

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**  
**NAGPUR BENCH, NAGPUR.**

**Criminal Application (ABA) No. 470 of 2015**  
**Vijay v. State of Maharashtra**

Office Notes, Office Memoranda of Coram,  
 appearances, Court's orders of directions  
 and Registrar's Orders.

Court's or Judge's orders.

Mr Anil Mardikar, Senior Advocate and  
 Mr S. G. Joshi, Advocate with him for  
 applicant  
 Mr V. A. Thakare, Addl. Public  
 Prosecutor for State

CORAM : V.M. DESHPANDE, J

DATED : 29<sup>th</sup> September 2015

1. Present is the application for grant of anticipatory bail. Applicant, according to the allegations made against him, has used some abusive language in the name of caste of the complainant. The incident is dated 15.2.2009. The First Information Report was also lodged on 16.2.2009.

2. After hearing Mr Anil Mardikar, learned Senior Advocate for the applicant and Mr V. A. Thakare, learned APP for State, it is clear that initially the Investigating Officer filed "B" summons before the learned Magistrate. The same was not accepted. Thereafter summonses were issued to the applicant for the offence punishable under Section 3 (1) (x) of the SC/ST (Prevention of Atrocities) Act, 1989. It is

pertinent to note that the First Information Report was for the offence under Section 3 (1) (x) of the said Act.

It is not in dispute that the summonses were duly served upon the present applicant. However, he failed to remain present before the learned Magistrate. Some explanations were given by the applicant. Without going into the merits or demerits of such explanations, suffice it to say, since applicant was not attending the court in pursuance to the summonses, bailable warrant was issued against the present by the learned Magistrate on 10.2.2015. The matter was fixed for return of bailable warrant on 13.7.2015. Learned APP has stated and concurred with the submission of learned Senior Advocate that the bailable warrant issued against the present applicant was not executed nor it was served upon the present applicant.

However, on 30.7.2015, instead of waiting for the report of bailable warrant, the learned Magistrate, it appears, has shown undue haste by issuing non-bailable warrant against the present applicant.

3. Since the non-bailable warrant was issued, the applicant was required to approach the learned Sessions Judge with an application under Section 438 Cr. P. C. for relief of pre-arrest bail. The said application came to be rejected on 25.8.2015.

Therefore, this application is moved.

4. From the aforesaid facts, it is crystal clear that the summonses were served. However, the bailable warrant issued against the applicant was not either served or executed and straightway, the non-bailable warrant was issued.

5. In the backdrop of aforesaid scenario, without going into the merits or demerits of the prosecution case since it will cause prejudice to both the parties, in my view, interest of justice can be achieved by directing the respondent not to execute the non-bailable warrant issued against the present applicant which is dated 30.7.2015 for a period of four weeks from today. In the mean-while, applicant shall appear before the learned Magistrate or before the learned Special Judge and shall obtain regular bail. Till his application for regular bail is duly decided by the learned Court below in accordance with law, no coercive steps should be taken against the applicant.

6. With the above observations, application is disposed of.

JUDGE

*joshi*