

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

CRIMINAL APPLICATION (BA) NO.257/2019

Abdul Naim Abdul Rashid

..VS..

State of Mah., thr. PSO Police Station Mana, Taluka Murtizapur, District
Akola

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

Court's or Judge's Order

Shri A.M.Ghare, Counsel for the Applicant.
Mrs.M.H.Deshmukh, Addl.P.P. for the State.

CORAM : M.G.GIRATKAR, J.

DATED : MARCH 18, 2019.

1. This is an application under Section 439 of the Code of Criminal Procedure for grant of bail.
2. Heard learned counsel Shri A.M.Ghare for the applicant.
3. Issue Notice to the non-applicant/State.
4. Learned Additional Public Prosecutor Mrs.M.H.Deshmukh waives Notice on behalf of the State.
5. Learned counsel Shri A.M.Ghare for the applicant points out a decision of this Court (Coram : V.M.Deshpande, J.) dated 28.1.2019 in Criminal Appeal No.278/2006. Operative portion of the said order is reproduced herein below:

ORDER

"1] All the appellants are acquitted of the offence punishable under Section 323 read with Section

34 of the Indian Penal Code.

2] The appellants are convicted for the offence punishable under Section 325 read with Section 34 of the Indian Penal Code as directed by the learned Ad-hoc Additional Sessions Judge, Akola in the judgment and order dated 06.5.2006 in Sessions Case No.82/2001, however, their jail period shall be the period which they have already undergone in jail, in stead of rigorous imprisonment for Two years as directed by the Court below.

3] Insofar as fine amount is concerned, the appellants are directed to pay fine of Rs.1500/- by each appellant within a period of Four weeks from today, in stead of Rs.500/- as directed by the Court below. The fine amount of Rs.1500/- shall be in addition to the amount of fine of Rs.500/- which the appellants have already deposited.

4] If within a period of four weeks the amount of Rs.1,500/- by each appellant is not deposited before the Sessions Court, Akola, then the order of jail sentence of two years as imposed by the Court below, will revive.

5] With this, the criminal appeal is partly allowed and disposed of.”

6. Learned counsel Shri A.M.Ghare for the applicant submits that inadvertently the judgment and order in Criminal Appeal No.278/2006 was not communicated to the applicant. Therefore, the applicant could not deposit amount as directed by this Court. He came to be arrested on 11.3.2019. Thereafter, an application is moved before this Court.

7. Order passed by this Court (Coram : Mrs.Swapna Joshi, J.) dated 13.3.2019 shows that time was extended and the applicants/appellants were permitted to deposit fine amount in this Court within a period of one week from 13.3.2019.

8. Learned counsel Shri A.M.Ghare for the applicant points out receipt of deposit of the amount dated 15.3.2019. The said receipt is marked as “X” for identification.

9. Out of 4 persons, only the present applicant is arrested.

10. Learned Additional Public Prosecutor Mrs.M.H.Deshmukh for the State raises an objection that at this stage no offence is against the accused and, therefore, the bail cannot be granted.

11. This Court (Coram : V.M.Deshpande, J.) on 28.1.2019 partly allowed Criminal Appeal No.278/2006 and

though the accused persons are acquitted of offence under Section 323 read with Section 34 of the Indian Penal Code, they are convicted for offence under Section 325 read with Section 34 of the Indian Penal Code. However, their jail period shall be the period which they have already undergone in jail, in stead of rigorous imprisonment for two years as directed by the Court. Insofar as fine amount was concerned, the appellants were directed to pay fine of Rs.1500/-. If within a period of four weeks from today the fine amount is not deposited before the Court below, the order of jail sentence of two years as imposed by the Court below will revive.

12. Though the accused has not deposited amount of fine within the stipulated period, order passed by this Court (Coram : Mrs.Swapna Joshi, J.) dated 13.3.2019 shows that time was extended and, therefore there is no dispute that the fine amount is deposited as per direction of this Court.

13. Now, there is no question of granting of bail to the present applicant. The applicant is entitled to be released finally on bail. Hence, following order is passed:

ORDER

(i) The criminal application is allowed.

(ii) Applicant-Abdul Naim Abdul Rashid, be released forthwith as per order of this Court (Coram : V.M.Deshpande, J.) dated 28.1.2019 in Criminal Appeal

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No.278/2006, if there is no any other crime pending against him.

(iii) The jail authorities be informed accordingly.

(iv) With this, the criminal application stands disposed of accordingly.

JUDGE

!! BRW !!

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