
(1998) 07 BOM CK 0048

In the Bombay High Court

Case No : Criminal Application No. 1403 of 1998

Sada Shiv Manohar Parkar

APPELLANT

Vs

The State of Maharashtra

RESPONDENT

Date of Decision : 15-07-1998

Acts Referred:

Constitution of India, 1950 — Article 21
Criminal Procedure Code, 1973 (CrPC) — Section 482
Penal Code, 1860 (IPC) — Section 147, 148, 149, 302, 34

Citation : (1999) 5 BomCR 89 : (1998) CriLJ 3755

Hon'ble Judges : Vishnu Sahai, J

Bench : Single Bench

Advocate : I.S. Thakur, app, for the Appellant;

Judgement

Vishnu Sahai, J.—This application has been sent from jail by one Sada Shiv Manohar Parkar who is being prosecuted for offences punishable under sections 147, 148, 302 r/w 149/34 I.P.C. Us perusal shows a shocking situation namely that the petitioner is in jail since 8th October, 1989 and his trial has not yet finished. A two fold prayer has been made in this application:--

(a) to direct the disposal of the case within 30 days; and

(b) to grant any other reliefs incidental or otherwise.

2. On 26th June, 1998, this application came up before V.H. Bhairavia, J., who called for a report from the learned Sessions Judge, Thane, in whose Judgeship the trial is pending. In compliance of the said order, the learned District and Sessions Judge, Thane, submitted his report dated 30th June 1998.

3. I have perused the report of the District and Sessions Judge, Thane, and am constrained to observe that for no fault of the petitioner, his trial has not been disposed off till date. Para 3 of the report shows that the case was committed to the Court of Sessions on 20th February 1990 and the charge was framed nearly 3 1/2 years later i.e. on 7th July 1993; thereafter the trial could not proceed

because a co-accused (Original Accused No. 4) was absconding and could only be produced on 5th August 1997; that considerable time was lost on account of the failure of the prosecution to serve the witnesses; and there was absence of co-ordination amongst the three Advocates appearing for the accused persons.

4. Article 21 of the Constitution of India mandates thus :

"no person shall be deprived of his life or personal liberty except according to the procedure established by law."

The Supreme Court in a catena of decisions has held that the expression "procedure established by law" envisages of an expeditious procedure. In the instant case, it is per se clear that there has been an infraction of the fundamental right of the petitioner conferred by Article 21 of the Constitution of India. A procedure in which the trial of the petitioner could not be disposed off, for no fault of his, for a period of nearly nine years is the very antithesis of an expeditious procedure. It is a blatantly dilatory procedure, shocks judicial conscience and casts a very sad reflection on the judicial system.

5. Having perused the report of the District and Sessions Judge, Thane. I for one am sceptical about the trial of the petitioner being disposed off within a period of 30 days as justifiably prayed by him.

6. In my view, the ends of justice would be better served if the alternate prayer made in this application namely, any other reliefs incidental or otherwise is granted. Bearing in mind the exceptional circumstances referred to above, I invoke my powers u/s 482 Cr.P.C. treat this application as an application for bail and direct that the petitioner be enlarged on bail on his furnishing a personal bond of Rs. 1000/- with one surety of the like amount to the satisfaction of the Sessions Judge, Thane.

This order shall also be forthwith communicated by the office to the Superintendent, Central Jail, Thane, who shall in writing inform the petitioner about it.

7. The District and Sessions Judge, Thane, shall ensure that the trial of the petitioner is disposed off as expeditiously as possible, preferably within 30 days from today. Office shall also forthwith communicate this order to him.

8. Application allowed.