

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

CRIMINAL APPLICATION NO.91/2014

(The State of Maharashtra, through PSO P. s. Alekasa, Tq. Salekasa, Dist. Gondia
..vs.. Jagesh @ Shankar s/o Rainu Watti

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

Court's or Judge's orders.

Mr. S. S. Doifode, A.P.P. for applicant.
Mr. H. P. lingayat, Advocate for non applicant.

CORAM : A. B. CHAUDHARI, J.
DATE : NOVEMBER 24, 2015.

This is an application for cancellation of bail granted to non applicnat-Jagesh by Additional Sessions Judge, Gondia in Crime No.66/2010 registered with Police Station, Saleksa for the offence punishable under Sections 397, 302, 147, 148, 149, 452, 506B, 120B, 121, 201 of the IPC, Sections 3, 5, 25 and 27 of the Indian Arms Act, Sections 16, 17, 19, 20 and 23 of the Unlawful Activities (Prevention) Act, 1967.

The learned A.P.P. for the State submitted that since there is a prohibition for grant of bail under Section 43D (5) of the Unlawful Activities (Prevention) Act, 1967 (as amended), the trial Judge could not have granted an order of bail in favour of the non applicant. He, therefore, submitted that material is available with the prosecution against the non applicant but that has not been considered by the trial Judge. Therefore,

according to him, the impugned order granting bail is perverse and looking to the activities of non applicant-Jagesh, the order deserves to be cancelled.

Per contra, Mr. Gadling, learned counsel for the non applicant, vehemently opposed the application and submitted that the offence is said to have taken place in the year 2010 and statement of witnesses were recorded in the year 2012 who also did not state of having seen Jagesh on the spot and committing any crime. On the contrary, the witnesses say that later on they came to know that Jagesh was part and parcel of the naxal gang.

I have perused the statements shown to me by the learned A.P.P. and I find that the statements were recorded after two years, that too stating that they came to know after two years but there is no source of knowledge of the witnesses disclosed by them.

Section 43D (5) reads thus:

“43D. Modified application of certain provisions of the Code:

(1) to (4)

(5) Notwithstanding anything contained in the Code, no person accused of an offence punishable under Chapters IV and VI of this Act shall, if in custody, be released on bail or on his own bond unless the Public Prosecutor has been

given an opportunity of being heard on the application for such release:

Provided that such accused person shall not be released on bail or on his own bond if the Court, on a perusal of the case diary or the report made under section 173 of the Code is of the opinion that there are reasonable grounds for believing that the accusation against such person is prima facie true.”

It clearly appears that the Court must be satisfied of the existence of prima facie case in order to refuse bail.

In the instant case, in the absence of any evidence muchless prima facie against Jagesh, it would be unfair to cancel the bail on the ground that the impugned order is illegal, which is not so.

Learned counsel for the non applicant further submitted that there is no complaint whatsoever against non applicant-Jagesh of misusing the liberty granted to him. On the contrary, the non applicant is attending the Court regularly and, therefore, there is no reason why the bail should be cancelled. There is no report that non applicant-Jagesh had been part of any naxal activity thereafter and is residing at his place of ordinary residence.

Accepting the above submissions, since they have not been controverted, I think, no case is made out

for cancellation of bail. Hence, following order is passed.

ORDER

- (i) Criminal Application No.91/2014 is rejected.
- (ii) Non applicant shall not leave the place of his ordinary residence except for attending the Court, till the trial is completed.

JUDGE

kahale