

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

CRIMINAL APPLICATION (APL) NO.526 OF 2018

(MANGESH GANGARAM TAPRE...VS.. STATE OF MAH. THR. PSO PS OLD CITY AKOLA.)

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

Court's or Judge's orders

Shri Atul Pande, Advocate for Applicant.
Ms Shamsi Haider, A.P.P. for Non-applicant/State.

CORAM : Z.A.HAQ, J.

DATED : FEBRUARY 13, 2019.

Heard.

Pursuant to registration of the First Information Report on 14th December 2017 for the offences punishable under Sections 307, 324, 294, 143, 144, 146, 147, 148 and 149 of the Indian Penal Code and Sections 4 and 25 of the Arms Act, Crime No. 384 of 2017 came to be registered by the non-applicant. By order dated 16th January 2018, the learned Sessions Judge directed that the applicant be released on bail. On 22nd January 2018, the non-applicant forwarded the proposal to the Inspector General of Police, Amravati Range seeking approval for application of the provisions of the Maharashtra Control of Organised Crime Act, 1999 against the applicant and the co-accused. On 22nd January 2018, the Inspector General of Police granted approval as sought by the non-applicant. On 9th February 2018, the non-applicant moved an application before the Sessions Court praying that the order passed by the Sessions Court on 16th January 2018 directing that the applicant be released on bail be recalled and the bail granted to the applicant be cancelled. This application filed by the non-applicant is allowed by the Sessions Court by the impugned order.

In the meantime, the applicant had filed Criminal Writ Petition No.242 of 2018 to challenge the order passed by the Inspector General of Police granting approval for applying the provisions of the Maharashtra Control of Organised Crime Act, 1999 against the applicant. This writ petition is dismissed by the Division Bench of this Court by order dated 21st August 2018. The Division Bench of this Court has observed that the applicant can agitate the questions before the Special Court.

The submission on behalf of the applicant is that the impugned order cancelling the bail granted to the applicant is not in consonance with the established principles laid down by the Hon'ble Supreme Court and this Court. It is submitted that application of the provisions of the Maharashtra Control of Organised Crime Act, 1999 cannot be the ground to cancel the bail granted to the applicant, unless the prosecution/investigating agency brings on record sufficient material to show that the applicant misused the liberty granted to him.

According to the non-applicant, the applicant is member of the gang of which co-accused-Ashish Shivkumar Wankhede (applicant in APL No.527/2018) is leader, and the gang to which the applicant belongs has created terror in the locality and the witnesses are not coming forward to give statements against the applicant and co-accused-Ashish Wankhede.

To counter this submission, the learned advocate for the applicant has submitted that the investigating agency has recorded statements of about 27 persons and none of them has complained to the investigating agency that the applicant has given threat to that person.

After the incident of 14th December 2017, because of which Crime No.384 of 2017 came to be registered against the applicant, any other crime is not reported against the applicant. According to the investigating agency, three charge-sheets are filed against the applicant, however, all the incidents are prior to 14th December 2017.

Considering the facts of the case, in my view, the learned Special Judge should not have cancelled the bail granted to the applicant and it would have been sufficient if some more stringent conditions were imposed on the applicant.

Considering the facts of the case, following order is passed:

- i) The impugned order is set aside.
- ii) The order dated 16th January 2018 passed by the learned Sessions Judge directing that the applicant be released on bail is restored, however, it is directed that he shall not enter the limits of Akola Municipal Corporation till the trial before Special Court concludes.
- iii) The applicant shall attend the trial before the Special Court on every date, unless granted exemption by the Special Court.
- iv) If the applicant fails to attend the trial on any date, without seeking permission of the Special Court, it will amount to breach of the condition while granting bail and it be treated that bail granted to the applicant stands cancelled.

- v) The applicant shall give details of his address, where he would be residing, to the Investigating Agency within one week.

The application is **allowed** in the above terms.

The learned Special Judge is directed to conclude the trial within four months.

JUDGE

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