

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO. 988 OF 2016**

Vinay Kumar Sharma	...Applicant
Versus	
Central Bureau of Investigation & Anr.	...Respondents

Mr. Mubin Solkar i/b Mr. Amit A. Jambotkar for the Applicant

Ms. Rebecca Gonsalvez for the Respondent No.1-CBI

Ms. P. P. Shinde, A.P.P for the Respondent No.2-State

CORAM : REVATI MOHITE DERE, J.
TUESDAY, 30th AUGUST, 2016

P.C. :

1. Heard learned Counsel for the parties.

2. By this application, the applicant seeks the following prayers :

“a) That the proclamation dated 28.06.2016 issued against the present applicant Vinay Kumar Sharma in C.C.No. 933/pw/2009 be recalled/cancelled and set aside.

b) That the applicant be enlarged on bail on such terms and conditions as this Hon'ble court may deem fit and proper.

c) Pending the hearing and final disposal of the present application the proclamation dated 28.06.2016 issued against the present applicant be stayed.”

3. Learned Counsel for the applicant states that the applicant alongwith others was enlarged on bail by the trial Court some time in 2005. He states that the applicant was represented by an Advocate and that in 2014, a new Advocate was appointed by the applicant. He submitted that the new Advocate appointed by the applicant was also appearing for all the co-accused in the said case. He submitted that on 3rd September, 2015, the applicant and other co-accused appeared before the trial Court, and that thereafter, on 5th May, 2016, a non-bailable warrant was issued as against the applicant, as the Advocate appearing for the applicant did not file an exemption application on behalf of the applicant. Thereafter, a report of non-execution of the non-bailable warrant was submitted, pursuant to which, notice to the surety was issued and on 22nd June, 2016 and proclamation was issued making it returnable on 28th July, 2016. It appears that the said proclamation was pasted at the residence of the applicant on 21st July, 2016. Learned Counsel for the applicant submits that the said non-bailable warrant came to be issued and subsequently proclamation, as the Advocate of the applicant had inadvertently failed to file an exemption application on behalf of the applicant.

4. Learned Counsel for the applicant has filed an affidavit-cum-undertaking of the applicant stating therein, that he undertakes to appear before the trial Court on the next date i.e. 1st September, 2016 and also undertakes to attend each and every date of hearing before the trial Court personally or through his Advocate. He submits that the applicant will file a similar undertaking even in the trial Court stating therein, that he or his Advocate will attend the court proceedings on every date and that his Advocate will not seek any adjournment on the ground that he has no instructions from the applicant.

5. Learned Counsel for the CBI does not dispute the fact, that the Advocate appearing for the applicant is also appearing for some of the co-accused, in particular, accused Nos. 4 and 9 to 17 and that as the exemption application was not filed on the applicant's behalf, non-bailable warrant came to be issued and subsequently proclamation.

6. Perused the application. It is not disputed that the applicant's advocate was appearing for some of the co-accused i.e. accused Nos. 4 and

9 to 17 and that the said Advocate had filed exemption applications on behalf of accused Nos. 4, 9 to 17 but had failed to file an application seeking exemption on behalf of the applicant, pursuant to which, a non-bailable warrant was issued against the applicant and subsequently proclamation. *Prima facie*, it appears to be an inadvertent mistake on the part of the Advocate.

7. Considering the aforesaid, the proclamation issued against the applicant by the trial Court is set aside. The applicant to file an appropriate application seeking cancellation of his non-bailable warrant before the trial Court on 1st September, 2016 along with an undertaking. The undertaking to state that the applicant will attend on every date of hearing personally or through his Advocate and that his advocate will not seek any adjournment on the ground that he has no instructions from the applicant, the application deserves to be allowed.

8. Accordingly, the application is allowed. The proclamation issued by the trial Court is quashed and set-aside. Accordingly, the applicant is protected till 8th September, 2016, inasmuch as, the non-

bailable warrant issued by the trial Court dated 5th May, 2016 is stayed till 8th September, 2016. The applicant to file an application seeking cancellation of his non-bailable warrant on 1st September, 2016 and the trial Court shall decide the said application, if filed, on the very same day as far as possible. The applicant shall also file an undertaking in the trial Court, stating therein, that he will remain present either personally and/or through his Advocate on every date of hearing in the trial Court. The undertaking to also state that his Advocate shall not seek adjournment on the ground that he has no instructions from the applicant and that he will appear before the trial Court, as and when so directed by the trial Court.

9. The application is disposed of on the above terms.
10. All concerned to act on the authenticated copy of this order.

REVATI MOHITE DERE, J.