

FARAD CONTINUATION SHEET No.
IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
WRIT PETITION NO.293 OF 2016

Padamchnd M. Chordiya.

..Petitioner.

vs.

The State of Maharashtra.

..Respondent.

Mr.R.V.Newton, APP. for the State.

Mr. Prashant Gurav with Ruruja Gurav for the Petitioner.

Smt. R.V. Newton, APP. for the State.

CORAM : A.S.GADKARI, J.

DATE : 29th March, 2016

P.C.

Leave to amend prayer clause. Amendment to be carried out forthwith.

2) Heard the learned counsel for the petitioner and the learned APP and also perused the record annexed to the petition.

3) By the present petition under Article 227 of the Constitution of India the petitioner has prayed that the proclamation dated 14.8.2012 issued by the Metropolitan Magistrate, 2nd Court at Mazgaon, Mumbai may be stayed and the standing warrant issued against the petitioner may be cancelled . He has further prayed that the orders dated 12.1.2016 and 12.2.2016 passed by the Trial Court may also be quashed and set aside.

4) The petitioner is an accused in CR No.197/2007 registered with Pydhonie Police Station, Mumbai for the offences punishable under Sections 465, 467, 420,511 read with Section 34 of the Indian Penal Code. The record discloses that as the Investigating Agency

could not complete the investigation within the stipulated period, the applicant was released on bail by the Trial Court by its order dated 1.1.2008 as contemplated under Section 167(2) of the Cr.P .C. After completion of investigation, police have filed the charge sheet.

It further appears that as the petitioner who is the original accused No.4 as per the charge sheet, did not attend the Trial Court on stipulated dates on several occasions, the Trial Court initially issued non bailable warrant against the petitioner. The said warrant could not be executed for want of proper address and whereabouts of the petitioner. That the Investigating Agency has thereafter filed an application under Section 82 of the Cr.P.C. The learned Trial Court after completing all the necessary and required procedure thereafter issued Proclamation under Section-82 of the Cr.P.C. on 14.8.2012. The petitioner after getting the knowledge that standing non bailable warrant has been issued against him and the Trial Court has also issued proclamation under Section 82 of the Cr.P.C. filed an application for cancellation of non bailable warrant dated 11.1.2016. The learned Trial Court by its order dated 12.1.2016 rejected the said application. The petitioner thereafter filed an application for cancellation of proclamation dated 11.2.2016. The learned Trial Court by its order dated 12.2.2016 has also rejected the said application. The petitioner feeling aggrieved by the said rejection of his application for cancellation of non bailable warrant and proclamation under Section 82 of the Cr.P.C. By the Trial Court by its orders dated 12.2.2016 and 12.2.2016 respectively has filed the present petition.

5) The learned counsel for the petitioner submitted that

after the petitioner was released on bail, his Advocate on record informed him that petitioner need not remain present on all the dates before the Trial Court as there was no express condition prescribed while releasing the applicant on bail by the Trial Court in its order dated 1.1.2008. He further submitted that his concerned Advocate had assured him that whenever his presence is required in the Court, the same would be intimated to the petitioner in advance. The petitioner further contended that as his Advocate did not inform him the progress of the trial he did not remain present before the Trial Court on the scheduled dates. The learned counsel for the petitioner further submitted that in the year 2014 the petitioner shifted his residence to his native place at District Sangli and thereafter he did not contact his Advocate for considerable period. He further submitted that on 2.3.2015 the trial of the petitioner and co-accused Nos. 1,5 and 8 was separated, however, as his Advocate did not inform the said fact to the petitioner, he could not attend the court thereafter also. That, in the month of January 2015 the petitioner received phone call from the police personnel attached to Pydhonie Police Station, Mumbai and informed him about the issuance of non bailable warrant and for remaining present in the Court on the next date of hearing. He submitted that the petitioner thereafter filed an application dated 11.1.2016 for cancellation of non bailable warrant which has been rejected by the Trial Court by its order dated 12.1.2016. The application for cancellation of proclamation has also been rejected by the Trial Court on 12.2.2016. He submitted that the petitioner is a Senior Citizen and as of today, he is 65 years of age. He further submitted that the petitioner is also

suffering from various ailments. He therefore, prayed that the orders dated 12.1.2016 and 12.2.2016 passed by the learned Trial Court may be set aside and the proclamation issued against the petitioner may be cancelled.

6) The learned APP vehemently opposed the present petition and submitted that since the order dated 1.1.2008 the petitioner did not remain present before the Trial Court and therefore, the prosecution was constrained to file an application under Section 82 of the Cr.PC.. She further submitted that the Trial Court in the impugned order has categorically observed that the long standing absence of the petitioner has not been justified and there are no cogent reasons given by the petitioner in the said application for cancellation of warrant. She lastly prayed that the present petition may be dismissed.

7) The record discloses that it is a matter of fact that the petitioner after his release on bail on 1.1.2008 did not attend the Trial Court on the stipulated dates. It appears that there is substance in the contention of the petitioner that, as his Advocate had assured him that he will inform the relevant date for the appearance of the petitioner, the petitioner did not attend the Trial Court on the stipulated dates. It further appears to me that in the present application dated 12.1.2016 filed by the petitioner before the Trial Court for cancellation of non bailable warrant the afore stated reasons have been mentioned. The petitioner has further given an undertaking that he will appear on all the dates before the Trial Court. It further appears to me from the record that the petitioner did not deliberately avoid the attendance before the Trial Court and

it was only on the basis of the assurance given by the Advocate for the petitioner that concerned Advocate would intimate the necessary dates before the Trial Court for appearance, the petitioner remained absent.

8) In view of the above and in the interest of justice I am inclined to set aside the orders dated 12.1.2016 and 12.2.2016 passed by the learned Trial Court on the condition that hereinafter the petitioner shall attend each and every date before the Trial Court without any excuse. The orders dated 12.1.2016 and 12.2.2016 are quashed and set aside. The non bailable warrant and proclamation issued against the petitioner are hereby cancelled on the afore stated condition.

9) Petition is allowed in the aforesaid terms.

(A.S. GADKARI, J.)