

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE SIDE JURISDICTION
CRIMINAL WRIT PETITION NO. 1171 OF 2016

Mr. Nilesh Shriniwas Baswant

.....Petitioner

V/s.

State of Maharashtra

....Respondent

Mr. Praful Soni h/f Ms. Verrsha Phadkay Advocate for Petitioner.
Ms. V. S. Mhaispurkar APP for the State.

CORAM : SMT. SADHANA S. JADHAV, J.

DATED : JUNE 22, 2016.

PC :

Heard.

- 2) Rule. Rule made returnable forthwith with the consent of the parties.
- 3) By this petition, Petitioner herein questions the correctness and validity of the proclamation issued against him under section 82 of Code of Criminal Procedure, 1973 vide order dated 22/02/2016 by Special (MCOCA) Judge, Pune in C.R. No. 477 of 2015.
- 4) Learned counsel for the petitioner submits that Petitioner has not been protected by way of any pre-arrest bail or an order of bail under section 439 of Code of Criminal Procedure, 1973. It is further submitted that Petitioner has filed Writ Petition No. 548 of 2016 seeking relief of quashing of F.I.R. on

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the basis of which C R. No. 477 of 2015 has been registered against him.

5) Learned counsel for the petitioner vehemently submits that the very filing of the petition seeking quashing of F.I.R. would be deemed to be construed as a prayer for pre-arrest bail and that since he has filed the petition, it shall be inferred that he has been protected. It is submitted that by filing the writ petition, it is deemed that he is present before the Court. The said contention is not only unfounded but is against any provision of the Statute. It is a matter of record that since crime is registered against the Petitioner in the year 2015 the whereabouts of the Petitioner have not been known and that he has filed a writ petition before this Hon'ble Court by this Court on 06/02/2016 i.e. before the proclamation was issued and therefore according to the learned counsel, learned Magistrate ought not to have issued the proclamation since the Petitioner has approached the Higher Court.

6) Learned counsel has placed implicit reliance upon the Judgment in the case of **Ranjit Singh Vs. Karim Baksh [A.I.R. 1922 Lahore 475 (1)]**. Learned counsel has drawn the attention of this Court to the following observation in the said Judgment which reads as follows:

“In view of what has been observed above as regards the impropriety of the order issuing non-bailable warrants, it need hardly be said that

further proceedings taken against the petitioner culminating in the attachment of his property were not called for. Action under Section 87 can be taken only when a Court has reason to believe that any person against whom a warrant has been issued has absconded or is concealing himself so that such warrant cannot be executed. But a man, who files a petition against the order issuing the warrant and takes steps to procure an order of a Superior Court that he should be allowed to remain on bail after such warrant has been issued can neither be said to be absconding nor concealing himself”.

7) The said citation has no relevance in the present case as Petitioner has not been protected by any order of any Court till today.

8) Learned counsel for the petitioner has further submitted that while issuing a proclamation under section 82 of Code of Criminal Procedure, 1973 it is necessary for the Court to apply its mind as the section contemplates the words “Reason to believe”. In the present case, Investigating Agency had made a specific application before the learned Court that since registration of the F.I.R., the whereabouts of the Petitioner were not known. That he was not protected by any order of any court and therefore the charge-sheet was filed against him under section 299 of Code of Criminal Procedure, 1973 which would be sufficient for the court to have reason to believe that the Petitioner is absconding.

9) In view of this, petition deserves to be dismissed. Hence, following

order.

- (i) Writ petition being sans merits, stands rejected.
 - (ii) Rule is discharged.
 - (iii) Learned Court shall execute and implement order dated 22/02/2016, forthwith.
- 10) Office to communicate this order to the concerned Court, forthwith.

(SMT. SADHANA S. JADHAV, J.)