

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO. 2730 OF 2016

Mr. Riyaz Shaikh.

... Petitioner.

Versus

M/s. Kalyanji Morarji Warehousing
Pvt. Ltd. & anr.

... Respondents.

Mr. Sandeep Dere, advocate for petitioner.

Mr. V.B. Konde-Deshmukh, APP for State.

CORAM : SMT. SADHANA S. JADHAV,J
DATE : AUGUST 10, 2016

P.C.:

1 Heard the learned Counsel for the petitioner and the learned
APP for State.

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

3 Learned Counsel for the present petitioner submits that the petitioner herein is being tried for the offence punishable under Section 138 of the Negotiable Instruments Act. On 12/5/2016, though the accused was duly served, accused was absent and hence, bailable warrant to the tune of Rs. 15,000/- was issued. On 18/5/2016 the accused appeared before the court and filed application for taking the matter on board and his bailable warrant was cancelled. On 24/6/2016 the plea of the accused was recorded. On 14/7/2016 the complainant had filed affidavit of examination-in-chief and at the same time, had filed an application below Exh. 36 seeking issuance of non-bailable warrant. The non-bailable warrant was issued. On 1/8/2016 the Petitioner appeared in person before the learned Court and requested the Court to cancel the non-bailable warrant, as the advocate representing him could not remain present on that day. On the same day, the learned Magistrate has asked the petitioner to take cross-examination of the complainant. However, due to absence of the advocate representing him, the Petitioner/accused has expressed

his inability to take cross-examination and therefore, the application seeking cancellation of non-bailable warrant was rejected.

4 The learned Counsel for the petitioner submits that it is apparent on the face of the record that the petitioner by no means is trying to protract the proceedings and undertakes to cooperate with the proceedings on all future dates. The learned Counsel on instructions submits that next date scheduled before the learned Magistrate is 19/8/2016 and that the Petitioner would cause his appearance/presence before the learned Magistrate on 18/8/2016 as well as on 19/8/2016 and file a fresh application seeking recalling of the non-bailable warrant. It is in this circumstances that the non-bailable warrant issued on 14/7/2017 deserves to be stayed till 18/8/2016.

5 In view of the above, the non-bailable warrant issued on 14/7/2016 is stayed till 18/8/2016. On 18/8/2016, the Petitioner shall cause his appearance, file fresh application seeking cancellation

of non-bailable warrant and the learned Magistrate shall consider the same on its own merits without being influenced by any observations made by this court while staying the non-bailable warrant for a limited period i.e. till 18/8/2016.

6 The Rule is made absolute in the above terms. The Writ Petition is disposed of accordingly.

Office to communicate this order to the concerned court.

(SMT. SADHANA S. JADHAV,J)