

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

Criminal Application (APPLN) No. 21 of 2020

in

Criminal Application (BA) No. 157 of 2020

(Court on it's own motion ..vs.. Sayyed Arif s/o Sayyed Mohd and anr.)

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

Court's or Judge's orders

Mr. A. J. Thakkar, Advocate for non-applicants
Mr. V. A. Thakre, APP for the State

CORAM : ROHIT B. DEO, J.

DATED : 08-02-2021

Heard.

2. This Court vide order dated 30-3-2020 passed in Criminal Application (BA) 248/2020 issued notice to accused Sayyed Arif s/o Sayyed Mohammad and Sabir Khan s/o Rahim Khan to show cause why the bail granted vide order dated 4-3-2020 in Criminal Application (BA) 157/2020 should not be cancelled.

3. The notice was issued since it was noticed that when the bail application was considered, it was not pointed out to this Court that Justice V. M. Deshpande had rejected the bail application of the co-accused.

4. Notice was issued to Mr. Subhash Dhudhal who had sworn the affidavit, to show cause why the rejection of the bail application of the co-accused was not disclosed. Report was called from the Superintendent of Police. The report indicates that disciplinary action is

initiated and penalty of Rs. 2,000/- imposed. The finding recorded is of gross negligence.

5. Mr. Thakkar would submit that the rejection of the bail application of co-accused was not such material fact as would influence the decision of the Court. The submission is not entirely substanceless. It is well settled that the rejection of bail to co-accused does not necessarily curtail the discretion of the Court. Several considerations weigh with the Court while deciding the bail application, *inter alia*, the role played by the accused. However, in the interest of fairness, if not the accused who are before the Court, at least, the Investigating Officer and the Public Prosecutor ought to have disclosed to this Court that the bail application of co-accused is rejected to enable the Court to analyze the rejection order and decide for itself whether such rejection has any bearing. Be that as it may, considering that the accused who are issued the show cause notices are on bail for quite some time and there is no reported misuse of the liberty, the show cause notice is dropped.

6. Criminal Application 21/2020 is disposed of.

JUDGE

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