

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

CRIMINAL APPLICATION (BA) NO.814/2017

Nanhe @ Niyajuddin s/o Jalaluddin Siddiqui ..vs.. State of Maharashtra
through PSO P.S. Yashodhara Nagar, Nagpur

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

Court's or Judge's orders.

Mr. P. P. Kotwal, Advocate for applicant.

Mr. T. A. Mirza, A.P.P. for non applicant-State.

CORAM : V.M. DESHPANDE, J.

DATED : SEPTEMBER 7, 2017

This is an application for grant of bail. The applicant was arrested in connection with Crime No. 251/2014 registered with Police Station, Yashodhara Nagar, Nagpur for an offence punishable under Section 143, 147, 148, 149 and 302 of the Indian Penal Code. After arrest, the applicant preferred an application before the Sessions Judge for releasing him on bail. The learned Sessions Judge rejected the said application. Being aggrieved by the said and also independently, the the applicant approached to this Court for releasing him on bail by moving an application under Section 439 of the Cr.P.C. the said application was registered as Criminal Application No.844/2014. This Court had on 05.01.2015 released the applicant on bail on certain conditions. Condition no.2 was that he should provide his residential address at Gondia where he was intending to reside to the police authority, Yashodhara Nagar, Nagpur. The other condition was that he shall not enter

into Nagpur city till the trial commences. The liberty was given by this Court to the investigating officer that in case of breach of condition, the prosecuting agency was free to file an application for cancellation of bail.

After release on bail though the applicant was under bounden duty to follow the condition imposed on him by this Court, the applicant has failed to follow the conditions those were imposed on him. His liberty was subject to the conditions those were imposed by this Court however the applicant shown arrogance and did not adhere to any of the conditions that were imposed on him. Consequently, the investigating agency approached to this Court by moving an application under Section 439 (2) Cr. P. C. The application was registered as Criminal Application No.86/2015. Notices were issued to the present applicant in respect of said application. The applicant put in his appearance and contested the application. This Court had on 17.03.2017 allowed the application filed on behalf of the State and cancelled the bail granted in favour of the applicant. Consequently, the applicant was taken into custody.

After the applicant was taken in custody, the applicant approached before this Court by filing Criminal Application No.432/2017. When this application for bail was listed before this Court on 03.05.2017 without there being any liberty sought, the application was withdrawn by present applicant. Therefore present application is filed.

According to the learned counsel for the applicant, the observations made by this Court on 17.03.2017 in Criminal Application No.86/2015 are incorrect and are contrary to the record.

I am afraid that such a submission could be entertained at this stage especially when it was open for the applicant to assail the order of cancellation of bail before the Hon'ble Apex Court. The said order was not challenged by the applicant before the Hon'ble Apex Court. Therefore, the finding recorded by this Court while cancelling the bail in favour of the applicant has attained finality.

The State has filed its reply opposing the present application. In the reply, it is stated that even as on today the applicant has failed to furnish his residential address at Gondia. Further, one of the reason for cancellation of the bail was that though he was not supposed to enter within the territorial limit of Nagpur city till the trial commences, stealthily, he entered into Nagpur city and was found roaming near Hamid Nagar. His roaming was not innocent. At that time, he was holding a chopper, a dangerous weapon.

All these facts show that the applicant does not deserve any sympathy or discretion from this Court. The application is therefore rejected.

JUDGE