

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

CRIMINAL APPLICATION (BA) NO. 157 OF 2016

(LAXMAN MANIKRAO BHONSLE...VS..STATE OF MAH. THR. PSO PS KALMESHWAR, DISTT.
NAGPUR)

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

Court's or Judge's orders

CORAM : Z.A.HAQ, J.

DATED : APRIL 01, 2016.

Heard Shri R.M. Daga, advocate for the applicant
and Shri S.B.Bissa, A.P.P. for the non-applicant.

The applicant is arrested on 3rd November, 2015
in the crime registered against him for the offence punishable
under Sections 147, 148, 149, 336, 427, 324 and 326 of the
Indian Penal Code.

The learned Additional Sessions Judge, while
considering the application filed by the applicant under
Section 437 of the Code of Criminal Procedure, has recorded
that the applicant is in magisterial custody for more than 1 ½
months and that it would be improper to keep him in jail as
no purpose would be served, in the facts of the case.
However, the application filed by the applicant praying for
directions to release him on bail is rejected on the ground that
the applicant is convicted earlier for the offence punishable
under the Bombay Prohibition Act, 1949 twice and in view of
the provisions of Section 437(1)(ii) of the Code of Criminal
Procedure the applicant is not entitled to be released on bail.

Shri R.M. Daga, learned advocate for the applicant has submitted that clause (ii) of sub-section (1) of Section 437 of the Code of Criminal Procedure lays down that a person shall not be released on bail if he had been previously convicted on two or more occasions for a cognizable offence punishable with three years or more but not less than seven years. It is submitted that the learned Sessions Judge has rejected the application of the applicant under the misconception that the applicant is earlier convicted on two occasions for the offences punishable with imprisonment for three years when in fact, it is not so.

Shri R.M. Daga advocate has pointed out from the affidavit filed on behalf of the non-applicant that the applicant is convicted in Case No. 956 of 1987 for the offence punishable under Section 65(f) of the Bombay Prohibition Act, 1949, in Case No. 524 of 1987 for the offence punishable under Section 66(1)(b) of the Bombay Prohibition Act, 1949 and in Case No. 527 of 1987 for the offence punishable under Section 66(1)(b) of the Bombay Prohibition Act, 1949. It is pointed out that at the relevant time i.e. in 1987 offence under Section 66(1)(b) of the Bombay Prohibition Act, 1949 was punishable for the first offence, with imprisonment up to six months, for second offence with imprisonment up to two years and for third and subsequent offence with imprisonment up to two years. It is submitted that Section 65 of the Bombay Prohibition Act, 1949 provided for punishment with imprisonment up to three years. The learned advocate has pointed out that the details of the offences for which the applicant was convicted were not before the learned Additional Sessions Judge and therefore, the error has crept into the order passed by the learned Additional Sessions Judge.

After considering the submissions made by the learned advocate for the applicant, I find that the applicant cannot be denied bail in view of the provisions of Section 437(1)(ii) of the Code of Criminal Procedure. On merits, the learned Additional Sessions Judge has recorded that the applicant is entitled to be released on bail.

Hence, the following order :

- i) The applicant, having been arrested in Crime No. 304 of 2015, registered by the non-applicant, he be released on bail on furnishing P.R. Bond for Rs. Twenty Thousand and one solvent surety in the like amount.
- ii) The applicant shall attend every date of the sessions trial before the Sessions Court, unless granted exemption by the Sessions Court.

The application is allowed in the above terms.

JUDGE