

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

Criminal Application (BA) No. 122 of 2017

Deepak @ Manna v. State of Maharashtra

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

Court's or Judge's orders

Shri D. V. Chouhan, Advocate and Shri C. R. Thakur,
Advocate with him for applicant
Shri N. B. Jawade, APP for respondent

Coram : S. B. Shukre, J

Dated : April 11, 2017

Heard learned counsel for the applicant and learned Additional Public Prosecutor for respondent-State.

This application has been strongly opposed by learned Additional Public Prosecutor. However, so far as the aspect of prima facie case is concerned, I find that this applicant is similarly situated as the one in Criminal Application (BA) No. 63 of 2017 viz. Rohit Markande who has been granted bail by this Court on 7.4.2017 and, therefore, I do not think it necessary to discuss this aspect once again except to state that there is a doubt about the prima facie case being made out against this applicant for various offences registered against him.

Since Section 3 of the MCOC Act has also been applied against this applicant, it would be necessary for the Court to consider the effect of Section 21 (4) thereof on this applicant. This Section lays down twin tests for the Court to exercise its discretion in granting bail or otherwise to the accused involved in an offence registered under the provisions of the MCOC Act. According to these tests, the Court must see prima facie case against the accused and also determine

the propensity of the applicant to commit an offence under the Act which has been interpreted to mean an offence having some commonness with the offence under the MCOC Act by following a consistent line of precedence set out by the Hon'ble Apex Court in the case of **Ranjit Sharma v. State** reported in AIR 2005 SC 2277 and **State of Maharashtra v. Bharat Shantilal Shah & ors** reported in (2008) 13 SCC 5. This Court has also taken a view that sharing of charge-sheet by the co-accused in the present crime with the applicant in the previously registered crime would also be one of the factors and the same has to be taken into consideration along with the other factor of similarity of the offence committed in the previous crime with the one committed in the present crime.

Applying the same tests of Section 21 (4) to the facts and circumstances of this case as they are available on record, at this stage, I find that this applicant prima facie clears the twin tests. There have been two crimes registered against this applicant previously. One crime No. 117/11 at police Station, Nandanwan, Nagpur was for the offences punishable under Sections 202, 147, 148 read with Section 149 of the Indian Penal Code and the other was Crime No. 158/2014 registered at Police Station, Lakadganj, Nagpur for an offence punishable under Section 324 read with Section 34 IPC. In the first crime at Police Station, Nandanwan, this applicant has been acquitted. However, in the second crime registered with Lakadganj Police Station, the trial is still pending. In the second crime, some of the co-accused in the present crime are also co-accused of this applicant. But, as one can see, in the second crime, the offence is punishable with maximum imprisonment of three years and, therefore, a lesser crime than the present one is there. It has to be prima

facie found that there is no reasonable nexus between the previous crimes and the present crime so as to enable this Court to find that if released on bail, the applicant is likely to commit a similar offence.

In the circumstances, I am inclined to allow this application.

Application is allowed and it is directed that the applicant be released on bail in crime No. 239/2014 registered with Police Station, Nandanwan, Nagpur for the offences punishable under Sections 302, 307, 120-B, 141, 143, 144, 148, 149, 506 (B) of the Indian Penal Code, Sections 4 and 25 of the Arms Act, Section 135 of the Bombay Police Act and Section 3 of the MCOC Act on his furnishing PR Bond of Rs. 50,000/- together with one solvent surety in the like amount, on the following conditions:

- (1) Applicant shall regularly attend all dates of hearing in the fixed as may be fixed by the trial Court.
- (2) Applicant shall cooperate with the trial Court in expeditious disposal of the trial.
- (3) Applicant shall not tamper with the prosecution evidence in any manner.
- (4) Applicant shall reside outside the city limits of Nagpur and shall furnish his new residential address to the concerned Police Station as also the concerned Court along with his cellphone number (s) within seven days from the date of his release.

Application is disposed of.

JUDGE

joshi