

IN THE COURT OF METROPOLITAN MAGISTRATE,
12TH COURT, BANDRA, MUMBAI.

C.C. No.663/PW/2020

Order Below Application for Discharge

1. The accused are submitted that as per the information of informant the Crime no.280/2020 was registered U/Sec.188, 269, 270 of Indian Penal Code r/w Section 3, 4 of Epidemic Disease Act, 1897 r/w Section 14 (b) of Foreigners Act and Section 51 of National Disaster Management Act, 2005. The accused further submitted that they have valid VISA with the permission of their Government. They came at Delhi on 29.02.2020, 02.03.2020 and 06.03.2020. All the accused left Delhi by train and reached at Mumbai on 07.03.2020. During that period the Central and State Government announced lock down for Covid 19. Therefore, they are unable to move and left the country. During that period as per the Central and State Government's direction the applicants carried their Covid 19 test. In that test the accused no.1 to 10 tested Negative and accused no.11 and 12 tested Covid 19 Positive and later on accused no.11 and 12 tested Negative. The accused are falsely involved in this crime. They not at all concerned with this crime. Due to the accused the Covid 19 were not spread. Their VISA were also valid, therefore, the allegations by the Investigation Officer are false and they falsely involved in this crime. Hence, they prayed to discharge them.

2. The Ld. APP filed his say and submitted that the application is against the law. The offence was rightly registered against the accused. The accused are liable to spread the Covid 19. Due to the act of accused they breach the Disaster Management Act and Epidemic Disease Act. The accused did not follow the rules of VISA and remained in India. The reason given for the discharge are not sufficient. Mere statement of witnesses are sufficient to frame the charge. Hence, they submitted the application filed by the accused



are against the law which is liable to be rejected.

3. The advocate of accused submitted that originally the police has registered the crime U/Sec.307 and 304 (2) of Indian Penal Code. The police does not find sufficient reason and hence, they deleted the section after thorough investigation. As per the provisions of Foreigners Act Section 14 (b), the VISA of all accused was a Tourist VISA. At the time of registration of crime VISA of all accused is valid, therefore, the question does not arises to breach the Section 14 (b) of The Foreigners Act. The investigation paper also reveals that the accused are not liable to spread the Covid and therefore, the accused are not liable U/Sec.188, 269 of IPC and Section 14 (b) of the Foreigners Act. The accused also not liable for National Disaster Management Act. Therefore, they prayed to discharge the accused. The advocate of accused relied upon Konan Kodio Ganstone & ors. V/s State of Maharashtra Criminal Writ Petition No.548/2020 and submitted that the Hon'ble Bombay High Court discharge the accused from the same offence by giving detail reasons. Hence, they submitted to discharge the accused.

4. The Ld. APP submitted that mere statement of witnesses are sufficient. This is not a fit case to discharge the accused. The submission of accused are against the law. The reason given for discharge are not sufficient, to tried the accused is necessary. Hence, they submitted to reject the application. The Ld. APP also relied upon State of Orissa V/s Debendra Nath Padhi Criminal Appeal No.497/2001 Hon'ble Supreme Court.

5. Perused the application, case law submitted by both parties and the charge sheet before the court. It reveals that the crime no.280/2020 was registered against the accused U/Sec.307 and 304 (2) of IPC r/w Disaster Management Act and Epidemic Disease Act. It also reveals that the police seized the VISA of all accused by preparing the panchanama. The panchanama reveals that at the time of registration of offence the VISA of all accused were



valid and they are came on Tourist VISA. Firstly, the investigation officer submitted that the accused were liable for spreading the Covid 19 and they does not follow the rules and regulations of Disaster Management Act and Epidemic Disease Act and hence, they are liable for the offence.

6. On carefully going through the charge sheet filed by the investigation officer it reveals that firstly the offence was registered against the accused U/Sec.307 of IPC and now the section 307 of IPC was deleted by the investigation officer. At the time of deletion of section, the Investigation Officer stated that the accused are not liable to spread the Covid in public at large and hence, they deleted the Section 307 and 304 (2) of IPC. The Investigation Officer mentioned in Form 5E that during investigation it does not reveals that the accused are liable for spreading the Covid as well as the accused are also not liable for the death of any person. It is also not reveals that due to the accused the Covid was spread. The investigation papers also reveals that the accused came from Indonesia on Tourist VISA. They visit to various masjid at Mumbai as well as at Delhi. The investigation papers also reveals that they also collected evidence where from the accused were residing during lock down. They also collected information about the VISA. The accused were also residing in Masjid as well as in the house of some peoples.

तपासामधे नमुद केले की, "सदर गुन्ह्याच्या तपासा दरम्यान नमुद सर्व आरोपीत इसम मुंबईत आल्यापासून त्यांना ताब्यात घेईपर्यंत सर्व आरोपी हे एकत्र राहिले होते तसेच मुंबईत आल्यानंतर देखिल ते मुंबई मधील विविध ठिकाणी तसेच मस्जिदमध्ये एकत्र राहिले असताना देखील नमुद आरोपीताच्या संपर्कात आलेल्या कोणालाही या आजाराची लागण झाली असल्याचे व कोणाचेही मरणास कारणीभूत झाले असल्याचा कोणताही पुरावा उपलब्ध झालेला नाही. एकंदरीत मुंबई शहरात कोवीड १९ या आजाराने जे मयत झाले, त्यांना लागण झाली ते नमुद आरोपीच्या संपर्कात आल्याचा व नमुद आरोपीतांमुळे कोवीड १९ या रोगाची लागण झाल्याचा व रोगाची लागण होऊन मृत्यू झाल्याचा पुरावा मिळून आलेला नाही. म्हणजेच नमुद गुन्ह्यात आरोपीविरुद्ध लावण्यात आलेली कलमे त्याची प्रती करीता कोणताही पुरावा तपासात मिळून आलेला नाही. म्हणून नमुद कलमे ही गुन्ह्यात दोषारोप पत्रामधून बगळण्यात आली आहेत."



7. After going through the judgment of Hon'ble Bombay High Court and the facts and circumstances of this case, it does not reveals that the accused are deliberately disobeyed the order duly promulgated by the public servant as well as negligently they were act likely to spread the infection of the disease dangerous to the life. The record also reveals that as per the Foreigners Act Section 14 (b) the accused does not breach the condition of VISA. Therefore, as per the allegation levelled against the accused and evidence on record it does not reveals that the accused were disobey the order of Central as well as State Government and acted negligently and liable to spread the infection of Covid 19.

8. Therefore, in the view of above judgment of Hon'ble High Court I found substance in the filed application. The case law relied by the I.d. APP is on different opinion. The facts and circumstances of the present case are different one. Hence, in view of above discussion and the judgment of Hon'ble High Court the application is liable to be allowed. Hence, the order :

ORDER

The application is allowed as under :

- i. The accused be discharged from charge levelled against them.
- ii. The seized passports be returned to accused with due identification.
- iii. The bail bond of the accused stands cancelled.



Date : 29.09.2019
vfp

(Signature)
29.09.2020
(Jaydeo Y. Ghule)
Metropolitan Magistrate
12th Court, Bandra, Mumbai

TRUE COPY
(Signature)
(Judicial Clerk)
Metropolitan Magistrate,
12th Court, Bandra, Mumbai

Applied on : 29-09-2020
Ready on : 30-09-2020
Charges : B. 281-CHX/1256/1-8-336(L)
Delivered on : 30-09-2020