

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL WRIT PETITION NO. 2107 OF 2016

Mr. Shrikant R.Salvi	...	Petitioner
vs.		
The State of Maharashtra	...	Respondent

Mr. Sameer Vaidya a/w Mr. R.D.Siroya, Advocate for the petitioner.
Ms. A.T.Jhaveri, APP, for the State.

CORAM: SMT. SADHANA S.JADHAV, J.
DATE : 20th June, 2016.

P.C.

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

2. The petitioner herein is accused in C.C. No.796/PW/2012 pending before the Addl. Chief Metropolitan Magistrate, 19th Court, Esplanade, Mumbai. It appears that on 21.11.2012, charge-sheet was filed against the petitioner for the offence punishable under Sections 467, 468, 471, 406, 420, 423 read with Section 120B of the Indian Penal Code. On 21.11.2012, the learned Magistrate had observed that the petitioner was on provisional cash bail. The original accused No.2 had furnished surety. The provisional

cash bail was extended upto 16.1.2013.

3. It appears from the Roznama that time to furnish surety was extended from time to time. On 30.10.2014, the accused had filed an exemption application which was granted and time to furnish surety was extended. It is a matter of record that till today the petitioner, who happens to be an Advocate by profession, has not furnished surety. On 9.6.2016, an application was received at 4.30 p.m. by the Magistrate seeking the relief of cancellation of non-bailable warrant which was issued against him in the morning session and on the same day, the learned Magistrate has observed that subsequently the accused did not remain present before the Court while praying for cancellation of non-bailable warrant. The learned Magistrate had observed that the accused is not complying with the bail order for more than four years and in such circumstances, there was no scope for cancellation of non-bailable warrant.

4. The learned counsel for the petitioner submits that the petitioner had furnished cash surety and that he was not fleeing from justice and, therefore, the non-bailable warrant ought not to have been issued.

5. Section 76 of Cr.P.C. reads as follows :-

“76. Person arrested to be brought before Court without delay
- The police officer or other person executing a warrant of arrest shall (subject to the provisions of section 71 as to security) without unnecessary delay bring the person arrested before the Court before which he is required by law to produce such person.”

In the present case, the petitioner ought to have remained present before the learned Magistrate and seek cancellation of non-bailable warrant. however, the said procedure is not adopted by the petitioner. Today, it is prayed that the order issuing non-bailable warrant be stayed. The very purpose of issuing a non-bailable warrant is to secure the presence of the accused before the Court by which he is being prosecuted. The learned Magistrate had rightly observed that although the accused was on bail, he had not complied with the conditions of bail and, therefore, had issued non-bailable warrant. The order passed by the learned Magistrate needs to be maintained.

6. The learned counsel for the petitioner, upon instructions from the petitioner who is present in the Court, submits that the petitioner would remain present before the Court before 5 p.m. on 23.6.2016 and file an application seeking recalling of the non-bailable warrant. The learned Magistrate shall consider the application on its own merits. The learned counsel for the petitioner submits that the magistrate has granted time for

furnishing surety till 10.8.2016. The learned Magistrate shall not extend any further time. On 9.6.2016 itself the learned Magistrate ought not to have extended time to furnish surety as the petitioner had sufficient time of 4 -1/2 years which he has not availed.

7. In view of this, the petition stands disposed of. Rule is discharged. In the interest of justice, the non-bailable warrant issued against the petitioner is stayed upto 5 p.m. of 23.6.2016.

(SMT.SADHANA S.JADHAV, J.)