

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

Criminal Application (APPP) No. 531 of 2021
in

Criminal Application (APL) No. 410 of 2019

(State of Maharashtra through Dy. S.P, Anti Corruption Bureau, Nagpur ..vs.. Gurudas Sahdeo
Mandavkar and ors.)

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

Court's or Judge's orders

Mr. Mandar Goswami, Advocate for applicant/original non-applicant 4
Mr. M. K. Pathan, APP for the State/applicant in APL 410/2019
Mr. P. V. Navlani, Advocate for non-applicant 3

CORAM : ROHIT B. DEO, J.

DATED : 23-03-2021

Hearing was conducted through Video Conferencing and the learned Counsel agreed that the audio and visual quality was proper.

2. This application is styled as an application for “grant of time to comply with the order dated 05/03/2021 passed in APL no. 410/2019”.

3. It would be necessary to briefly note the order dated 5-3-2021 in Criminal Application (APL) 410/2019.

4. Criminal Application (APL) 410/2019 was preferred by the State of Maharashtra, which was

dissatisfied with the order of the Special Judge, of discharging the accused solely on the ground that approval under Section 17-A of the Prevention of Corruption Act (Act) was necessary since the charge-sheet was filed after the coming into force of the said provision.

5. This Court has held that the order of discharge is clearly erroneous since by incorporating Section 17-A, the legislative intent was not to nullify the investigation already commenced, much less, investigations which are concluded. A finding of fact is recorded that as a fact the entire investigation was over prior to 26-7-2018 on which date, Section 17-A came into effect.

6. Paragraphs 25, 26, 27 and 28 of the order read thus :

“25. The learned Additional Sessions Judge has not considered the other contentions in support of the discharge applications since the learned Additional Sessions Judge wrongly assumed that previous approval is required. In this view of the matter, while the order of discharge impugned is quashed and set aside, the learned Additional Sessions Judge is directed to decide the discharge applications of the accused afresh and

record finding qua the contention that the material on record is not sufficient to warrant a trial.

26. The accused shall appear before the learned Additional Sessions Judge on 16th March, 2021 and shall bring this order to the notice of the learned Judge.

27. The learned APP Mr. M.K. Pathan is requested to forward a copy of this judgment to the learned District Government Pleader and Public Prosecutor, to enable him to appear before the learned Additional Sessions Judge on 16th March, 2021.

28. The learned Additional Sessions Judge shall decide the discharge applications within the next 15 days and if the discharge applications are found unmerited, to conduct and conclude the trial, as expeditiously as possible, and in any event, within the next six months.”

7. It is necessary to note that similar order is passed in Criminal Revision 254/2018.

8. Criminal Application (APL) 410/2019 arose from Special Case 26/2018 and Criminal Revision 254/2018 arose from Special Case 25/2018. However, both the prosecutions and trials pertain to the financial irregularities in the execution of VIDC projects and the accused in both the trials were discharged only on the

ground that approval under Section 17-A was not obtained.

9. Paragraphs 4, 5 and 6 of the application read thus :

4. *That, the applicant most respectfully states that the applicant is permanent resident of Sangamner and at present is at Pune, and also is of 71 years and suffering from chronic acute asthma, and is under treatment for weak Pulmonary Function, and advised not to travel, therefore, considering the present situation of complete lockdown at Nagpur and as even the state of Maharashtra is going through second wave of Covid 19, it is very difficult for the applicant to travel for in order to exhaust his legal right, and also to instruct the applicant counsel.*

5. *The applicant states that has chronic asthma alongwith weak pulmonary functions, and as being comorbid, hence it is not medically advisable for the applicant to travel and to proceed with the discharge application. **HERETO ANNEXED AND MARKED AS ANNEXURE 'B' COPY OF MEDICAL CERTIFICATE***

6. *It is submitted that therefore considering the lockdown in Nagpur and the second wave of Covid Situation in Maharashtra vis a vis with the medical condition and age (71) of the applicant, it is prayed that this Hon'ble Court may please to grant 6 week time to comply with the order passed by this Hon'ble Court in Application no 410/2019 dated 05/03/2021.*

10. The reliefs sought in the instant application is clearly misconceived. The prayer to grant six weeks time to comply with the order dated 5-3-2021 clearly indicates that the applicant has not understood the order. Be it noted that notwithstanding a specific direction in paragraph 26, the applicant/accused has not appeared before the Special Judge. The applicant has sought personal exemption which is granted. It is clarified that the applicant shall be at liberty to seek similar exemption even hereinafter and such applications shall be considered and decided on merit.

11. It is needless to record that discharge application will have to be decided on the material in the charge-sheet. It is difficult for this Court to comprehend as to what exactly is the relief sought since the prayer that six weeks time be granted to comply with order dated 5-3-2021 is to a certain extent incomprehensible. If the learned Special Judge has any difficulty in adhering to the schedule laid down or if the learned Special Judge is of the view that the schedule needs modification, the

learned Special Judge is free to seek an appropriate order of extension.

12. In any event, since the applicant is not attending the hearing personally and is seeking personal exemptions on each date of hearing, there is no prejudice caused, if the hearing continues as per the schedule laid down.

13. The application is dismissed.

JUDGE

wasnik

Avinash
Wasnik

Digitally
signed by
Avinash
Wasnik
Date:
2021.03.24
12:26:33
+0530