

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

CRIMINAL APPLICATION NO. 2106 OF 2015

Mujahid s/o Ibrahim Pathan,
Age : 27 years, Occu – Business,
R/o. Shevgaon, Taluka – Shevgaon,
Dist. Ahmednagar.

...Applicant

Versus

The State of Maharashtra

...Respondent

.....
Shri. Shaikh Mazhar A. Jahagirdar, Advocate for the applicant
Shri. U. S. Mote, APP for respondent/State
.....

**CORAM : SMT. SADHANA S. JADHAV, J.
DATED : APRIL 21ST, 2015.**

ORAL JUDGMENT: -

. Heard learned Counsel for the applicant and learned
APP for respondent/State. Rule. Rule made returnable forthwith
with the consent of parties.

2. The petitioner herein is an accused in C.R. No. 150 of
2010 registered at Shevgaon Police Station, Dist. Ahmednagar
for offence punishable under Section 379 of the Indian Penal
Code and Sections 14 and 15 of the Mines and Minerals
(Regulation and Development) Act, 1957. After completion of
investigation, charge-sheet was filed under Section 173 of the

Code of Criminal Procedure. It appears from the record that, the learned Magistrate had issued process against the applicant on 25th November, 2010. On the same day, the applicant had caused his appearance through an Advocate. It is contended by the learned Counsel for the applicant that the applicant had no knowledge about the order of issuance of process as he had not received any summons or warrant for appearance in the said case. In fact, the said case is a warrant triable case. The learned Magistrate had issued Non-bailable warrant against the applicant on 26th December, 2012 and the bail bonds of the applicant were forfeited. A notice was issued to the surety on 11th August, 2014. According to learned Counsel for the applicant, the applicant had learnt about issuance of Non-bailable warrant only after notice was issued to the surety. The applicant had filed an application below Exh. 25 seeking cancellation of Non-bailable warrant.

3. Perused the application filed by the present applicant. The applicant has specifically contended that, after registration of Crime No. 150 of 2010, he was shown as an accused in Crime No. 43 of 2014 and was being prosecuted for offence punishable under Sections 307, 147, 148 and 149 of the Indian Penal Code. The applicant had specifically contended in

the application that, he was enlarged on bail in Crime No. 43 of 2014. Subsequently, the Special D.I.G. had sanctioned prosecution of the applicant under the provisions of MCOC Act. That, he was apprehending arrest in Crime No. 43 of 2014 after application under MCOC Act. It was further specifically contended that since he was apprehending arrest in the said Crime, he could not remain present in the present proceedings. He had also expressed his apprehension that, in the eventuality he appears before the Magistrate in the present proceedings he would be arrested in Crime No. 43 of 2014.

4. In fact, the record would show that the application seeking cancellation of Non-bailable warrant was filed by the Advocate in absence of the accused.

5. Learned APP has drawn attention of this Court to the observations of the learned Magistrate. While rejecting the application seeking cancellation of Non-bailable warrant, the learned Magistrate had considered the conduct of the accused. It is further observed by the learned Magistrate that, the charge-sheet is filed on 25th November, 2010. Thereafter the accused had filed application seeking exemption from appearance. The accused did not appear before the Court thereafter, nor any

application was made seeking exemption. Initially, Non-bailable warrant was issued. The police had filed a report that the accused is not residing at Shevgaon i.e. at the given address. The residential address of the accused was not furnished to the Court and, therefore, his bail bonds were forfeited. The accused No. 1 is attending the Court regularly. The accused Nos. 2 i.e. the present applicant has not attended the Court even on a single date and, therefore, the learned Magistrate could not frame charge. The matter was being protracted at the behest of the present applicant. In view of this, the learned Magistrate had rightly rejected the application on 20th February, 2015.

6. The learned Counsel for the applicant submits that in fact, it was incumbent upon the Magistrate to issue summons to the accused and that the applicant had not received any summons and, therefore, had no knowledge about the stage of proceedings. The learned Magistrate has rightly observed that on earlier occasion, the accused had filed an application seeking exemption, therefore, it was clear that he was aware of the proceedings and the stage of the proceedings. The learned Counsel reiterates that, no summons was issued to the accused. It is true that, Roznama would clearly show that on 25th

November, 2010 i.e. the date on which the process was issued the applicant was represented by an Advocate. It is therefore clear that, the applicant was aware of the order of issuance of process and the proceedings. It was incumbent upon the applicant also to keep track of the proceedings.

7. Upon perusing the order passed by the learned Magistrate and upon perusal of the application filed by the applicant seeking cancellation of Non-bailable warrant in the presence of the accused, this Court is not inclined to interfere with the order passed by learned JMFC, Shevgaon on 20th February, 2015. Hence, the application being *sans* merits stands rejected. The prosecution shall take steps to comply with the order passed by learned JMFC on 26th December, 2012. Rule is discharged.

(SMT. SADHANA S. JADHAV, J.)