

Shyam Radhakrishna Malpani ...Applicant
Versus
The State of Maharashtra & Anr. ...Respondents

Mr. Amit Desai, Sr. Counsel with Mr. Pranav Badheke I/b Mr. Prashant B. Pawar for the Applicant

Ms. P. P. Shinde, A.P.P for the Respondent No.1-State

Mr. Anil Singh, Additional Solicitor General with Ms. Purnima Kantharia, Spl. P.P, Mr. H. S. Venegavkar, Ms. Deepali Patankar and Ms. Indrayani Deshmukh for the Respondent No. 2

CORAM : REVATI MOHITE DERE, J.
FRIDAY, 7th OCTOBER, 2016

P.C. :

1. Heard learned Senior Counsel for the applicant and the learned Special Public Prosecutor for the respondent No. 2.
2. By this application, the applicant has impugned the order dated 11th August, 2016 passed by the learned Special Judge, PMLA Court, Mumbai, by which, his application seeking cancellation of the non-bailable warrant issued against him vide order dated 27th April, 2016, came to be rejected.

3. Learned Senior Counsel for the applicant submitted that the applicant was always ready and willing to appear before the Special Judge, PMLA Court, however, for want of interim protection, the applicant was precluded from appearing before the said Court. He submits that the impugned order rejecting his application for cancellation of non-bailable warrant was essentially on the premise that the applicant, despite several opportunities, had failed to appear before the Court. He submits that the applicant is even now ready and willing to appear before the Special Court, if he is protected by an interim order. He states, on instructions, that the applicant will remain present before the learned Special Judge on 17th October, 2016.

4. Learned Special Public Prosecutor Mrs. Kantharia, on the instructions of the Officer, who is present in Court, states that in view of the statement made by the learned Senior Counsel that the applicant will appear before the Special Court on 17th October, 2016, the Enforcement Directorate will not arrest the applicant, pursuant to the warrants issued by the trial Court, till 20th October, 2016.

5. Perused the papers. It appears that the impugned order dated 11th August, 2016 passed by the learned Special Judge, PMLA, Mumbai is essentially on the premise that the applicant had failed to appear before the Court despite several opportunities. The applicant at the time when the non-bailable warrant was served, was in U.S.A. The said fact is not disputed. It appears that an application was filed by the applicant seeking cancellation of his non-bailable warrant, on 9th May, 2016. No interim protection was granted to the applicant and finally on 11th August, 2016, the impugned order was passed.

6. Be that as it may, considering the statement made by the learned Senior Counsel that the applicant is ready and willing to appear before the Special Judge on 17th October, 2016, the impugned order dated 11th August, 2016 is quashed and set-aside. The original application dated 9th May, 2016 filed by the applicant seeking cancellation of non-bailable warrant alongwith the interim application, is restored back to its original file. The learned Judge shall consider the said applications on its own merits, in accordance with law. In the peculiar facts and circumstances of

this case, the non-bailable warrants issued against the applicant, shall not be executed till 20th October, 2016.

7. The application dated 9th May, 2016/interim application or any other application, if filed by the applicant shall, as far as possible, be decided by the learned Special Judge on the same day i.e. 17th October, 2016 or before 20th October, 2016. If for any reason not attributable to the applicant, the learned Special Judge is unable to decide the application on before 20th October, 2016, the learned Judge to consider granting interim relief to the applicant. All contentions of the parties, including the submissions on the judgment of the Apex Court in ***Inder Mohan Goswami & Anr. vs. State of Uttaranchal & Ors.***¹, are kept open.

8. In the meantime, the LOC dated 5th September, 2016 is also stayed.

9. The application is disposed of accordingly.

1 2007 (12) SCC 1

10. The Officers of the Enforcement Directorate shall inform the Immigration authorities of the order passed today, forthwith, either telephonically or by fax, without waiting for a certified or an authenticated copy of this order.

11. All concerned to act on the authenticated copy of this order.

REVATI MOHITE DERE, J.