



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL BAIL APPLICATION NO. 1836 OF 2023

Tribhuvansing Raghunath Yadav .. Applicant
Versus
The State of Maharashtra .. Respondent

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Mr. Vinod Kashid for the applicant.
Ms.A.S. Pai, P.P with Mr.Y.M. Nakhwa, APP for the State.
Mr.Satyavrat Joshi appointed as Amicus Curie.

CORAM: BHARATI DANGRE, J.
DATED : 14th SEPTEMBER, 2023

P.C:-

1 In compliance of the direction issued, Ms.Pai, the learned Public Prosecutor has placed before me an affidavit, affirmed by Addl. Director General of Police & Inspector General (Prisons & Correctional Services), State of Maharashtra, Pune. The same is taken on record.

Copy of the same is also made available to Mr.Kashid.

2 On asked to offer the explanation as to why the applicant was not produced on various dates of hearing before the Court, the explanation is found in paragraph no.4 of the affidavit,

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which is to the effect that since no orders were received from the trial Court to Talaja Central Prison, for the court production of the applicant, on the fixed date of hearing, the applicant was not produced before the trial Court on those dates.

Reliance is placed upon the warrant issued by Metropolitan Magistrate, 66th Court, Andheri on 17/8/2023 and it is informed that when the Magistrate issued the said warrant, the applicant was immediately produced.

3 Ms.Pai would justify the assertion in the affidavit and she would submit that it is imperative for the trial Court to issue a production warrant and in absence of which no accused can be produced before the Court.

Mr.Kashid would claim that this is an incorrect & misconceived notice and by placing reliance upon Section 309 of Cr.P.C, it is his submission that in no case, an accused can be remanded to custody by the Magistrate for a term exceeding 15 days, at a time and once there is a production before the Court, an endorsement about the next date of hearing is sufficient enough to secure his production before the Court, on the next date.

It is his specific submission, that it is not expected that the Magistrate shall issue production warrant in respect of each of the accused whose matter is listed before him for distinct purpose and only upon issuance of the production warrant, the jail authorities shall produce the accused.

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4 The aforesaid conundrum need a solution.

Mr.Satyavrat Joshi, the learned counsel who is present in the Court, in order to assist the Court, placed before me a decision of the Apex Court in *Ram Narayan Singh Vs. State of Delhi and ors, 1953 AIR 277*.

5 In the aforesaid circumstances, I deem it appropriate that the learned Public Prosecutor as well as the counsel for the applicant shall place before me the position of law, which would be emerging from reading of the provisions of the Code of Criminal Procedure as well as the Criminal Manual.

I would also request Mr.Satyavrat Joshi to assist this Court as an amicus curiae, so that a workable solution is found out after ascertaining the position in law and the procedural aspect, since time and again the grievance is made on behalf of accused, and not only this, this Court has also taken judicial note of the fact that on several dates of listing, the accused are not produced before the Court.

6 Another solution which Ms.Pai as Public Prosecutor offered is about production of the accused persons through video conferencing and she shall obtain necessary instructions as to whether such facility is available in all Jails and whether it is in working condition and Mr.Kashid as well as Mr.Joshi can assist the Court upon this alternative being explored for production of the accused persons.

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7 Let the necessary instructions be obtained by Ms.Pai on the said aspect and even on ascertaining whether the facility of video conferencing is made available to each Magistrate, Court restricted for the time being to Mumbai & Suburban area.

Registry shall notify the name of Advocate Satyavrat Joshi as amicus curiae in the matter.

List on 5/10/2023.

(SMT. BHARATI DANGRE, J.)