courts. This may appear to be impracticable in big cities like Bombay as it would involve financial implication and availability of space. But on long term basis, this needs consideration. Being within the police station complex, it would afford security and being near to the Court complex, it would avoid hardships and difficulties in transport and escort risk while producing undertrials in the Court. It may be mentioned that, the undertrials from Bombay are kept in far away prisons, like Thane, Kalyan, and even Nasik and Yerawada. All the prison Superintendents with one voice have expressed difficulties experienced in conveying such prisoners to the Court and back to the prisons, the risk of escape involved while on the way, non-availability of escort guards etc. It may be mentioned that daily hundreds of such undertrials are brought to Bombay from prison at Thane for the production before the Court. Such prisoners include notorious criminals, gangsters, etc. There is great risk in transporting them from such distant place. Large number of police personnel are required to be deployed as escort guards. On this background, the construction of separate Remand Houses would require favourable consideration."

11. It is distressing to note that there is no change or improvement in such state of affairs in the prisons. The conditions in prisons are appalling. The Prison Authorities, when summoned and called upon to explain, upon any complaint from the under trial for non-production or late production before the Court, raise their fingers to the Police, stating that to arrange transportation of the undertrial prisoners from prisons to the courts is the duty of the police and not theirs. Repeated directions or even strongly worded reprimands have not yielded desired results. This is most deplorable state of affairs.

12. It is shocking to note that even after the Court production warrants, no prompt steps are taken to produce the undertrials before the Court. This would be clear from what the learned N.D.P.S. Special Judge, Greater Bombay before whom the case of the applicant herein is listed, has in his Report dated 7th September, 1994, submitted to this Court stated:

"On 22-2-1994 both the accused were not produced from Nashik jail and so the matter was adjourned to 6-4-1994.

On 6-4-1994 both the accused were not produced from custody and later on at 2.00 p.m. the accused were produced from Nashik Jail when the matter was already adjourned to 20-4-1994 for framing charge. In spite of the production warrant, the accused were not produced at 11 a.m. It is also mentioned in the roznama of the said date that the matter was High Court expedited.

On 20-4-1994, the accused were not produced at 11 a.m. and, therefore, production warrant was issued against the accused and the matter was posted to 26-4-1994. The accused were produced at 2.45 p.m. after the case was adjourned.

On 26-4-1994 the accused were produced from Nashik jail and on that day a draft charge was given by the Special Public Prosecutor and, therefore, the matter was posted to 10-6-1994 for framing charge.

On 10-6-1994 only accused No. 1 was produced from Arthur Road jail and accused No. 2 was not produced from custody and hence the matter was kept on 17-6-1994 for framing charge. On 17-6-1994 only accused No. 1 was produced from Arthur Road jail and accused No. 2 was not produced from custody. Therefore, the matter was posted to 20-6-1994.

On 20-6-1994 both the accused were not produced from custody and, therefore, the Registrar was directed to inform the concerned jailor to produce the accused at 11 a.m. so that the matter could be proceeded with. "The matter is High Court expedited. The matter is kept on 24-6-1994 for charge" and production warrants were issued against both the accused. Later on accused No. 1 was produced from Arthur Road Jail.

On 24-6-1994 accused No. 1 was produced from custody and accused No. 2 was not produced from Nashik Jail. Therefore, a production warrant was issued against accused No. 2. It was also directed to the Liaison Officer to send a message to Nashik Jail to produce accused No. 2 and the matter was adjourned to 4-7-1994 for framing charge.

On 4-7-1994 accused were not produced from custody and, therefore, the matter was kept back and later on the accused were produced from Arthur Road Jail at 2.45 p.m. Charge was framed and the matter was posted to 7-7-1994 as list of witness summons was not given."

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On 13-9-1994 the counsel for the parties were present, but due to escort problem and band bust duties of the police personnel, both the accused were not produced before the Court. P.W. 1 was present and ready, but in the absence of the accused, the cross-examination could not be taken. The matter was, therefore, posted to 14-9-1994."

The above would sufficiently demonstrate the state of affairs needing no elaborations .It would be notice from the extracted part of the Report that on many occasions, the accused were not produced before the Court at all and when produced, it was at late hours. It is indeed sad that such could happen in the case which this Court has directed to be disposed of expeditiously .I may state, as the experience shows, this is also a position in many other cases.

13. It is not possible for the Court to blink off its eyes over such happenings. Indeed the concerned Executive wing would realise that speedy trial is a basic right of a person accused of any crime and who is declined bail by the courts. It is unnecessary to lengthen this judgment emphasising how Apex Courts and High Courts, in large number of cases, have pointed and stressed the need to ensure speedy disposal of the Court cases concerning undertrial prisoners. It is but proper that the concerned wing of the Executive in charge of production of undertrials in the courts, ensure to do so would hamper the efforts of the Court to dispose of the cases expeditiously and prolonging the detention of the undertrials.

14. This Court in the circumstances is compelled to take notice of the situation as obtained in this case and having so noted, thinks it proper to issue directions to the Government of this State who shall take immediate steps to ensure prompt and regular production and movements of the undertrials before the Court to face trial whenever required by the concerned courts. The Court also makes it clear that failure to do so would compel the Court to view such lapses or inactions as hindrance and interference with the judicial process warranting stern actions against those responsible for such lapses or failures. Concerned authorities of the State will do well to realise such grim situation. Large number of undertrials are languishing in prisons awaiting their turn for judicial trial, who cannot be so detained for indefinite period. Courts cannot proceed with the trials if the accused are not produced before them. Such non-production also causes sheer waste of judicial time, which is precious one.

15. As far as the case in hand is concerned specific directions are issued to the prosecution as also Jail Authorities to see that the accused in the said case are promptly and regularly produced before the concerned Court. Further till the conclusion of the trial accused in this case shall be kept in a prisons in Greater Bombay or in Thane. Further from the report of the learned Special Judge it is noticed that he has already commenced the trial of the case of the applicant. Therefore, the question of granting bail does not arise and the request in that behalf stands rejected as his earlier application for the said relief has been rejected on merits.

16. Mr. Barot stated that the petitioner wants to raise various points during the trial. I may add that my brother Judge Shah has given appropriate directions in his order mentioned above and no further directions are called for in that respect.

17. Hence the order :

- i) Request of the applicant for release on bail stands rejected.
- ii) As requested by the learned Special Judge the time to dispose of the said case is extended for a further period of six months.
- iii) The respondent No. 1 i.e. the State of Maharashtra is ordered and directed to ensure prompt and regular production of the undertrials in this case as also in other similar case before the courts whenever their presence is required to ensure speedy trial of their cases.
- iv) The application herein stands disposed of.
- v) The office is directed to forward the copies of this judgment to:
 - 1) The Government of Maharashtra through the Chief Secretary with directions to place the same before the concerned Ministry;
 - 2) Director General of Police Maharashtra State;
 - 3) Commissioner of Police, Greater Bombay;
 - 4) The respondent No. 1-State of Maharashtra - to submit its report of steps taken to this Court within four weeks from the receipt of this judgment;

Issuance of C.C. expedited.

Office is directed to forward a copy of this judgment to the Sessions Court, Greater Bombay.

Office is also directed to forward a copy of this judgment to the Director General of Prisons, Maharashtra State, Pune.