

CRIMINAL WRIT PETITION NO. 1229 OF 2016

VERSUS

.....
Shri Abhishekh Kulkarni, advocate for petitioner
Shri R.V.Dasalkar, A.P.P. for respondent
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CORAM : N.W.SAMBRE, J.

DATED : 28th September, 2016

PER COURT :-

The Additional Sessions Judge-4, Aurangabad in his order, dated 30.8.2016 noted that the present petitioner was released on pre-arrest bail by the learned Sessions Judge in Application No. 518 of 2012 on 24.4.2012 and since then the petitioner is absconding. The Court then ordered issuance of non-bailable warrant against the petitioner and proclamation under Sections 82 and 83 of the Code of Criminal Procedure.

2. Accused no.11 thereafter filed an application Exh.70/D on 6.9.2016 stating that the order of issuance of non-bailable warrant and action under Section 82 and 83 of the Code of Criminal Procedure against him be set aside. It is also stated in the said application that the petitioner was never served with accused summons in the Trial and as such he is not intentionally avoiding the trial. He would then submit that the said application came to be rejected by the Additional Sessions Judge on 6.9.2016. As such, the present petition.

3. According to the learned counsel for the petitioner, the petitioner is very much ready and willing to appear and contest the trial as an accused voluntarily without waiting for further accused summons by the Court. He would then urge that bona fides of the petitioner are apparent from the fact that the petitioner moved an application Exh.70/D for cancellation of non-bailable warrant and also the action under

Sections 82 and 83 of the Code of Criminal Procedure.

4. Learned A.P.P. opposed the claim on the ground that after the present petitioner was released on pre-arrest bail, the petitioner did not turn up in the matter in question, though he was knowing that the crime in question is registered against him.

5. Having bestowed my thoughts to the submissions made, it is required to be noted that the recourse could be taken to the provisions of Sections 82 and 83 of the Code of Criminal Procedure only in case if the accused is avoiding the court proceedings by proclaiming him as a person absconding and on attachment of the property of such person who is absconding.

6. Once the petitioner voluntarily appeared before the learned Court below, it was expected of the Court to consider the claim on merits,

particularly in the light of prayer made in the application Exh. 70/D.

7. Apart from above, the non-bailable warrant was issued so as to secure the presence of the petitioner and the petitioner was voluntarily present before the Court below. As such, the order impugned of issuance of non-bailable warrant against the present petitioner and initiation of proceedings under Sections 82 and 83 of the Code of Criminal Procedure is not sustainable and is liable to be quashed and set aside. Same is accordingly set aside. The undertaking given by the petitioner that he shall regularly attend the trial in Sessions Case No. 103 of 2013 is accepted as a condition precedent for the above order.

8. Petition stands allowed in above terms.

(N.W.SAMBRE, J.)

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