

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

Criminal Application (BA) No.354 of 2021

Mr. Nagesh Ramalungli & Others

Vs.

State of Maharashtra through the P.S.O. P.S. Sironcha, Dist. Gadchiroli

WITH

Criminal Application (BA) No.411 of 2021

Manikyam Durgayya Atela & Another

Vs.

State of Maharashtra through the P.S.O. P.S. Sironcha, Dist. Gadchiroli

Office notes, Office Memoranda of

Coram, appearances, Court's orders

or directions and Registrar's orders.

Court's or Judge's Orders

Shri A.K. Sukhdeve, Advocate for the Applicants (in B.A. 411/2021).

Shri R.R. Vyas, Advocate for the Applicant No.1 (in B.A. 354/2021).

Shri M.A. Kadu, APP for the Non-applicant/State.

CORAM : S.M. MODAK, J.

DATE : 5th MAY, 2021.

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

02] Heard learned Advocate Shri A.K. Sukhdeve for the applicants in B.A. No.411/2020 and learned Advocate Shri Rajnish Vyas for the applicant No.1 in B.A. 354/2012 and also heard learned APP Shri M.A. Kadu for the non-applicant. The applicants in B.A. No.411/2021 are applicant Nos.2 and 3 in B.A. No.354/2021

03] The Sironcha Police have registered offence under Sections 328, 273, 188, 107 of the Indian Penal Code and under Section 65(e) and 65(f) of the Maharashtra Prohibition Act, 1949 against applicant Nagesh Ramalungli. When the police have raided his house, they found the prohibition material including the liquor jaggery and other articles, total amounting to Rs.38,220/-. He was

arrested. During custodial interrogation, it was revealed that he has purchased tobacco from the accused-Manikyam Atela and the foreign liquor from the accused-Suresh Dagam. The police have raided their houses. Foreign liquor to the tune of Rs.17,100/- was found in the house of accused-Suresh Dagam.

04] The main thrust of the argument is that Section 328 of the Indian Penal Code will not be applicable. The reason is, no stupefying substance is administered, which is required in Section 328 of the Indian Penal Code. Bail is opposed also on the ground that previous offences were registered against accused-Manikyam Atela and accused-Nagesh Ramaluingli. Accused-Nagesh is acquitted in SCC No.182/2018 on 20th April, 2019 and the Pursis to that effect is filed.

05] I feel that all applicants have made out the case for grant of bail. The *prima facie*, I feel that the ingredient of administering the substance is not contemplated. Section 328 of the Indian Penal Code is missing. Trial Court need not be influenced by these observations. Hence, the following order is passed:

ORDER

- a) Both applications are allowed.
- b) Applicant No.1-Manikyam Durgayya Atela and applicant No.2-Suresh Rajesh Dagam in Criminal Application (BA) No.411/2021 are released on bail on furnishing personal bond and surety bond of Rs.25,000/- (Rs. Twenty Five Thousand Only) each.
- c) Applicant No.1-Nagesh Ramaluingli in Criminal Application (BA) No.354/2021 is released on bail on furnishing personal bond and surety bond of Rs.25,000/-

(Rs. Twenty Five Thousand Only).

- d) Applicants are directed to give attendance to Sironcha Police Station on First Saturday of every month in between 10.00 AM to 12.00 Noon for one year.
- e) Applicants are directed not to threaten the prosecution witnesses or to allure them in any manner.
- f) If the applicants will breach any of the conditions of this order, the Investigating Agency is at liberty to apply for cancellation of the bail.

(S.M. Modak J.)