

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

CRIMINAL APPLICATION (ABA) NO. 128 OF 2016

(PRALHAD SHANKARRAO MAHALLE...VS..STATE OF MAH., THR. PSO, PS DIGRAS, DIST.
YAVATMAL)

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 : MARCH 07, 2016.

Heard Shri V.N.Patre, advocate for the applicant
and Shri N.S.Khubalkar, A.P.P. for the non-applicant.

The applicant filed application under Section 438
of the Code of Criminal Procedure before the Sessions Court
which is rejected by the learned Additional Sessions Judge
recording that the applicant is seeking bail apprehending
arrest in the crime registered against him for the offence
punishable under Section 304-A of the Indian Penal Code and
as the offence punishable under Section 304-A of the Indian
Penal Code is bailable, the application is not maintainable.

The learned advocate for the applicant has
pointed out that the applicant has stated in the application
that there is possibility that the offence punishable under
Section 304 of the Indian Penal Code may be added against
the applicant, however, overlooking this, the learned
Additional Sessions Judge has rejected the application as not
maintainable.

It is undisputed that the offence punishable under Section 304 of the Indian Penal Code is added against the applicant. As the learned Additional Sessions Judge has not dealt with the application of the applicant on merits, in my opinion, it would be proper that the matter is considered by the learned Additional Sessions Judge taking into account the fact that the offence punishable under Section 304 of the Indian Penal Code is added against the applicant.

Hence, the following order :

- i) The impugned order is set aside.
- ii) The learned Additional Sessions Judge shall consider the application filed by the applicant under Section 438 of the Code of Criminal Procedure afresh.
- iii) The applicant shall appear in person or through his advocate before the Additional Sessions Judge No.1, Darwha, District : Yavatmal on 16th March, 2016.
- iv) Till 16th March, 2016 the non-applicant shall not arrest the applicant in Crime No. 436 of 2015 registered against him.

The application is disposed of in the above terms.

JUDGE