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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL WRIT PETITION NO.3454 OF 2016

Sanjay Shankar Sagale @ Dipak Patil @ D.P. ...Petitioner

Versus

The State of Maharashtra ...Respondent

Mr.S.S.Ladda, for the Petitioner.

Ms.P.P.Shinde, A.P.P for the Respondent-State

CORAM : REVATI MOHITE DERE, J.

DATE : 19th OCTOBER, 2016

P.C. :

1. Heard learned Counsel for the petitioner and the learned A.P.P.

2. At the outset, learned counsel for the petitioner seeks leave to amend the petition. Leave granted. Amendment to be carried out forthwith.

3. By this petition, the petition has impugned the Order dated 20th February, 2015, issuing NBW as well as order dated 25th February, 2015, issuing proclamation, as against the petitioner in Sessions Case No.742 of 2006.

4. Learned Counsel for the petitioner states that the NBW which

was issued as against the petitioner was sent to a wrong address at Dahisar, Mumbai, which is not the address of the petitioner. He submitted that the petitioner is a resident of Nashik and the same is evident from the address disclosed in the copy of the Judgment, which is on page 101 of the petition. He submitted that even the 313 statement of the petitioner shows the petitioner's address of Nashik and not of Dahisar, Mumbai. He submits that as both, the NBW and subsequently the proclamation were issued at the wrong address, the petitioner could not remain present, being unaware of the same. He submitted that even notice issued to the surety is incorrect, as the said surety is not the person who stood as surety for the petitioner. The petitioner has also tendered an undertaking of the petitioner stating therein, that he will appear on every date before the trial Court. The said undertaking is taken on record and marked 'X' for identification.

5. Learned APP does not dispute the fact, that the address given in the copy of the Judgment, as well as in the 313 statement of the petitioner is of Panchavati, Nashik and not of Dahisar, Mumbai, where the NBW and thereafter proclamation was issued. She also does not dispute that the surety to whom notice has been issued, is not the person who stood as

surety for the petitioner.

6. Perused the papers. It appears that the NBW was issued against the petitioner at Dahisar, Mumbai and the police report shows that the petitioner could not be found at the said address. Pursuant to the said report, proclamation was issued. It appears that in the 313 statement, the address of the petitioner is shown as Panchavati, Nashik and not of Dahisar, Mumbai. The same is also reflected in the copy of the Judgment, which is on page 101 of the petition. The petitioner has also annexed a copy of the electricity bill, ration card etc., to show that the petitioner is a resident of Panchavati, Nashik and not of Dahisar, Mumbai.

7. Without going into any other submission advanced by the learned counsel for the petitioner, the petition is allowed. The impugned order dated 20th February, 2015, issuing NBW as well as order dated 25th February, 2015, issuing proclamation as against the petitioner in Sessions Case No.742 of 2006, are quashed and set-aside. The petitioner shall appear before the trial Court on the next date and shall abide by the undertaking dated 15th October, 2016, given by the petitioner, to this Court.

A copy of the undertaking to be placed on the record of the trial Court.

8. The petition is allowed in the aforesaid terms and is accordingly disposed of.

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

REVATI MOHITE DERE, J.