

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
WRIT PETITION NO. 3427 OF 2015

Mr. Arun Shiv Kumar	...	Petitioner
vs.		
The State of Maharashtra	...	Respondent

Mr. Rishi Bhuta i/b. Mr. P.R.Yadav, Advocate, for the petitioner
Ms. G.P.Mulekar, APP, for the State.

CORAM: SMT.SADHANA S.JADHAV,J.
DATE : 28th August, 2015.

P.C.

Heard. Rule. Rule made returnable forthwith with consent of the parties.

2. The petitioner was arrested for committing an offence punishable under Sections 420, 406 read with Section 34 of Indian Penal Code. The investigation is completed and charge sheet is filed. On 23.5.2011, the case is registered as C.C. No.1379/PW/2011 and is pending before the Metropolitan Magistrate, 10th Court, Andheri, Mumbai.

3. The learned counsel for the petitioner submits that on 23.6.2011, the accused was not produced from Jail. Similarly, on 21.7.2011 also he was not produced. He was released on bail in the present case, but continued to remain in custody in another case. He was not

produced on 5.8.2011. On 23.5.2011, the regular Court was on leave. On 8.6.2011, the accused was produced from Jail. On 22.6.2011, the application was taken on board for arguments on bail. On 18.8.2011, the accused was not produced from jail. He was directed to be produced before the Court on 8.9.2011. On 25.9.2011, the board was discharged. On 22.9.2011, the court was informed that the petitioner has been enlarged on bail. On 4.3.2013, the accused remained present before the Court and hence the court was pleased to issue non-bailable warrant against the accused. Similarly, notice to surety was issued. His bail bond was forfeited.

4. The learned counsel for the petitioner submits that the petitioner was not aware that non-bailable warrant has been issued against him. On 14.8.2015, the petitioner filed an application seeking cancellation of non-bailable warrant. He had given an undertaking that he would remain present on scheduled dates in future. However, by an order dated 14.8.2015, the learned Magistrate has been pleased to reject the said application.

5. It is true that no fault can be found with the order passed by the Metropolitan Magistrate in issuance of non-bailable warrant. However, the bail bond was forfeited on the same day even before the warrant could be

executed. It is true that the petitioner had filed an application seeking withdrawal of the warrant practically after two years. The intention of the legislature in drafting Section 70 of Cr.P.C. and empowering the Magistrate to issue non-bailable warrant is to secure the presence of the accused at the time of trial.

6. The learned counsel for the petitioner submits that the petitioner would appear before the Magistrate on or before 1.9.2015. The non-bailable warrant issued against the petitioner on 4.3.2013 shall remain stayed till 5.00 p.m. of 1st September, 2015. The learned Magistrate shall consider the application seeking cancellation of non-bailable warrant on its own merits, without being influenced by the observations of this Court and pass an order in accordance with law.

7. The learned counsel for the petitioner submits that the petitioner was directed to be enlarged on cash bail. The said bail bond has been forfeited. The learned Magistrate shall direct the petitioner to be enlarged on cash bail, if so prayed.

Petition is allowed in the above terms and stands disposed of.
Rule is made absolute accordingly.

(SMT.SADHANA S.JADHAV, J.)