

Anand

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

WRIT PETITION NO.3496 OF 2016

Mohammad Wasim Hanif Qureshi .Petitioner

Vs.

The State of Maharashtra .Respondent

Ms Tahera A.R.Qureshi with Mr.Yakub Shaikh,
Advocate, for the Petitioner
Mrs.P.P.Shinde, APP, for the Respondent – State

CORAM : REVATI MOHITE DERE, J.

DATE : 04.10.2016

P.C.

. Heard learned counsel for the
Petitioner and the learned APP for the
Respondent – State.

2. By this Petition, the Petitioner has
impugned the order dated 19.04.2016 passed by
the learned District & Sessions Judge, Thane, by
which non-bailable warrant came to be issued as
against the Petitioner, his bail bonds came to
be forfeited and notice was issued to the
surety.

3. Learned counsel for the Petitioner submits that the Petitioner himself or his Advocate have been appearing on every date before the trial Court. She states that four witnesses in the said case have been examined till date. She submits that as the Petitioner's mother was unwell on 19.04.2016 and as there was no one to look after her, he informed his Advocate that he will not be able to attend the Court proceedings on 19.04.2016. She submits that accordingly, the Advocate on record sent his junior Advocate and asked him to file an exemption Application before the learned Sessions Judge. She submits that the learned Sessions Judge took the said Application on record but did not pass any order on the said Application. She submitted that later on, when the Petitioner contacted his Advocate and inquired about the next date, he learnt that the learned Sessions Judge on 19.04.2016 had issued a non-bailable warrant and notice was also

issued to the surety. She submits that thereafter, the Petitioner did not attend the Court apprehending that he may be arrested pursuant to the NBW. Learned counsel submitted that the Petitioner was unable to remain present on the said date due to a genuine difficulty and that he had informed his Advocate about the same. She further submitted that it is not a case, where none appeared on 19.04.2016. She submitted that the order passed was harsh and it would be impossible for the Petitioner to give or arrange for a new surety.

4. Learned APP submitted that an opportunity be given to the Petitioner considering the peculiar facts of this case.

5. Perused the papers, in particular, the impugned order. Pursuant to an oral direction, the Petitioner has tendered an undertaking which is taken on record and marked as "X" for

identification. In the said undertaking, the Petitioner has stated that he will attend the Sessions Court on every date and will not cause any delay in the trial. He has also undertaken to co-operate in the conduct of the trial. From a perusal of the order dated 19.04.2016, it appears that the matter was posted for recording the evidence of two witnesses who were present in Court. The said witnesses had to be discharged as neither the Advocate on record nor the Petitioner was present. It also appears that the Petitioner could not attend the proceedings as his mother was unwell and had informed his Advocate to that effect. However, his Advocate sent a junior lawyer, instead of appearing himself and proceeding with the matter.

6. Considering the peculiar facts and circumstances of this case, in the interest of justice, the impugned order dated 19.04.2016 is quashed & set aside. The Petitioner to remain

present before the trial Court on 13.10.2016. The Petitioner shall abide by the undertaking tendered by him today. A copy of the said undertaking to be placed on the file of the trial Court on 13.10.2016.

6. Considering the fact that two witnesses had to be discharged on the said date, the Petitioner is directed to pay costs of Rs.1,000/- to the District Legal Service Authority, Thane, within two weeks from today.

7. Accordingly, the Petition is disposed of on the aforesaid terms.

Parties to act on the authenticated copy of this order.

(REVATI MOHITE DERE, J.)