

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO. 66 OF 2016

Suresh S/o Shivaji Dhotre,
Age : 27 years, Occu.: Agri.,.
R/o. Revki, Taluka Gevrai,
District Beed

.. Petitioner

Vs.

The State of Maharashtra
Through Gevrai Police Station,
Georai, Taluka Georai,
District Beed

.. Respondent

Mr. Suhas R. Shirsat, Advocate for the petitioner
Mr. R.B. Bagul, A.P.P. for the respondent-State

CORAM : M.T. JOSHI, J.

DATE : 27/01/2016

ORAL ORDER :

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

2. The present petitioner, who is accused no.6 in Sessions Case No. 97 of 2015 pending on the file of 3rd Assistant Sessions Judge, Beed, is praying for setting aside the order dated 19/12/2015 passed by the learned Assistant Sessions Judge of issuing non-bailable warrant against him.

3. The record would show that on 19/12/2015, the present petitioner was absent when called by the learned Assistant Sessions Judge. Therefore, the order to issue non-bailable warrant against him was passed by the learned Assistant Sessions Judge.

. Thereafter, on 22/12/2015, the petitioner filed an application for cancellation of the said order. The same however was not pressed. Thereafter, again on 28/12/2015, the petitioner prayed for taking the case on board by filing an application. The said application was dismissed.

. Ultimately, on 02/01/2016, i.e. on the due date, an application was filed for cancellation of the said order of issuing non-bailable warrant. The said application was rejected vide order dated 02/01/2016.

. It was submitted that the petitioner/applicant was not present, when the matter was called out on 19/12/2015, as he had gone to answer the nature's call and, therefore, the order was passed.

4. The learned Assistant Sessions Judge has observed that the authority cited by the learned counsel for the petitioner that the presence of the accused would not be necessary when the application for cancellation of the non-bailable warrant was moved, is particularly in reference to the city of Mumbai and, therefore, the application came to be dismissed.

5. Considering the overall history of the case that even otherwise that the petitioner was regular in attending the Court, in my view, the learned Assistant Sessions Judge ought to have allowed the application, may be by imposing certain penalty.

6. In the circumstances, the following order:-

7. Criminal Writ Petition is hereby allowed.

8. Impugned order passed by the learned Assistant Sessions Judge is hereby set aside. Instead, the application at Exhibit 33 is hereby allowed.

9. The order of the learned Assistant Sessions Judge directing to issue non-bailable warrant against the present petitioner is hereby withdrawn on the condition that the petitioner deposits an amount of Rs.500/- (Rs. Five Hundred Only) in the Sessions Court, as a penalty within a period of four (4) weeks from the date of this order.

10. Rule is accordingly made absolute on the aforesaid terms.

11. Parties to act on authenticated copy of this order.

[M.T. JOSHI]
JUDGE

arp/