

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

CRIMINAL APPLICATION (BA) NO.1147 OF 2018

Rohit alias Golu s/o Hariprasad Tiwari

VERSUS

State of Maharashtra, through PSO, P.S. Ramnagar Station, Dist. Gondia.

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

Court's or Judge's orders.

Mr. S.P. Dharmadhikar, Senior Advocate with Mr. R.K. Tiwari, Advocate
for the applicant.

Mr. J.Y. Ghurde, A.P.P. for non applicant- State.

Mr. A. A. Gupta, Advocate for complainant/Assist to APP.

CORAM : V. M. DESHPANDE, J.

DATED : SEPTEMBER 20, 2019

Criminal Application (APPP) No. 785/2019

1. This is an application filed on behalf of the complainant through Mr. A.A. Gupta, learned counsel seeking permission to assist the prosecution.

2. Perused the application. For the reasons stated therein the application is allowed and disposed of.

Criminal Application (BA) No. 1147 of 2018

1. This is an application for bail. Few facts are required to be set out in this order for considering this application for bail.

2. Present applicant was arrested on 10.10.2012 in Crime No.88/2012 registered with Police Station, Ramnagar, Gondia for the offence punishable under Sections 147, 148,

149, 109, 120-B, 212, 302 and 307 of the Indian Penal Code and under Sections 3, 4, 27 and 25 of the Arms Act and under Section 3(2)(5) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989.

3. After rejection of his bail application in the said crime by the learned Judge of the Court below, the applicant approached to this Court by filing Criminal Application(BA) No.285/2014. On 18.07.2014, this Court (Coram: Prasanna B. Varale, J.) allowed the application and released the applicant on bail by imposing certain conditions. Thereafter, the applicant furnished bail bonds before the Court below and he was released from prison.

4. The complainant in Crime No.88/2012 filed an application before this Court under Section 439(2) of Code of Criminal Procedure for cancellation of bail granted in favour of the applicant on 18.07.2014. The said application was registered as Criminal Application (APPLN) No. 26/2016. This Court, after hearing the parties to the said application, allowed the application and cancelled the bail. After cancellation of bail, the applicant was taken into custody.

5. Prior to cancellation of bail in Crime No.88/2012, the applicant was also arrested in Crime No.159/2016 by Police Station, Gondia for an offence punishable under Sections 147, 148, 149, 307, 395, 397 and the provisions of

Maharashtra Control of Organized Crime (MCOC) Act were also invoked. After arrest of applicant in Crime No.159/2016, the applicant was released on bail by learned Special Court on 12.07.2018.

6. Though, the applicant was released on bail in Crime No.159/2016 on 12.07.2018 he could not step out of prison since his bail in Crime No.88/2012 was cancelled and he was taken in custody. Therefore, the applicant approached the Court below for releasing on bail. However, his bail application was rejected on 04.08.2018. Therefore, he preferred present application before this Court.

7. The applicant is represented by the learned Senior Advocate Mr. S.P. Dharmadhikari and the State is represented by the learned Additional Public Prosecutor Mr. J.Y. Ghurde.

8. Though the original complainant was not made party in this application, the complainant filed an application to assist learned Additional Public Prosecutor through his Advocate Mr. A. A. Gupta and said application being Criminal Application (APPP) No.785/2019 is allowed by this Court today itself and Mr. Gupta, learned counsel not only permitted to assist the learned Additional Public Prosecutor but also made his elaborate submissions.

9. The learned senior advocate for the applicant relied on the provisions of Section 10 of MCOC Act. The said provision is reproduced hereinbelow:

“Section 10 - The trial of any offence under this Act by a Special Court shall have precedence over the trial of any other case against the accused in any other Court (not being a Special Court) and shall be concluded in preference of the trial of such other cases and accordingly the trial of such other cases shall remain in abeyance”

It is his submission that Crime No.159/2016 which was culminated in registration of Special Case No.3/2018 is pending on the file of learned Special Judge, Nagpur. It is his submission that in the said special case charges are yet to be framed. He also invited my attention to the law laid down by the Division Bench of this Court reported in **2009 Cri LJ 4708 (Dashrath Bapu Shinde and others Vs. State of Maharashtra)** to urge that in view of the law laid down in the said case Section 10 of MCOC Act is mandatory in nature and there is no discretion available with anybody unless and until MCOCA case is disposed of and/or decided, the other cases can not proceed further.

10. It is his submission that after the cancellation of bail by this Court, the applicant was arrested and since then he is in jail. It is his submission that therefore the present application be considered favourably and the applicant be released on bail by imposing conditions and the learned senior advocate submits that surely the applicant will not infringe any of the conditions that will be imposed by this Court.

11. *Per contra* it is the submission of the learned Additional Public Prosecutor and Mr. Gupta, learned counsel that Section 10 of MCOC Act does not spelt out that the applicant has any right to file any application for bail for not proceeding with the matter registered under the MCOC Act. It is their submission that since this Court found that the applicant has flouted the condition imposed while releasing him bail on 18.07.2014, he should not be released on bail. It is also their submission that after the applicant was released on 18.07.2014 he has committed another crime. They, therefore, submitted that the application be rejected.

12. It will be useful to refer that what weighed in the mind of this Court on 18.07.2014 while releasing the applicant on bail in Crime No.88/2012 and the observations are reproduced hereinbelow :

“Considering the nature of injuries caused to informant Vishal and deceased Dharam, there is considerable merit in the submissions of Mr. Daga, learned counsel for the applicant that at the most these injuries may call for an offence of minor nature against the applicant and certainly these injuries cannot be held to be fatal injuries, causing death of victim Dharam.”

13. Thus, while releasing the applicant on bail *prima facie* this Court considered favourably the submission made on his behalf that the injuries attributed to the present applicant can reduce his role for commission of minor offence.

14. While releasing the applicant on bail, the applicant was directed to attend Police Station, Ram Nagar, Gondia on second and fourth Saturday of every month between 09:00 a.m. to 12:00 noon till conclusion of the trial. The application for cancellation of bail was moved before this Court on the ground that he flouted the said condition for long time and therefore, his bail was cancelled.

15. Admittedly, the special case registered under the MCOC Act is pending before the learned Special Judge and in that, charges are yet to be framed. In the said crime the applicant is already released on bail by the learned Special Judge of the Special Court and the said order was not challenged by the prosecution.

16. In view of the mandate of Section 10 of the MCOC Act, Sessions Trial No.48/2013 pending on the file of learned Additional Sessions Judge, Gondia registered on the basis of Crime No.88/2012 cannot proceed further. Nothing is placed on record by the prosecution in respect of the time frame of disposal of MCOC case.

17. Looking to the observations of this Court in order dated 18.07.2014 which weighed for releasing the applicant on bail in Crime No.88/2012 and the fact that the trial of the said crime cannot proceed for an inch in view of pendency of Sessions Trial under MCOCA, in my view the incarceration of the applicant cannot be continued and he can be released

on bail by putting stringent conditions. Resultantly, I pass the following order :

ORDER

- (i) The criminal application is allowed.
- (ii) Applicant - Rohit alias Golu s/o Hariprasad Tiwari be released on bail in connection with Crime No.88/2012 registered with Police Station, Ram nagar, Gondia for an offence punishable under Sections 147, 148, 149, 109, 120-B, 212, 302 and 307 of the Indian Penal Code and Sections 3, 4, 27 and 25 of the Arms Act and Section 3(2)(5) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, on he executing P.R. Bond in the sum of Rs.50,000/- with two solvent sureties of the like amount before the Court below.
- (iii) The applicant shall attend Ram Nagar Police Station, Gondia on second, third and fourth Saturday of every month between 09:00 a.m. to 02:00 p.m. till culmination of the trial.
- (iv) Applicant shall maintain diary of his attendance duly countersigned by the investigating officer/P.S.O. of the said police station.
- (v) Needless to mention that if the applicant is found committing breach of these conditions it will be

open for the investigating agency to file application for cancellation of bail.

- (vi) With this, the application is allowed and disposed of.

JUDGE

srwagh/Diwale