

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

**CRIMINAL APPLICATION NO.5580 OF 2016
IN
CRIMINAL APPEAL NO.162 OF 2003**

Shaikh Atik S/o. Abed Hussain .. Appellant
and others

Versus

The State of Maharashtra .. Respondent

Mr.Zai Ul Mustafa, Advocate for the appellant
Mr.S.P.Tiwari, APP for the respondent/State

**CORAM : V.L.ACHLIYA, J.
DATED : 07.10.2016**

P.C. :-

1. The applicant has moved this application to recall the order dated 01.08.2016.
2. Heard learned counsel for the applicant and APP for the respondent/ State.
3. Perused the record and proceedings. The appeal is of the year 2003 and though listed for final hearing could not be heard due to failure on the part of the appellant to appear. He was released on bail during pendency of appeal.

4. Despite issuance of bailable warrant the presence of the appellant could not be secured. The learned counsel for the applicant also informed the Court that the applicant has not contacted him. Police Official reported that the appellants was not found at his house though he repeatedly visited.

5. In this background on 01.08.2016 this Court (Coram:- A.I.S.Cheema, J) passed the following order

"1. Heard counsel for appellant-Shaikh Atik S/o. Abed Hussain. Counsel states that the appellant is not in contact with the Counsel. In this matter, bailable warrant was issued. Report received is that inspite of repeated visits, the appellant is not found on the given address.

2. As such, issue non-bailable warrant to the appellant-Shaikh Atik S/o. Abed Hussain returnable on 29th August, 2016. On the appellant-accused being arrested, he shall commit him to prison being convicted accused. Trial Court shall also give legal aid to the appellant-accused to represent him in this

appeal by counsel having instructions to argue the same."

6. Mr. Zia Ul Mustafa learned counsel appearing for the applicant submits that as he went for religious visit and therefore he could not remain present, when the bailable as well as non-bailable warrant were issued.

7. On due consideration of submissions advanced in the light of earlier report of service of warrant and order dated 01.08.2016 passed by my predecessor, I am not inclined to entertain the request for re-call of the order dated 01.08.2016. The appeal is of the year 2003. The applicant was granted bail. When the bailable warrant was issued against the applicant the report came to be submitted that the applicant was not found at given address though visited repeatedly. When non-bailable warrant was issued, similar type of report has been filed. It reflects that the applicant has managed to avoid the service of bailable warrant as well as non-bailable warrant. Looking to this conduct it is difficult to accept that the applicant could not remain present due to reason stated in the application. The reason assigned is after thought and assigned to any how re-call the order. The appeal is of the year 2003 and listed for final hearing. There is every possibility that he may

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abscond. Hence I am not inclined to entertain the request. The application is rejected.

8. Further steps be taken in the matter as per order dated 01.08.2016.

[V.L.ACHLIYA,J.]

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