

SESSIONS CASE OF THE COURT OF ADDL. SESSIONS JUDGE-3,
CENTRAL DISTRICT, TIS HAZARI COURTS, DELHI

Sessions Case No. 27762/2016
FIR No. 356/2007
PS: Hauz Qazi (Crime Branch)
Under Sections 302 and 120-B of Indian Penal Code
State v. Rishipal & Ors.

ORDER
22.06.2020

1. This order shall decide the pending applications filed by the accused persons. The applications are being decided after passing of final judgment since they were filed after the judgment had been reserved and the case had been fixed for pronouncement of judgment.
2. The earliest among the applications are those filed on 12.3.2020. These are two applications. Both of them are handwritten. The first one has been signed by accused persons Hitender (who is not an accused in this Sessions Case), Gopal Krishan Aggarwal, Bhisham, Parveen and Vinod (whose trial has also been separated and whose case has not been decided yet owing to his mental condition). By that application, the accused persons urged that the proceedings be stayed and they do not want "to take decision" from this court because they feel that they may be

convicted. According to the accused persons, they were not given adequate time to present their final arguments. The other application moved on the same day is preferred by learned counsel for accused persons on behalf of accused persons Bhisham, Parveen, Parmod and Deepak. Through this application, the accused persons have prayed for an opportunity to lead defence evidence and for further time to advance final arguments.

3. In the application which is signed by accused persons Hitender, Gopal Krishan Aggarwal, Bhisham, Parveen and Vinod, it is mentioned that the court had made up its mind to convict all accused persons except three accused persons without reading the case file and the court asked the public prosecutor not to take interest in the matter. The aforesaid assertions are not only preposterous but also contrary to the record. In a case that presents a conundrum of facts, the court cannot tilt the scales in favour of either the prosecution or the accused persons without going through every page of the case file. Also, the premonition of the accused persons has turned out to be untrue. Accused Gopal Krishan Aggarwal, who signed the application and expressed his fear that he is going to be summarily convicted in disregard of the evidence on record, has been acquitted in the case. Another accused person namely Parmod has also been acquitted. The apprehension of the accused persons that the

court had made up its mind to convict them has been proved to be wrong, and was entirely misplaced. In any case, such fears and beliefs of the accused persons do not furnish adequate ground to stay the proceedings. It is not the duty of the court to convince the accused persons and to obtain their consent before proceeding with a criminal trial. Earlier the accused persons themselves had been insisting on an expeditious trial, and when the court proceeded with it, they tried to create bottlenecks.

4. It is appalling that the accused persons are lending their voice to the prosecution and they claim that the public prosecutor was told not to take 'interest' in the matter. It is not understood what 'interest' the accused persons wanted the public prosecutor to take. The public prosecutor is only to advance arguments. The court never asked the public prosecutor not to advance arguments. In fact, the public prosecutor has indeed advanced final arguments at length. The grievance of the accused persons is contrary to the record. It has nowhere been stated by the public prosecutor that the court did not accord full opportunity to the prosecution to address arguments. If they had been deprived of this opportunity, surely the prosecution would have pointed that out and would have sought another opportunity for arguments. That did not happen. Queerly, the accused

persons, of their own, felt that the public prosecutor should have taken more 'interest' and was not allowed to do so.

5. The persons who have signed the application appear to be unaware of the correct facts. Accused Vinod @ Gola who has signed the application is not even an accused in this sessions case. The case against him is not at the stage of final arguments and judgment has not been reserved in that case. Yet, for no reason, he has lent his signatures to the application. Similarly, accused Gopal Krishan Aggarwal, after signing the application, himself has been requesting the court to pass final judgment, as is apparent from the order dated 15.06.2020. It seems that the person who prepared this application has got it perfunctorily signed from accused persons without reading out the contents of the application to the accused persons. From the order dated 15.06.2020, it is apparent that accused Gopal Krishan Aggarwal is desiring the passing of the judgment and not the stay of proceedings. Similarly, accused Vinod Kumar (though found unfit for trial) himself filed a petition (Vinod Kumar @ Gola v. State, CrI. M. C. No. 1491/2020) before the High Court of Delhi seeking the passing of judgment in his case. Accused Gopal Krishan Aggarwal also filed a petition before the Hon'ble High Court of Delhi bearing W.P. (CrI.) 1977/2019 in which he prayed for holding of trial on day-to-day basis and for

concluding the same within two months. That apart, there is no ground made out for stay of proceedings.

6. The application seeking stay of proceedings cannot be entertained. There is no provision of law under which such an application can be preferred. No provision has been cited in the application which entitled the accused persons to file such an application or which confers jurisdiction on the court to allow such an application. A criminal court does not have inherent powers and must pass orders within the contours prescribed by the Code of Criminal Procedure and other statutes. The Code of Criminal Procedure does embody provisions for expeditious trial but does not have provisions to bring the proceedings to a halt, particularly when the accused persons are fit to face trial and when final arguments have been heard and judgment is to be pronounced.
7. The accused persons have contended that they do not want the case to be decided by the presiding officer who had heard final arguments. In the wake of the plea, the presiding officer cannot hold his hand. The remedy lies in seeking transfer of the case by filing a petition before a superior court. The court had given ample opportunity for this. The accused persons had even applied for transfer of the case. The transfer petition filed by them before the Id. District and Sessions Judge came to be dismissed. That being so, this

Court could not have, of its own, chosen not to decide the case. That would have been contrary to the order of Id. District and Sessions Judge and may have even amounted to abdication of duty. The fate of the case cannot be left in a limbo that the transfer petition would be declined and yet the trial court would refuse to decide the case. That would be in negation of judicial discipline. The application is therefore liable to be dismissed.

8. In the other application which is filed by learned counsel for accused persons Bhisham, Parveen, Parmod and Deepak, it is mentioned that the accused persons have not had adequate opportunity to lead defence evidence. This is wholly contrary to the record. Moreover, this plea has been raised before the Ld District and Sessions Judge in the transfer petition as well as before the Hon'ble Supreme Court by the accused persons. Both the petitions were dismissed.
9. Statements of accused persons were recorded under Section 313 of the Code of Criminal Procedure. They stated that they wish to lead defence evidence. The Court, by order dated 03.07.2017, called upon accused persons Bhisham, Parmod, Parveen and Deepak (the applicants herein) to lead defence evidence. The accused persons were directed to file list of defence witnesses within a week from that day. The court also directed the said accused persons to either produce their

witnesses or to apply for issuance of summons for appearance of the witnesses. The accused persons took neither of the said steps within the time stipulated by the court. It is only accused Gopal Krishan Aggarwal who took steps for summoning of witnesses. The other accused persons neither filed any list of witnesses nor produced defence witnesses. They did not file any application for issuance of summons to any defence witness. The case remained at the stage of defence evidence till 09.08.2018. On 09.08.2018, Ms.Poonam Chaudhry, Id. Addl. Sessions Judge fixed the case for final arguments. This implies that for more than one year, the accused persons did not take any step to lead defence evidence, despite the directions of the Court. The accused persons, therefore, cannot now contend that they were not granted adequate opportunity to lead defence evidence.

10. In fact, it has been the consistent stand of the accused persons themselves that the case is at the stage of final arguments. In order dated 29.09.2019 passed by the Hon'ble High Court of Delhi in case titled Gopal Krishan Aggarwal vs. State W.P. (Crl.) 1977/2019, the submission of the accused person was recorded that "*the evidence in respect of the petitioner is complete and case is fixed for final arguments*".

11. When the learned predecessor had closed defence evidence and fixed the matter for final arguments, by order dated 09.08.2018, the accused persons did not point out that they intend to lead defence evidence. The accused persons neither sought further liberty to lead defence evidence nor challenged the order of closure of defence evidence and fixing of the case for final arguments before higher courts. The accused persons even advanced final arguments. At that stage too, they did not urge that they wish to lead defence evidence.
12. At least at the stage of final arguments, Id. Counsel for accused persons would have studied the case file and would have realized that the accused persons wish to lead defence evidence. However, no submission was made before advancing arguments that the accused persons intend to lead defence evidence. It is clear from the above that the accused persons never wanted to lead defence evidence and they raised this plea only with a view to prevent the passing of final judgment. All the accused persons were represented by counsel at every stage. It cannot be accepted that after the court has reserved judgment, the accused persons suddenly remembered that they wanted to lead defence evidence.
13. Ld counsel for accused persons urged on dates when the case was taken up for arguments that this case is at the stage of

final arguments but arguments may not be heard on that day since other cases are also to be brought to the same stage for a common decision (Ref.: orders dated 10.4.2019 and 29.7.2019) Later they even advanced final arguments on 5.3.2020, 6.3.2020 and 11.3.2020 without demur. Not once did they urge or express any desire to lead defence evidence.

14. The applications are meritless. An order dated 9.12.2019 passed by Hon'ble Supreme Court in SLP (Crl.) no. 11082/2019 was received in the court on 16.12.2019. The case had to be proceeded with reasonable expedition keeping in view the directions of the Hon'ble Supreme Court, apart from numerous directions of Hon'ble High Court of Delhi passed in cases arising out of this case. It need not be underscored that it is the solemn duty of the trial court to scrupulously comply with every direction received from superior courts. The applications being aimed at stay of the proceedings and of relegating the case to the stage of defence evidence could not have been entertained in light of directions of superior courts.
15. Ld. counsel for accused persons has been granted ample time to file written submissions and to advance oral arguments. Arguments of ld. counsel for these accused persons were heard at length on 5.3.2020, 6.3.2020 and 11.3.2020.

16. Final arguments were advanced by Id counsel for accused Gopal Krishan Aggarwal on 4.3.2020 for three hours. Id counsel for accused Bhisham, Parveen, Parmod and Deepak who is now raising an objection that he was not given adequate opportunity to advance arguments himself chose not to advance final arguments. He prayed for adjournment on that day. This is despite the fact that the court had apprised the counsel of the directions of superior courts of time-bound disposal of the case.
17. On the next date i.e. 5.3.2020, Id counsel for accused persons Bhisham, Parveen, Parmod and Deepak advanced final arguments at length. He however did not conclude his arguments. At the request of Id counsel, the case was fixed for further arguments on 6.3.2020. In view of the directions of superior courts of early disposal of the case, the court requested Id counsel for accused persons to conclude arguments on the next date.
18. On 6.3.2020, Id counsel for accused persons advanced further arguments for five hours. They still did not conclude their arguments. They prayed for adjournment for remaining arguments. They stated that they are not available on 7.3.2020 and so the case may be taken up on 11.3.2020. They also submitted that they will conclude their arguments on 11.3.2020. In spite of directions of the Hon'ble Supreme

Court for time-bound disposal, in order to safeguard the rights of the accused persons, the court accommodated ld. counsel for accused person. His request for adjournment was allowed and the next date of his choice was given to him. The court made it clear to the accused persons that no further adjournment would be granted.

19. On 11.3.2020, ld counsel for accused persons Bhisham, Parveen, Parmod and Deepak advanced further arguments for two hours. He still did not conclude his arguments. He did not even continue with his arguments. He stated that he has to go to some other court to attend to a bail application and that he will return at 3pm to resume his arguments. He stated that he will conclude his arguments on that very day. After that, the counsel did not turn up.
20. Ld counsel for accused Ashok Jain and ld. Addl. Public Prosecutor advanced arguments on that day. Arguments on behalf of all other accused persons were already concluded. In light of repeated lapses of ld counsel for accused persons Bhisham, Parveen, Parmod and Deepak and having regard to the directions of superior courts, the court had no option but to reserve the judgment. The court however gave liberty to the counsel to file written synopsis of submissions.
21. Principles of natural justice are fully met in granting adequate time for verbal arguments and opportunity for

filing written submissions. One cannot complain of violation of principles of natural justice or deprivation of full opportunity of hearing only because he was not allowed to make unduly protracted and long-winded submissions at his whims. Id. counsel for accused persons Bhisham, Parveen, Parmod and Deepak earlier sought adjournment. It was granted. Later he advanced arguments on two different dates. He was given a date of his choice to conclude his arguments. He had also undertaken to do so. Yet, after arguments, he left the court on the pretext of having to attend to some other case, despite being aware of directions of Hon'ble Supreme Court. It is the counsel who did not honour his undertaking of completing his arguments on the stipulated date, but the accused persons are attempting to find fault with the court for their own lack of earnest intent to complete their arguments. The interest of the accused persons was protected by granting them liberty to file written submissions.

22. In spite of having more than three months after the judgment was reserved, Id. counsel for accused persons did not file written submissions. He was able to file a number of applications aimed at stalling the passing of judgment, but found it unnecessary to file written synopsis of arguments.
23. An adequate opportunity of presenting his case has been granted to accused Bhisham, Parveen, Parmod and Deepak.



Their counsel has already advanced detailed arguments in court on three dates of hearing. He was granted a chance to supplement his contentions with written arguments. He chose not to avail of this opportunity.

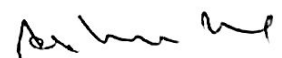
24. The grant of a chance to file written synopsis of arguments after verbal arguments, is more than adequate compliance of the law. Reference may be made to the Instructions issued by the Hon'ble High Court of Delhi to Delhi District Courts bearing No. 27/RG/DHC/2020 circulated by endorsement no. 28-50/RG/DHC dated 13th March, 2020. The Hon'ble High Court of Delhi has thereby recognised the correctness of the procedure of curtailing oral arguments and calling upon parties to instead file written submissions. Not only has this been permitted, it has been formally mandated. The relevant instruction reads as follows:

"In final argument matters, as far as possible, written submissions be called upon to be submitted in court and the time for oral arguments be reduced to the extent possible."

25. Accepting the contention of ld. counsel for accused persons would amount to questioning the correctness of the instructions of the Hon'ble High Court. If the contention was to be accepted, all judgments passed by the District Courts in compliance with the aforesaid instructions would be open to challenge. I am afraid that cannot be so. In light of the

express instructions, representing the correct position of law, the contention of the accused persons made in both the above applications that their counsel has not had sufficient opportunity to advance arguments is liable to be rejected.

26. Another reason for which the applications cannot be entertained is that they had been filed after judgment had been reserved in the case. Judgment was reserved on 11.3.2020. The applications were filed on 12.3.2020. Once the judgment has been reserved, such applications cannot be entertained. In the case of Arjun Singh v. Mohindra Kumar & Ors 1964 SCR (5) 946, it was held by Hon'ble Supreme Court that when judgment is reserved, "*the parties have no further rights or privileges in the matter*". It was noted that it is only for the "*convenience of the Court*" that judgment is permitted to be delivered after an interval on completion of hearing. The most important and oft-quoted observation in the judgment is that "*there is no hiatus between the two stages of reservation of judgment and pronouncing the judgment*". Although the decision was in the context of a civil case, the principle laid down equally applies to criminal cases too. The applications are liable to be dismissed on this ground alone.
27. It is worthy to note that after judgment had been reserved, some of the accused in this case filed a transfer petition



before the court of Id. District & Sessions Judge on the same grounds as are canvassed in the applications. The transfer petition was dismissed by order dated 13.3.2020. The court of Id. District & Sessions Judge had painstakingly perused the entire record and found no merit in the submissions of the accused persons. Once the same grounds have been considered and found to be without merit, this court cannot show undue sympathy by accepting the said grounds and deferring proceedings, contrary to not only the order of Ld. District & Sessions Judge but also directions of Hon'ble Supreme Court passed in case titled Gopal Krishan Aggarwal v. State SLP (Crl.) 11082/2019 and numerous directions of Hon'ble High Court of Delhi passed in cases arising out of this case, more recently order dated 19.9.2019 in case titled Gopal Krishan Aggarwal v. State WP (Crl.) no. 1977/2019.

28. By order dated 5.6.2020 in case titled Vinod Kumar @ Gola vs. State Crl. M. C. No. 1491/2020, the Hon'ble High Court of Delhi has directed this court to conclude the judgment and to pronounce the same within three weeks from the date of passing of the said order. The grant of four weeks for defence evidence and final arguments sought by Id counsel for accused persons would preclude this court from compliance with directions of Hon'ble High Court of Delhi

and thus the prayer of the accused persons cannot be accepted.

29. Lastly, since the judgment has been pronounced, the applications have been rendered infructuous.
30. In light of the aforesaid reasons, both the abovestated applications dated 12.03.2020 are held to be misconceived. They are hereby dismissed.
31. After filing of the aforesaid applications, the accused persons filed two more applications dated 17.3.2020. By the first application, the accused persons are seeking deferring of the passing of judgment. The ground raised in the application is that the accused persons have filed an application before Hon'ble Supreme Court for extension of time for disposal of the case by a month, to enable the accused persons to lead defence evidence and to advance further final arguments. It is argued that this court must await the decision of the Hon'ble Supreme Court. The other application is under section 311 of Code of Criminal Procedure for recall of PW67 SI Mukesh for his further cross-examination. It is urged that the accused persons had been permitted to cross-examine the witness in the year 2016 subject to payment of costs but costs were not paid due to which remaining cross-examination had not been permitted.

32. The aforesaid applications had been submitted before this Court with an office objection that they have not been filed in the filing section and have been submitted across the counter.
33. The office objection, being technical in nature, may be ignored. Moreover, since the applications have been received during the Coronavirus Pandemic, it is possible that the counsel may, in light of the urgency, not have been able to file them at the filing counter.
34. However, the application for adjournment may be taken up first. Having considered the application, it is found to be liable for rejection, owing to a number of reasons.
35. Firstly, the application for adjournment sought deferment of final decision from 18.3.2020 to any other date. That has already been done. The date of 18.3.2020 has passed. The judgment was not pronounced on that day. The application is therefore rendered infructuous.
36. Secondly, the deferment of final decision was sought on the ground that the accused persons have filed an application before Hon'ble Supreme Court for extension of time for disposal of the case by a month. The said one month has also lapsed.



37. Thirdly, deferment of final decision was prayed so as to await the decision of Hon'ble Supreme Court to the application filed by the accused persons. The application has already been listed and this court is informed that the application of the accused persons has been dismissed. That being the case, the reason on the basis of which deferring of pronouncement of judgment was being prayed for, no longer survives.
38. Fourthly, the accused persons have contended that they did not get adequate opportunity for leading defence evidence and for final arguments. This plea has already been held to be devoid of merit.
39. Fifthly, the application cannot be entertained since it had been filed after judgment had been reserved in the case. This principle has been laid down in the case of Arjun Singh (ibid) and has already been discussed earlier in the context of the other applications that have been decided today.
40. Sixthly, the application does not lie because a transfer petition and the application filed before the Supreme Court on the same ground of not being given adequate opportunity for defence evidence and final arguments has already been dismissed. A ground that did not find favour with superior courts cannot be accepted by this court.

41. Seventhly, the allowing of the application and constantly deferring the pronouncement of judgment would be contrary to directions of Hon'ble Supreme Court passed in case titled Gopal Krishan Aggarwal v. State SLP (Crl.) 11082/2019 and numerous directions of Hon'ble High Court of Delhi passed in cases arising out of this case, more recently order dated 19.9.2019 in case titled Gopal Krishan Aggarwal v. State WP (Crl.) no. 1977/2019.
42. Eighthly, by order dated 5.6.2020 in case titled Vinod Kumar @ Gola vs. State Crl. M. C. No. 1491/2020, the Hon'ble High Court of Delhi has directed this court to conclude the judgment and to pronounce the same within three weeks from the date of passing of the said order. Deferring of passing of judgment would be in violation of directions of the Hon'ble High Court of Delhi.
43. Lastly, after passing of the final judgment, this application too has been rendered infructuous.
44. The only objective of filing of the application apparently was to delay or altogether prevent passing of a final judgment even though the transfer petition of the accused had been dismissed by the Ld District and Sessions Judge. In view of the above reasons, the application is hereby dismissed.
45. The other application dated 17.3.2020 seeks to recall a witness for his cross-examination. Firstly, the said witness


has already been cross-examined at length. Secondly, this opportunity was granted four years back and was not availed. It is incomprehensible that after four years, and after prosecution evidence is closed, and after statement of accused has been recorded under section 313 of Code of Criminal Procedure, and after defence evidence has been concluded, and even final arguments have been advanced and judgment is reserved (all stages of which the accused was represented by the same counsel), the accused never realized that he needs to cross-examine the witness. The application is clearly an abuse of the process of law. If the accused and his counsel did not realize the progression of the case, at least at the stage of final arguments, or while preparing for final arguments, the counsel would have realized this and should have moved an application for recall of witness instead of advancing final arguments. Incompetence of the present counsel (who advanced final arguments) has not been urged as a ground in the application, let alone being substantiated. Thirdly, the application cannot be entertained since it had been filed after judgment had been reserved in the case {Ref.: Case of Arjun Singh (ibid)}. Fourthly, this ground too was urged in the transfer petition and the application filed before the Supreme Court, both of which were dismissed. Once rejected before a superior court, it cannot be urged before this court. Fifthly,



the allowing of the application and relegating the case to the stage of prosecution evidence would be contrary to directions of Hon'ble Supreme Court passed in case titled Gopal Krishan Aggarwal v. State SLP (Crl.) 11082/2019 and directions of Hon'ble High Court of Delhi dated 19.9.2019 in case titled Gopal Krishan Aggarwal v. State WP (Crl.) no. 1977/2019. Sixthly, by order dated 5.6.2020 in case titled Vinod Kumar @ Gola vs. State Crl. M. C. No. 1491/2020, the Hon'ble High Court of Delhi has directed this court to conclude the judgment and to pronounce the same within three weeks from the date of passing of the said order. The pushing back of the case to the stage of prosecution evidence will be a violation of directions of the Hon'ble High Court of Delhi. Seventhly, this application has become infructuous by passing of final judgment. In these circumstances, this application too is dismissed.

46. Another application filed by the accused dated 17.3.2020 seeks hearing of the abovesaid two applications. Since the above applications have been dealt with despite office objection and have been disposed off, the instant application has become infructuous and is accordingly dismissed.
47. There is another application filed by accused Bhisham @ Chintu. By the said application, the accused has sought permission to make a confession in the court. The said

accused has already been convicted. Since the trial has concluded, the application cannot be entertained by this court. The application is dismissed.


Ashish Aggarwal
Joint Registrar (Judicial)
Delhi High Court
New Delhi

**Announced through video-conferencing
on 22nd June, 2020**