

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

CRIMINAL APPLICATION (APPLN) NO.55/2015

State of Maharashtra, through Police Station Officer, Police Station Digras, Distt.

Yavatmal

..Versus..

Akhtar Kha s/o Gulab Kha and others

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.

DATE : 22.2.2016

Heard Shri A.K. Bangadkar, A.P.P. for the applicant and Shri F.T. Mirza, advocate for the non-applicant no.1.

This is an application filed by the State of Maharashtra under Section 439(2) of the Criminal Procedure Code praying that the order passed by the learned Additional Sessions Judge granting pre-arrest bail to the non-applicant no.1 be set aside and the pre-arrest bail be cancelled.

Though the application is filed against three non-applicants, this Court restricted notice to the non-applicant no.1. The learned A.P.P. has submitted that the applicant is pressing this application against the non-applicant no.1.

The non-applicant no.1 filed application under Section 438 of the Criminal Procedure Code seeking pre-arrest bail apprehending

arrest in Crime No.68/2015 registered by the applicant for the offence punishable under Sections 143, 146, 147, 148, 149, 302 of the Indian Penal Code and Sections 3, 4 and 25 of the Arms Act.

The learned Additional Sessions Judge allowed the application filed by the non-applicant no.1 observing as follows:

“6 Learned counsel for the applicant has drawn my attention towards the say filed by informant before Hon'ble High Court in Criminal Application No.327/15 which was filed by the applicant. In this say, the informant has sworn an affidavit that the applicant was not present on the spot at the time of incident and she had not named him in the report. She had never stated to the police that the applicant was present on the spot of incident along with some weapon and had instigated other accused for committing murder. Hence, considering such affidavits of the informant which is filed before Hon'ble High Court, it seems that the name of the applicant is later on added in the F.I.R. Hence, considering this affidavit, applicant is entitled for releasing on bail in the event of his arrest.”

The learned A.P.P. has submitted that the Criminal Application No.327/2015 which was filed by the non-applicant no.1 praying that the F.I.R. registered against him be quashed, subsequently came to be withdrawn. It is submitted that the learned Additional Sessions Judge could not have relied on the affidavit sworn by the informant stating that she had not named the non-applicant no.1 in the report given by her and she had never stated that the non-applicant no.1 was not present on the spot of incident along with weapon and had instigated other accused for committing murder. The learned A.P.P. has pointed out that the non-applicant has faced 17 prosecutions for various

serious offences. Relying on the judgment given in the case of *Puran V/s. Rambilas and another* reported in **AIR 2001 SC 212** and the judgment given in the case of *Neeru Yadav V/s. State of Uttar Pradesh and another* reported in **AIR 2015 SC 3703**, it is submitted that the impugned order passed by the learned Additional Sessions Judge is required to be set aside as the learned Additional Sessions Judge as not considered the relevant material on the record before granting pre-arrest bail to the non-applicant no.1.

Shri F.T. Mirza, learned advocate for the non-applicant has submitted that the non-applicant no.1 is being falsely implicated in the crime and to support this, he has pointed out the sentences in the report made by the informant and in the statements of the persons and has argued that statements attributing the overt act to the non-applicant no.1 have been introduced after thought. On instructions, it is submitted that the non-applicant no.1 is not and has not been prosecuted for any other crime. Shri Mirza, learned advocate has relied on the judgment given in the case of *Dolat Ram and others V/s. State of Haryana* reported in **(1995) SCC 349** and has submitted that the applicant has not been able to make out a case for cancellation of pre-arrest bail as none of the contingencies as discussed by the Hon'ble Supreme Court in the judgment given in the case of *Dolat Ram and others V/s. State of Haryana* (cited supra) exists. It is further submitted that the non-applicant no.1 has co-operated with the investigation and it is not the case of the applicant that the non-applicant no.1 has misused the liberty granted by the Sessions Court.

After hearing the learned A.P.P. and the learned advocate for the non-applicant no.1 and examining the documents placed on the record, I find that the reasons given by the learned Additional Sessions Judge while granting pre-arrest bail cannot be said to be sufficient for allowing the application filed by the non-applicant no.1 under Section 438 of the Criminal Procedure Code. The tenor of the order passed by the learned Additional Sessions Judge shows that the application filed by the non-applicant no.1 came to be allowed only because the informant had filed an affidavit before this Court in Criminal Application No.327/2015 stating that she had not named the non-applicant no.1 in her report and that she had not stated that the non-applicant no.1 was present at the spot of incident and had instigated the other accused. In my view, the learned Additional Sessions Judge should have examined the material placed on the record. Because of failure on the part of the learned Additional Sessions Judge to consider the relevant aspects, considering the proposition laid down in the judgment given by the Hon'ble Supreme Court in the case of *Puran V/s. Ram Vilas* and in the case of *Neeru Yadav V/s. State of Uttar Pradesh and another* (cited supra), I am of the view that the impugned order is unsustainable and has to be set aside. However, considering the fact that the non-applicant no.1 is granted pre-arrest bail by the order dated 25th June, 2015 and the fact that the applicant has not been able to establish that the non-applicant no.1 has misused the liberty granted by the Sessions Court, the following order is being made.

- (i) The impugned order passed by the learned Additional Sessions

Judge, Darwha in Miscellaneous Criminal Application No.143/2015 on 25th June, 2015 is set aside.

(ii) The matter is remitted to the learned Additional Sessions Judge for deciding the application filed by the non-applicant no.1, afresh.

(iii) The non-applicant no.1 is protected by ad-interim order and it is directed that in the event of arrest in connection with Crime No.68/2015 registered by the applicant, the non-applicant no.1 be released on bail on furnishing P.R. bond in the sum of Rs.15,000/- and one solvent surety in the like amount.

(iv) The non-applicant no.1 shall appear or be represented by an advocate before the learned Additional Sessions Judge, Darwha on 1st March, 2016.

(v) The applicant shall also see that it is represented before the learned Additional Sessions Judge, Darwha on 1st March, 2016.

(vi) The learned Additional Sessions Judge shall dispose of the application filed by the non-applicant no.1 under Section 438 of the Criminal Procedure Code, according to law till 14th March, 2016.

(vii) The application is **allowed** in the above terms.

(viii) In the circumstances, the parties to bear their own costs.

JUDGE