

Vidya.Amin

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO. 945 OF 2016

Madhav B. Patel	... Applicant
Vs.	
The State of Maharashtra & Anr.	... Respondents

Mr. Amit Desai i/b. M/s. Thakore Jariwala & Associates, Advocate for the applicant.

Mr. H.S. Venegavkar, Advocate for respondent no. 2/CBI.

Mr. V.V. Gangurde, APP for the respondent/State.

CORAM	:	MRS.MRIDULA BHATKAR, J.
RESERVED ON	:	1st December, 2016
PRONOUNCED ON	:	14th December, 2016

ORDER:

In this Application, the applicant has prayed to set aside the order dated 22nd July, 2016 issued by Additional Chief Metropolitan Magistrate, 3rd Court at Esplanade of issuing non-bailable warrant against the applicant/accused. He also prays for quashing and setting aside the order dated 2nd August, 2016 rejecting the application for cancellation of non-bailable warrant issued by them.

2. The applicant/accused is prosecuted for the offence of cheating and conspiracy under sections 420 and 120B of Indian Penal Code by the respondent/CBI in which the applicant/accused is on bail. The case is pending on the file of learned Magistrate since last 9 years. The application for discharge is not yet decided. On 22nd July, 2016 the

application for discharge was taken up for arguments, however, neither the accused nor his lawyer were present in the Court. Therefore, the Special Prosecutor of CBI moved an application for issuance of non-bailable warrant against the accused, which was allowed on the same day. Thereafter, on 22nd July, 2016 the advocate of the accused filed an application for cancellation of non-bailable warrant, however, subsequently the Advocate did not press the application and informed the Court that he will produce the accused before the Court on the next date and will move an application for cancellation of non-bailable warrant. Thereafter, detailed application for cancellation of non-bailable warrant was made on 2nd August, 2016. CBI opposed the said application and the learned Additional Chief Metropolitan Magistrate on the same day passed a reasoned order rejecting the said Application. Hence, this Application.

3. The main contention raised before this Court by the learned senior counsel Mr. Desai is that at the time of cancellation of warrant, the Advocate of the accused had relied on the order of the **Single Judge of this Court dated 24th December, 2013 in the case of Arunkumar N. Chaturvedi vs. The State of Maharashtra & Anr. in Writ Petition No. 4429 of 2013** wherein the High Court while dealing with the same situation of rejection of cancellation of warrant by the learned Magistrate has specifically expressed displeasure of demanding the presence of the

accused at the time of application for cancellation of non-bailable warrant. The learned senior counsel has submitted that accused had apprehension of arrest after his appearance pursuant to non-bailable warrant and, therefore, rejecting the application for cancellation of non-bailable warrant, if the accused is not present is unjust.

4. The learned counsel Mr. Venegavkar for respondent no.2 opposed this Application and submitted that the learned Magistrate has passed a well-reasoned order while rejecting the application for cancellation of non-bailable warrant and, therefore, it cannot be said that the order of learned Magistrate is illegal.

5. I have perused the Application for cancellation of non-bailable warrant. In the said application in paragraph 2, the chart of all the dates of attendance of the accused is mentioned. The observation of the Court that the accused did not remain present on 22nd July, 2016 and on 25th July, 2016 is correct. The advocate of the accused might have told the Court that he would keep accused present on the next date, however, subsequently he might have realized that accused would be taken in custody by the court on his appearance in compliance with the order of non-bailable warrant. It is the duty of the accused and the counsel to appear on the date whenever the Court directs and if it is not possible,

necessary applications are to be made to the Court. The copy of roznama annexed herewith reveals that the accused or his advocate were present on most of the dates and when they remained absent, i.e., on 22nd July, 2016, non-bailable warrant was issued. The case is 9 years old and the date was fixed for argument on the application for discharge. Thus, neither the steps taken by CBI to move an application for non-bailable warrant against the accused can be questioned nor the order of the learned Magistrate of issuing non-bailable warrant is illegal. A short point raised by the learned senior counsel is whether the insistence of presence of the accused at the time of cancellation of non-bailable warrant is justified or not?

6. It is a settled position of procedural law that before issuing non-bailable warrant, the Court is required to issue summons or bailable warrant as per the facts of the case. Non-bailable warrant results in a physical production of a person before the Court by the police. While issuing non-bailable warrant, the Judge has to ascertain and satisfy himself/herself whether a person whose presence is required before the Court is intentionally avoiding to appear before the Court or is mischievous or is likely to abscond or deliberately trying to protract the trial by using different tactics and then the power to issue non-bailable warrant is expected to be used by the Courts. The learned Judicial Magistrate and

Metropolitan Magistrate, while dealing with variety of cases, do come across from fresh criminals to hardcore criminals, so also seasoned white collar offenders to the persons who are facing unfortunate prosecution with very less or no involvement in the crime and waiting for their turn of audience. Thus, the trial Court judges especially the Judicial Magistrates and Metropolitan Magistrates are heavily burdened with the work of trial, remand, production and so on.

7. If a person is avoiding deliberately to come before the Court or is mischievous, then the Court is required to be harsh and need not cancel the non-bailable warrant as per the facts of the case. However, all the defaulting persons are not to be treated with same scale. There are some persons who do not avoid appearance before the Court but they have genuine apprehension that they will be arrested due to their default on the earlier date and if such person wants to attend future dates after cancellation of non-bailable warrant, under such circumstances, to cancel non-bailable warrant is the only judicious order. It is expected that the parties coming before the Court not to be under terror but are required to respect the discipline and command of the Court.

8. I rely on the order of a Single Judge of this Court in Writ Petition No. 4429 of 2013 (supra) wherein it is observed thus:

“In my considered opinion, there is no law that the accused shall personally remain present for cancellation of warrant. If the lawyer makes an application for cancellation of warrant, the same needs to be considered on merits by the learned Magistrate without insisting the for appearance of the Applicant/accused. It is noted by this Court that many Writ Petitions are filed in this Court only because the learned Magistrate straight way take a view that warrant cannot be cancelled unless accused appears before the Court. The view taken by a few of the Magistrates particularly in the city of Bombay, in my opinion, is not correct. It is high time that this Court lets the Magistrate note that the appearance of the applicant/accused is not necessary when application for cancellation of warrant is made.”

9. Hence, the order dated 22nd July, 2016 passed by the Additional Chief Metropolitan Magistrate of issuing non-bailable warrant against the applicant/accused and the order dated 2nd August, 2016 rejecting the application for cancellation of non-bailable warrant are quashed and set aside. The accused and his counsel are directed to attend the Court on the date fixed for hearing. Application is allowed.

(MRIDULA BHATKAR, J.)