

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

Criminal Application (APPLN) No. 41 of 2020

(Noor Khan S/o Yusuf Khan ..vs.. State of Maharashtra through P.S.O., P.S. Achalpur, Distt. Amravati
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. T. V. Tathod, Advocate for the applicant
Mr. N. R. Rode, APP for the non-applicant 1
Mr. P. W. Mirza, Advocate for non-applicant 2

CORAM : ROHIT B. DEO, J.

DATED : 08-02-2021

Heard.

2. This application is moved by the informant in Crime 104/2019 registered with Achalpur Police Station, District Amravati under Sections 302, 307 and 34 of the Indian Penal Code.

3. Non-applicant 2 is charge-sheeted along with three others. Non-applicant 2 was arrested on 23-7-2019. The attempt to seek bail from the Sessions Court failed, this Court was approached and since this Court was disinclined to entertain the application, the same was withdrawn.

4. However, the learned Additional Sessions Judge-1, Achalpur vide order dated 27-5-2020 entertained the application for interim bail and allowed the same. The operative part of the order reads thus :

[1] The application is hereby allowed.

[2] The applicant be released on his executing P.R. Bond of Rs. 15,000/- (Rs. Fifteen Thousand only) for the period of 45 days from the date of his release or till the Provisions of Disaster of Management Act and Epidemic Act are in force by the State Government, whichever is earlier.

[3] On his release from prison, the applicant shall report at Achalpur police station every fortnight.

[4] On expiry of the above period, the applicant shall surrender himself before the Court.”

5. The learned Additional Sessions Judge-1, Achalpur observes that the High Power Committee has recommended release of the under trial prisoners who are facing prosecutions for which the punishment is not more than 7 years. Surprisingly, having thus observed, the learned Additional Sessions Judge ordered the release of non-applicant 2 on interim bail, which is thereafter extended time and again. The last of such extension being vide order dated 2-2-2021.

6. The order of the learned Additional Sessions Judge-1 is manifestly illegal. In the first instance, the recommendations of the High Power Committee are not to be read or understood as statutory provisions curtailing the discretion of the Court. More importantly, the exercise of power to grant interim bail was clearly not available since the maximum sentence for offence punishable under Section 302 is death. The classification between offence depending on severity was challenged

and the Division Bench of this Court speaking through **Justice Madhav Jamdar** held the classification to be valid. This view was affirmed by the Supreme Court in *National Alliance for People's Movements and others Vs. State of Maharashtra and others [(2020) 9 SCC 698]*.

7. The order granting bail and the extension orders are quashed.

8. The non-applicant 2 is present in the Court and he undertakes to surrender within the next 48 Hours.

9. The application is disposed of.

10. If non-applicant 2 does not surrender within next 48 Hours, this disposed of application shall be listed on board under the caption "for compliance and further orders".

JUDGE

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