

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL WRIT PETITION NO. 527 OF 2015

Shamkant Bhagwat Patil & Anr. .. Petitioners

Versus

Bhagwat Krushna Bhangale & Ors. .. Respondents

Mr. P.S. Gaikwad, Advocate for the petitioners.

CORAM : SMT.SADHANA S. JADHAV,J.

DATED : 20.04.2015

P.C. :-

1. Heard. Rule. Rule made returnable forthwith.

2. The petitioners herein happens to be original accused Nos. 4 & 8 in RCC No.67 of 2012. By an order dated 03.09.2014, learned J.M.F.C., Amalner was pleased to issue process against all the accused i.e. accused Nos. 1 to 13 for an offence punishable under section 403 of the Indian Penal Code. The summons were issued to all the accused on 10.12.2014. Original accused No.4 had caused his appearance through advocate on 18.12.2014 and original accused No.8 had caused his appearance on 10.02.2015. The next scheduled date was 16.03.2015. The petitioners herein had filed application seeking

exemption from appearance. The said application seeking exemption from appearance was rejected on 16.03.2015. On the same day, the complainant had filed application requesting the Court to issue warrant against the present petitioners. The said application was allowed and the learned Magistrate has been pleased to issue non-bailable warrant against accused Nos.4 & 8 i.e. the present petitioners.

3. It is pertinent to note that, that was the first date after causing of appearance through advocate. Though the petitioners had chosen to remain absent, however, they were represented by their respective counsel and had also filed application seeking exemption. Learned Counsel for the petitioner rightly submits that the learned Magistrate ought to have given opportunity to the petitioners to remain present thereafter and ought not to have issued non-bailable warrant on the same day. It is true that the petitioners were entitled to an opportunity. Learned Counsel further submits that the next scheduled date is 24.04.2015.

4. Learned Counsel upon instructions submits that the petitioners would remain present before the Court on 24.04.2015. In view of this, learned Counsel seeks quashing of the order dated 16.03.2015, thereby issuing

non-bailable warrant against the petitioners. Taking into consideration the Roznama and the submissions advanced across the bar, this Court is inclined to quash and set aside the order issuing non-bailable warrant only upon an undertaking that the petitioners would remain present before the Court on 24.04.2015. The petitioners would be at liberty to file an application seeking exemption on 24.04.2015 after appearing in person. Learned Magistrate shall consider the said application seeking exemption on its own merit and decide the same within one week from the date of filing.

5. The writ petition is allowed in terms of prayer clause (C). Rule made absolute in above terms. The petition stands disposed of.

[SMT. SADHANA S. JADHAV, J.]