

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL WRIT PETITION NO. 2100 OF 2016

Mr. Ashraf Gulamrasool Patel @ Tatyaa.. Petitioner
(Orig. Accused No.2)

VS.

The State of Maharashtra ... Respondent

Ms. Tahera A.R. Queshi a/w Mr. Aamir Shaikh, Advocate for the petitioner.
Ms. A.A. Mane, APP, for the State.

CORAM: SMT. SADHANA S.JADHAV, J.
DATE : 17th June, 2016.

P.C.

Heard. Rule. Rule made returnable forthwith with the consent of the parties.

2. The petitioner herein seeks the leave of quashing and setting aside the order dated 8.6.2016 passed by the Addl. Sessions Judge, Thane in Sessions Case No.389 of 2012, thereby issuing non-bailable warrant against the present petitioner and others and also issuing notices to their surety.

3. The petitioner herein happens to be the original accused No.2. The learned counsel for the petitioner, upon instructions, submits that the petitioner had co-operated with the trial to the best of his capacity and had

attended almost on all dates. It is a matter of record that the crime was registered against the present petitioner and 20 others for the offences punishable under Sections 147, 148, 149, 307, 439, 427, 342 of IPC read with Sections 3 and 5 of Arms Act in the year 1994.

4. The petitioner has stated on oath before this Court that on 8.6.2016 that the Sessions Case No.389 of 2012 was fixed before the Court for appearance. An application was filed before the Sessions Court that the petitioner was held up in traffic. The petitioner informed, his lawyer on record that he will be reaching the Court later as he is held up in traffic. It was also informed that the petitioner is on way to the Court. However, the learned Sessions Judge by only considering the fact that the matter is very old has issued non-bailable warrant not only against the petitioner but notices are issued to the sureties also. The learned Sessions Judge has recorded that no application for exemption was filed. By inference, it can be said that the petitioner and his lawyer had not made any attempt to protract the proceeding nor had sought an adjournment but only sought time for appearance.

5. The learned APP submits that the Roznama would indicate that

NBW was issued against the accused-petitioner on 31.10.2012. In answer to this objection, the learned counsel for the petitioner submits that in fact charge sheet was filed in the year 2012 and most of the time the date of filing of charge sheet is not conveyed to the accused in advance and, therefore, there is possibility that the accused had remained absent. However, that would not be the crux of the issued to be decided today.

6. The learned counsel for the petitioner, upon instructions, submits that the petitioner would remain present before the Sessions Court on 18.6.2016 and would make himself available for framing of charge and also pray for recalling the NBW issued. The learned Magistrate to decide the same.

7. In view of this, non-bailable warrant issued against the petitioner on 8.6.2016 is stayed till 5.00 p.m. on 20.6.2016. The petitioner shall appear before the Sessions Court and cause his appearance. The order issuing notice to the surety is quashed and set aside. The order forfeiting the bail bonds is also quashed and set aside. Rule is made absolute. Petition stands disposed of.

8. Parties to act on an authenticated copy of this order.

(SMT.SADHANA S.JADHAV, J.)