

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

CRIMINAL APPEAL NO.412 OF 1995

Sambhaji Maruti Madhale ... **Appellant**
V/s.
The State of Maharashtra & Anr. ... **Respondents**

.....

Mr.Umesh Mankapure, Advocate for the Appellant
Mrs.M.R.Tidke, APP for the Respondent/State.

....

CORAM : ABHAY M. THIPSAY J.

DATED : 7TH JULY 2015

ORAL ORDER :

1. When the appeal was being heard, it was noticed that the order of conviction has been recorded on a trial held by an Assistant Judge. The appellant was the only accused in the said case. The sentence imposed upon the appellant is of rigorous imprisonment for a period of seven years. The appeal from the impugned Judgment and Order, therefore, would lie to the Court of Sessions itself in accordance with Sub-Section (3) of Section 374 of the Code of Criminal Procedure.

2. Under these circumstances, after hearing the learned counsel for the appellant and the learned Additional Public

Prosecutor, instead of directing the appeal to be brought before this Court and placed before it for final disposal, it appears proper to forward the appeal to the Court of Sessions, Sangli for being finally heard and disposed of in accordance with law.

3. The appellant was released on bail at the time of admission of appeal. He, however, subsequently came to be arrested on the basis of the non-bailable warrant issued, purportedly under the order passed by this Court. However, the learned counsel for the appellant has pointed that actually no non-bailable warrant of arrest was ordered to be issued by this Court. According to him, the non-bailable warrant came to be issued against the appellant by misconstruing the order passed by his Court and on execution of the said non-bailable warrant the appellant was arrested and continues to be in custody.

4. There is substance in what the learned counsel for the appellant submits. It appears that the matter appears on board on 02/12/2010, when the counsel for the appellant sought an adjournment. This Court granted adjournment on the condition that the appeal shall be heard finally on the next date. In the said order, it was observed as follows :

“At the request of Mr.Wable, it is adjourned tomorrow i.e. 3-12-10, only on a condition that it will be heard finally. Accused is on bail pending this appeal. He is convicted u/s.376 IPC. Conviction

order was passed on 30-6-95 passed by Asst.Sess.Judge, Sangli. Therefore, it is apprised that failure to prosecute this appeal as above, the bail bonds of the accused *will be* cancelled and accused-appellant *shall be* directed to surrender to custody.” (Emphasis supplied)

5. Thus, the Court had merely stipulated that, *in case the appellant would not prosecute the appeal, he would be asked to surrender*. However, when the matter appeared on board, relying on an office note, this Court (Coram : Mrs.Mridula Bhatkar J.) was made to believe that the appellant had been asked to surrender, that he had failed to do so, and that a non-bailable warrant be issued against him. Pursuant to the non-bailable warrant issued, the appellant was arrested and has been kept in prison. Clearly, the appellant came to be arrested and detained on the basis of an error, when the Court had never cancelled his bail. It, therefore, follows that the appellant should be permitted to be on bail.

6. The appeal be forwarded to the Court of Sessions, Sangli for hearing and final disposal in accordance with law.

7. The learned Additional Sessions Judge to whom the appeal shall be assigned, shall dispose of the same within a period of six months from the receipt of record and proceedings by him.

8. Pending the hearing and final disposal of the appeal, the substantive sentences imposed upon the appellant shall remain

suspended; and the appellant shall be released on bail in the sum of Rs.15,000/-, with one surety in the like amount.

9. Registry to forward the record and proceedings to the Court of Sessions, Sangli expeditiously.

(ABHAY M. THIPSAY J.)