

IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
APPELLATE SIDE
NAGPUR BENCH, NAGPUR

CRIMINAL APPLICATION (APPLN) NO. 7 OF 2015

State of Maharashtra P.S.Duggipar Vs. Maroti @ Akshay @ Gulaba Ganpat Parwatkar & Ors.

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Office Notes, Office Memoranda of Coram,
appearances, Court orders or directions
and Registrar's orders
.....

Court's or Judge's Order

Smt Rashi Deshpande APP for applicant.
Shri S. P. Gadling Adv for non applicants.

CORAM: A.S.CHANDURKAR J.

DATED: 5th OCTOBER, 2015.

By the present application the applicant has challenged the order dated 01.01.2015 passed by the learned Sessions Judge below Exs. 9 and 11 thereby enlarging present non applicants on bail under Section 439 of the Criminal Procedure Code (for short the Code).

With regard to Crime No. 104 of 2010 registered on 26.12.2010 for offences punishable under Sections 121, 121A, 120(b), 465, 468 and 471 of the Indian Penal Code read with Sections 17, 20 and 39 of the Unlawful Activities (Prevention) Act, 1967, the non-applicant no.1 was arrested on 04.09.2012, non applicant no.2 was arrested on 11.01.2013 and non-applicant no.3 was arrested on 13.12.2012. The non-applicants accordingly moved applications for their release on bail and the learned Additional Sessions Judge after perusing the supplementary charge sheet and other material on record prima facie came to the conclusion that there was no material to connect the

non applicants with the alleged offence. All the non-applicants were accordingly released on bail by the aforesaid orders which are under challenge.

Smt. Rashi Deshpande, learned Additional Public Prosecutor submitted that the learned Additional Sessions Judge did not independently consider the case of each non-applicant and merely by observing that there was no material on record and that completion of trial would take some time, released the non-applicants on bail. It was submitted that while non applicant no. 1 was the Secretary of the Naxalite Organisation of Communist Party of India (Maoist), the non-applicant nos. 2 and 3 were also connected with activities of said organisation. It was submitted that in the supplementary charge sheet as well as statement recorded under Section 27 of the Evidence Act, the role of the non-applicants was clear and they could not have been released on bail. It was further submitted that merely because other accused were acquitted in Sessions Trial No. 29 of 2013, same was not relevant for granting bail to the present non-applicants. It was, therefore, prayed that the order passed by the learned Additional Sessions Judge granting bail be set aside and non-applicants be placed under arrest.

Shri S. P. Gadling, learned counsel for the non applicants submitted that the Sessions Court after considering all material available on record has released the non-applicants on bail. There was no material on record to indicate that the non-applicants were active members of the banned association. The statement of one Kishore Warwade P. W. 28 on which reliance has been placed by the applicants was considered in para 9 of the judgment of the Sessions Court in Sessions Trial no. 14 of 2012 dated 15.05.2014 wherein the other accused were acquitted. It is further submitted

that even in Sessions Trial No. 123 of 2012 the accused have been acquitted by judgment dated 10.09.2015. More over, there was no grievance that any terms or conditions of bail had been violated by any non-applicant.

I have considered respective submissions and I have gone through the documents filed on record. I have also gone through the supplementary charge sheet including statements of one Kishore Warwade, brother of one Sanjay Bawane, Nandkishore and others. Reading of these statements primfacie indicates that the non applicants were alleged to be the members of a banned organisation. It is pertinent to note that these statements were recorded after the arrest of non-applicants. Prima facie aforesaid statements do not indicate any active role attributed to the non-applicants in relation to the alleged accident dated 26.12.2010. More over, in para 9 of the judgment dated 15.05.2014 in Sessions Trial No. 14 of 2012 the statement of P. W. 28 Kishor Warwade have been duly considered. Thus in absence of any prima facie material collected by the prosecution to indicate active participation of the non-applicants in relation to the banned organisation, it cannot be said that the learned Additional Sessions Judge committed any error while observing that there was no material on record to connect non-applicants with the alleged office. Further in absence of any breach of conditions of bail, there is no reason whatsoever to interfere with the impugned orders. In view of aforesaid the orders dated 01.01.2015 passed below Exs. 9 and 11 in Sessions Trial No. 29 of 2013 do not call for any interference. Application is rejected.

JUDGE

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