

*shivgan*FARAD CONTINUATION SHEET No.IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CRIMINAL APPELLATE JURISDICTION

## CRIMINAL APPLICATION No.561 OF 2016

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| Office Notes, Office Memorandum of Coram, appearances, Court's orders or directions and Registrar's orders | Court's or Judge's orders |
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Mr. M.N.Gawankar, Advocate for the Applicant.  
Smt. M.R.Tidke, APP for the State.

CORAM : A.S.GADKARI, J.  
DATE : 30<sup>th</sup> June, 2016

P.C.

- 1) Heard learned counsel for the applicant and the learned APP
- 2) By the present application under Section 482 of the Cr.PC., the applicant has impugned the order dated 25.4.2014 passed by the Additional Sessions Judge Sangli in Sessions Case No.36 of 2012 arising out of C.R.No.264 of 2011 registered with Sangli City Police Station. By the impugned order dated 25.4.2014, the learned Additional Sessions Judge, Sangli had issued non bailable warrant and as a consequence thereof, the applicant has now been sent to judicial custody.
- 3) The applicant is an accused in C.R.No.264/2011 registered with Sangli City Police Station which after completion of investigation has now been culminated in Sessions Case No.36 of 2012 and is pending on the file of Additional Sessions Judge, Sangli. Applicant was arrested in the said offence on 4.12.2011 and was released on bail on 13.7.2012.

4) The applicant was also involved in a crime no.128 of 2014 dated 9.4.2014 registered with Karad City Police Station. He was in custody in that crime till the conclusion of the said trial. The applicant is acquitted for the said crime no.128 of 2014 which was culminated in R.C.C.No.212 of 2014 by the learned JMFC Karad on 21.1.2016.

5) Applicant was also involved in crime no.74 of 2014 registered with Vishrambaug Police Station, Sangli dated 11.4.2014 and was in custody during the pendency of the said trial. The said crime after investigation was culminated in R.C.C. No.250 of 2014. Applicant is acquitted from the said C.R.No.74 of 2014 culminated in R.C.C.No.250 of 2014 on 21.7.2015.

6) It is to be noted here that though the applicant was acquitted in the Crime No.74 of 2014, he remains to be in judicial custody in Crime No.128 of 2014 as stated above. When the applicant was in custody in C.R.No.128 of 2014 and 74 of 2014 as stated above, the applicant could not attend the Sessions Case No.36 of 2012 pending on the file of the learned Additional Sessions Judge, Sangli on 25.4.2014 and the present impugned order issuing non bailable warrant came to be passed by the concerned trial Court.

7) The learned counsel for the applicant submitted that it is apparent from the record that it was beyond the control of the applicant to attend the said Sessions Case No.36 of 2012 arising out of C.R.No.264 of 2011 before the Additional Sessions Judge, Sangli as he was in judicial custody in C.R.No.128 of 2014 and 74 of 2014. He further submitted that though the police machinery was well aware of the said fact, they did not bring it to the notice of the concerned Court and as a consequence thereof, after his acquittal from C.R.No.74 of 2014 (R.C.C.NO.250/2014) on 21.7.2015 and in Crime No.128 of 2014 (R.C.C. NO.212/2014) on 21.1.2016, he has been now taken into judicial custody in pursuance of the impugned order dated 25.4.2014. He submitted that the impugned order dated 25.4.2014 needs to be quashed and set aside as it was passed without taking into consideration the aforesaid facts on record. The learned APP fairly admitted the facts involved in the present case and submitted that appropriate orders in the interest of justice may be passed.

8) The record discloses that the applicant was in judicial custody on 25.4.2014 in C.R.No.128/2014 (RCC 212/14) and in C.R.No.74/2014 (RCC 250/2014). It is unfortunate to note that the investigating agency in C.R.No.264/11(Sessions Case No.36 of 2012) did not point out the said fact to the learned Additional Sessions Judge, Sangli before whom the said Sessions Case No.36 of 2012 is pending for final adjudication.

9) It is further to be noted here that in C.R.No.264/2011

(Sessions Case No.36/2012), the applicant was already enlarged on bail by an order dated 13.7.2012 passed below Exhibit 52 and the applicant was neither absconding nor he remained absent deliberately before the trial Court on 25.4.2014 in Sessions Case No.36 of 2012.

10) In view of the above, the impugned order dated 25.4.2014 passed by the learned Additional Sessions Judge, Sangli in Sessions Case No.36 of 2012 is hereby quashed and set aside and as a consequence thereof, the applicant is released on bail on the same terms and conditions as were imposed on him while releasing him on bail in Sessions Case No.36 of 2012 by the learned trial Court by its order dated 13.7.2012 which is annexed at Exhibit 'B' to the present application. In addition to the conditions imposed by the said order dated 13.7.2012, the applicant after his release from jail shall attend the trial Court on each and every date fixed for hearing.

11) Application is allowed in the aforesaid terms.

(A.S. GADKARI, J.)