

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

Sessions Case No. 327/2019

FIR No. 356/2007

PS Hauz Qazi (Crime Branch)

Under Sections 302 and 120-B of Indian Penal Code

State

Versus

Hitender @ Chhotu

S/o Sh. Lazman Singh Rawat,

R/o F-440, Ram Park Extn.,

Loni Road, Ghaziabad, UP.

ORDER  
22.06.2020

1. This order shall decide the pending applications filed by the accused. The first application is dated 13.3.2020. By that application, the accused prayed for an opportunity of two weeks for his counsel to advance further final arguments.
2. The application cannot be allowed. There are five reasons for this.
3. Firstly, the application is 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.

4. Ld. counsel for accused person has been granted ample time to file written submissions and to advance oral arguments. Arguments of ld. counsel for accused person were heard at length on 6.3.2020. After advancing detailed arguments, ld. counsel for accused person stated that though he desires to make some further submissions, he is not inclined to do so on that day because court hours were over. He was requested to advance remaining arguments on the next day i.e. on 7.3.2020. He declined to do so. He stated that he is not available on 7.3.2020 and he has to go out of station. Ld. counsel for accused person stated that he is available for advancing arguments only on 11.3.2020. He also undertook to complete his 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, 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.
5. On 11.3.2020, ld. counsel for accused person advanced further final arguments for two hours. After that 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 day. After that the counsel did not turn up. The court had no option but to reserve the

judgment. The court however gave liberty to the counsel to file written synopsis of submissions.

6. 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. Ld. counsel for accused person was given a date of his choice to conclude his arguments. He had also undertaken to do so on that day. Yet, 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, and he cannot find fault with the court for his own lack of earnest intent to complete his arguments. The interest of the accused was protected by granting the counsel liberty to file written submissions.
7. In spite of having more than three months after the judgment was reserved, ld. counsel for accused 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.
8. An adequate opportunity of presenting his case has been granted to the accused. His counsel has already advanced detailed arguments in court on two dates of hearing. He was

granted a chance to supplement his contentions with written arguments. He chose not to avail of this opportunity.

9. 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 13<sup>th</sup> 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."*

10. Accepting the contention of Id. counsel for accused 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 Id. counsel for the accused that he has not had sufficient opportunity to advance arguments is liable to be rejected.



11. The second reason for which the application cannot be entertained is that it had been filed after judgment had been reserved in the case. Judgment was reserved on 11.3.2020. The application was filed on 13.3.2020. Once the judgment has been reserved, such an application cannot be entertained. In the case of Arjun Singh vs 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 application is liable to be dismissed on this ground alone.
12. The third reason for which the application does not lie is 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 ground as is canvassed in the application. 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. Once the same ground has been considered and found to be without merit, this court cannot show undue sympathy by accepting the said ground and



detering proceedings, contrary to not only the order of Id. 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,

13. The fourth reason is that 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 two weeks for further final arguments by Id counsel for accused person would preclude this court from compliance with directions of Hon'ble High Court of Delhi and thus the prayer of the accused cannot be accepted.
14. The fifth reason is that the application has to be taken up after pronouncement of judgment as per the decision of Arjun Singh (ibid), and since the judgment has been pronounced, the application has been rendered infructuous.
15. In light of the aforesaid reasons, the application is held to be misconceived. It is hereby dismissed.
16. After filing of the aforesaid application, the accused filed two more applications dated 17.3.2020. By the first application, the accused is seeking deterring of the passing of judgment. The

ground raised in the application is that the accused has filed an application before Hon'ble Supreme Court for extension of time for disposal of the case by a month, to enable the accused 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 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.

17. 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.
18. 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.
19. 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.
20. 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.

21. Secondly, the deferment of final decision was sought on the ground that the accused has 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.
22. 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. The application has already been listed and this court is informed that the application of the accused 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.
23. Fourthly, the accused has contended that he did not get adequate opportunity for leading defence evidence and for final arguments. This is preposterous. The statement of accused under section 313 of Code of Criminal Procedure was recorded, for the final time on his arrest after he had absconded, on 5.3.2020. He plainly declined to lead defence evidence. That being so, he cannot complain that he was never allowed to lead defence evidence. The accused cannot be forced to lead defence evidence against his wishes. The argument of the accused is wholly misleading and untenable. It has already been held above, that for final arguments too, ample opportunity was given to Id. counsel for accused. Counsel for accused initially made detailed submissions, and then absented himself. He did





not file written submissions despite the fact that the court expressly called for it.

24. 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 application that has been decided today.
25. 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.
26. 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.
27. 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.

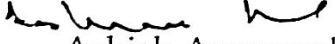
28. Lastly, after passing of the final judgment, this application too has been rendered infructuous.
29. The only objective of filing of the application apparently was to delay or altogether prevent passing of a final judgment even though the transfer petition of the accused had been dismissed by the Ld District and Sessions Judge. In view of the above reasons, the application is hereby dismissed.
30. 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 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 substantiating the ground. 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.

31. 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.

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

**Announced through video-conferencing  
on 22<sup>nd</sup> June, 2020**