

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL WRIT PETITION NO. 1092 OF 2015

Sattar Masum Pinjari,
Age : 26 years, Occupation : Labour,
R/o Ambika Nagar, Kabir Ganj,
Dhule, District Dhule.

...PETITIONER

-VERSUS-

The State of Maharashtra.
Through Police Station Officer,
Chalisgaon Police Station,
District Jalgaon.

...RESPONDENT

...
Advocate for Petitioner : Shri Pawar Pawan B.
APP for Respondent/State : Shri K.S.Patil.
...

CORAM: RAVINDRA V. GHUGE, J.

DATE :- 22nd June, 2016

Oral Judgment :

1 Rule. Rule made returnable forthwith and heard finally by the consent of the parties.

2 The Petitioner has put forth the following substantive prayers in terms of prayer clauses 14(B), 14(C) and 14(D):-

“(B) *Record and proceeding of RCC No.31/2008 pending before learned Judicial Magistrate First Class,*

Chalisgaon, be called for.

- (C) This Hon'ble Court may be pleased to quash and set aside the order dated 31.07.2014 passed below application Exhibit-80 in RCC No.31/2008 passed by Judicial Magistrate First Class, Chalisgaon, District Jalgaon, by segregating the trial of present petitioner.*
- (D) This Hon'ble Court may be pleased to quash and set aside the order of issuance of Non Bailable Warrant dated 31.07.2014, issued by learned Judicial Magistrate First Class, Chalisgaon, District Jalgaon in RCC No.31/2008."*

3 I have heard the learned Advocates appearing for the respective sides for quite sometime. Considering the order that I intend to pass, I am not required to advert to their entire submissions.

4 The litigating sides were before this Court in Criminal Application No.2366/2014. By order dated 28.04.2014, this Court had specifically directed the release of the Applicant/ Petitioner herein on bail on a bond in the sum of Rs.20,000/- with one surety of the like amount on the condition that he shall report to the Trial Court on every Monday till the disposal of the case against him. It was also noted that if the Trial Court is closed on a given Monday on account of holiday, the Applicant shall report on the next working day. It was also directed to the learned Magistrate to expedite the trial of the case and if necessary, by separating the case of the accused who are absconding.

5 An application Exhibit-80 was filed by the Petitioner on 05.05.2014 praying for segregation of the trial against him vis-a-vis those accused who were absconding. On 31.07.2014, under fortuitous circumstances the Petitioner/ accused No.2 was absent. By the impugned order, the application Exhibit-80 was simply filed without passing any order. It is by the order of filing the application dated 31.07.2014 that the Petitioner is aggrieved and has impugned in this petition.

6 Considering the observations of this Court below paragraph 5 of the order dated 28.04.2014 passed in Criminal Application No.2366/2014, it was expected for the learned Magistrate to decide the application Exhibit-80 keeping in view the observations of this Court.

7 The learned Advocate for the Petitioner submits that if the application Exhibit-80 is restored, he would address the Court on merits of the application and would also explain away the circumstances that compelled him in not attending the Court on 31.07.2014. He further submits that the Petitioner is presently behind the bars in another crime registered against him. Hence, he would not be in a position to appear before the learned Magistrate.

8 Notwithstanding the submissions of the learned Advocate for

the Petitioner as are recorded herein above, in my view, the learned Magistrate will have to decide the application Exhibit-80 keeping in view the observations of this Court in the order dated 28.04.2014.

9 As such, this Criminal Writ Petition is partly allowed only in terms of prayer clause (C). It be noted that insofar as the prayer clause (D) is concerned, this petition is not entertained, meaning thereby, that prayer clause (D) is not considered by this Court on its merits and is kept open.

10 The learned Magistrate is, therefore, expected to decide the application Exhibit-80 in RCC No.31/2008 on it's own merits.

11 Rule is made partly absolute in the above terms.

kps

(RAVINDRA V. GHUGE, J.)