

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

Criminal Revision Application (REVN) No. 305 of 2019

Sukhdeo @ Sukhchand s/o Jairaj Harinkhede Vs. The State of Maharashtra
Through Police Station Officer, Police Station Nandanwan, Nagpur

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

Court's or Judge's orders

Mr. W.R. Kapse, Advocate for the applicant.
Mr. Amit Chutke, APP for the respondent

CORAM : MANISH PITALE, J.

DATED : DECEMBER 02, 2020

Heard learned counsel for the applicant.

2. By this application, the applicant (original accused No.2) has challenged order dated 29/11/2019, passed by the Court of Assistant Sessions Judge, Nagpur, whereby an application for discharge (Exh.10), filed by the applicant herein was dismissed.

3. It is contended by the learned counsel appearing for the applicant that the aforesaid Court committed an error in dismissing the application for discharge, for the reason that even if the contents of the FIR dated 21/12/2017, were to be taken into account, no overt act was attributable to the applicant before this Court. There is also a reference to a plea of

alibi taken by the applicant before the Court below.

4. This Court has perused the FIR and report dated 21/12/2017, leading to registration of FIR. A perusal of the same shows that the complainant, who is an Assistant Police Inspector of the Traffic Branch has stated in detail regarding the manner in which the incident in question took place and the role that can be attributable to the accused No.1 as well as applicant herein i.e. accused No.2. A perusal of the same would show that the presence of the applicant is alleged and a specific role is indeed attributed to him.

5. Therefore, this Court is of the opinion that it would be a matter of evidence and trial to ascertain as to whether the role attributable to the applicant herein is indeed proved by the prosecution. Similarly, the plea of *alibi* taken by the applicant needs to be tested during the course of the trial.

6. Considering this aspect of the matter, this Court is of the opinion that the aforesaid Court while dismissing the application for discharge, has not committed any error.

7. In view of the above, the application is dismissed.

8. Needless to say, any observations made by the aforesaid Court and this Court while considering the question of discharge shall not influence the course of the trial.

JUDGE

MP Deshpande