

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

CRIMINAL APPLICATION (APL) NO.560 OF 2022

Surendra Dnyaneshwar Banait and others

Vs.

State of Maharashtra, Through PSO PS Hudkeshwar, Nagpur

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

Court's or Judge's orders

Mr. M. N. Ali, Advocate for applicants.

Mr. I. J. Damle, APP for non-applicant/State.

CORAM : AVINASH G. GHAROTE, J.

DATE : 22/04/2022

Heard Mr. Ali, learned counsel for the applicant. Mr. Damle, learned APP waives notice for non-applicant/State.

2. The application challenges the order dated 08.04.2022 passed by the learned Sessions Court, Nagpur, whereby considering the contradictory stand taken by the applicants regarding their identification in the absence of the applicants, On 08.04.2022 the application for exemption Exh. 31 has been rejected, the bail bonds of the accused have been cancelled and NBW have been issued against the accused with notice to their sureties.

3. Mr. Ali, learned counsel for the applicants submits that the impugned order is a result of misconception as there was no intention of the applicant

not to dispute the identity, as that was the very crux of the defence. It is therefore, submitted that the impugned order has been passed under a misconception that the right to dispute the identity of the applicant has been given up. A further statement is being made upon instructions that in case the witness is available on the next day, the cross-examination shall be completed on the same day and so also no adjournment shall be sought in the future for the purpose of cross-examining any witnesses, which may be examined by the prosecution. It is further contended that since the application for exemption was filed earlier in point of time before commencement of evidence, the same ought to have been decided before beginning with the evidence.

4. Though there are contradictory statements attributed to the learned counsel for the applicant and there is no reason to disbelieve the learned Sessions Court on this count, however, considering that the dispute about the identity of the applicants forms a basic defence, and the statements made above, which are accepted as statements to this Court, considering that the trial has to be completed expeditiously, the impugned order is hereby quashed set aside and the applicants are directed to cross-examine the witnesses on the next date, without fail and so also to cross-examine all other witness as and when they are examined on the same day. The applicant, shall be under obligation to remain present

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before the learned Sessions Court on each and every date of trial without fail. Since the statement is that the matter is listed before the learned Sessions Court today itself, this order shall be brought to the notice of the learned Sessions Court by filing a pursis to that effect and the cross-examination of PW 3, shall be conducted on 28.04.2022.

5. The application is accordingly allowed as indicated above. No costs.

JUDGE

Sarkate