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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY.
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL WRIT PETITION NO. 2791 OF 2015

Mr. Sameer Nasir Shaikh and Ors. ... Petitioners

Versus

The State of Maharashtra ... Respondents

Ms Tahera R. Qureshi for the petitioners.

Smt. V.S. Mhaispurkar, A.P.P. for the State.

**CORAM : M.L. TAHALIYANI, J.
DATED : JULY 15, 2015**

P.C.

Admit. Heard forthwith.

2. Heard learned counsel for the petitioner and learned A.P.P. for the State.

3. The petitioners are aggrieved by the order passed by the learned Additional Sessions Judge, Thane. The petitioners are accused in Sessions Case No.763 of 2012. They were absent on 26th June, 2015 which was the date of hearing. Therefore, non bailable warrants have been issued against them and their bail bonds have been forfeited.

4. By the applications made by the petitioners the warrants have been cancelled subject to the condition that the petitioners shall pay the bond amount of Rs.15,000/- each and shall execute a fresh PR bond and SB

bond in the sum of Rs.15,000/-. In my opinion, the learned Additional Sessions Judge could not have asked the petitioners to pay the bond amount of Rs.15,000/- each without following the procedure laid down under section 446 of the Criminal Procedure. Section 446 of the Code of Criminal Procedure reads thus :

“446. Procedure when bond has been forfeited.

(1) Where a bond under this Code is for appearance, or for production of property, before a Court and it is proved to the satisfaction of that Court, or of any Court to which the case has subsequently been transferred, that the bond has been forfeited, or where, in respect of any other bond under this Code, it is proved to the satisfaction of the Court by which the bond was taken, or of any Court to which the case has subsequently been transferred, or of the Court of any Magistrate of the first class, that the bond has been forfeited, the Court shall record the grounds of such proof, and may call upon any person bound by such bond to pay the penalty thereof or to show cause why it should not be paid. Explanation.- A condition in a bond for appearance, or for production of property, before a Court shall be construed as including a condition for appearance, or as the case may be, for production of property, before any Court to which the case may subsequently be transferred.

(2) If sufficient cause is not shown and the penalty is not paid, the Court may proceed to recover the same as if such penalty were a fine imposed by it under this Code. ¹ provided that where such penalty is not paid and cannot be recovered in the manner aforesaid, the person so bound as surety shall be liable, by order of the Court ordering the recovery of the penalty, to imprisonment in civil jail for a term which may extend to six months.]

(3) The Court may, at its discretion, remit any portion of the penalty mentioned and enforce payment in part only.

(4) Where a surety to a bond dies before the bond is forfeited, his estate shall be discharged from all liability in respect of the bond.

(5) Where any person who has furnished security under section 106 or section 117 or section 360 is convicted of an offence the commission of which constitutes a breach of the conditions of his bond, or of a bond executed in lieu of his bond under section 448, a certified copy of the judgment of the Court by which he was convicted of such offence may be used as evidence in proceedings under this section against his surety or sureties, and,; if such

certified copy is so used, the Court shall presume that such offence was committed by him unless the contrary is proved.”

5. As such the penalty could not have been imposed on the petitioners without giving them an opportunity of being heard. Learned Sessions Judge could have even discharged notice if the sufficient cause was shown by the petitioners. As such the procedure adopted for imposing the penalty is absolutely arbitrary and cannot be sustained. I therefore, modify the order of the learned Additional Sessions Judge dated 13th July, 2015 in Sessions Case No. 763 of 2012 as under :

1. Non bailable warrants issued against the petitioners shall stand cancelled.
2. The petitioners shall execute personal bond of Rs.15,000/- each with one surety in the like amount or cash deposit of Rs.5,000/- in lieu of surety of Rs.15,000/-.
3. The learned Sessions Judge is at liberty to initiate proceedings for imposition of penalty due to forfeiture of earlier bonds in accordance with the provisions of section 446 of the Criminal Procedure Code.

Writ petition stands disposed of accordingly.

(JUDGE)