

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO. 3141 OF 2017

Sheikh Shafi S/o Sheikh Shabbir, Aged **Applicant**
about 33 Years, Occ. Business, R/o
Tambolipura, Sakharkherda, District
Buldana

V E R S U S

The State of Maharashtra, through P.S. **Respondent**
Mantha, District Jalna

Mr. Syed Ateeb Syed Aasif, Advocate for the Applicant
Mr. K.S. Patil, A.P.P. for the Respondent/State

CORAM : V.L. ACHLIYA, J.

DATE : 26TH JULY, 2017

ORDER :

1. By this application moved under Section 482 of the Code of Criminal Procedure, the applicant has challenged the orders dated 3rd May, 2017 and 14th June, 2017, passed in Regular Criminal Case No.134 of 2016 by the learned Judicial Magistrate, First Class, Mantha, District Jalna.

2. In view of the limited challenge raised in the application, the application is heard finally at the stage of admission with the consent of learned counsel for applicant and A.P.P. for the State.

3. Heard the learned counsel for the applicant and A.P.P. for the State. Perused the impugned order.

4. In short it is the case of the applicant that he was arrested for the offences punishable under Sections 376, 420, 468, 471 of the Indian Penal Code and Section 3 (2) of the Maharashtra Prevention and Eradication of Human Sacrifices and other Inhuman Evil and Black Magic Act. He was released on bail vide order dated 6th October, 2016 passed by the Judicial Magistrate, First Class, Mantha in default of filing of Charge-sheet within the statutory period of 90 days in exercise of powers under Section 167 (2) of Code of Criminal Procedure. Later on, the charge-sheet came to be filed. Instead of issuing the summons and securing presence of the accused for passing order of committal of case, the learned Judicial Magistrate straight way

passed order on 3rd May, 2017 to issue Non-Bailable Warrant against the applicant. Immediately after knowing the order passed to issue non-bailable warrant, the applicant moved application to recall the order of issuance of Non-Bailable Warrant by filing application through his Advocate. However, the application came to be rejected. Being aggrieved, the applicant has moved this application seeking quashing of orders dated 3rd May, 2017 and 14th June, 2017 passed in Regular Criminal Case No. 134 of 2016 by Judicial Magistrate, First Class, Mantha.

4. In my view, the impugned orders are not sustainable in law and deserves to be set aside to meet the ends of justice. It is an admitted fact that the applicant was granted bail in default of filing charge-sheet within time and released on furnishing bail. Since the applicant was on bail, it was expected on the part of Investigating Officer to have issued notice intimating the accused the date of filing of charge-sheet and calling upon him to appear before the Court for committing the case to the Sessions Court.

In order to secure the presence of the applicant, in first instance the trial Court ought to have issued summons to the applicant instead of straight way passing order of issuance of warrant. Only in the event of failure to appear inspite service of summons the steps to issue warrant to secure the presence of accused should have been taken. Even the application moved to recall of order of issuance of warrant was rejected for unwarranted reasons.

5. Perusal of the application filed seeking recall of order, reflects that the trial Court has not properly applied its mind before passing such order. The purpose of issuance of warrant was to secure the presence of the applicant/accused, so as to commit the case to the Sessions Court. It was expected on the part of learned Judge to have made endeavour to secure presence of the accused. As the accused had appeared though advocate, the trial Court ought to have considered the application as to the purpose of securing presence of the accused was otherwise

achieved. The learned Judge ought to have directed the personal appearance of the accused for cancellation of warrant. In this view, I am of the opinion that the impugned orders are not sustainable and contrary to law.

O R D E R

- A) Application is allowed in terms of prayer clause 'B'. Impugned orders are set aside.
- B) The applicant is directed to appear before the learned Judicial Magistrate, First Class, Mantha on 21st August, 2017 and thereafter continue to appear on each date of proceeding unless exempted from personal appearance on particular date.
- C) On appearance of the applicant, the trial Court may consider to pass necessary order to commit the case to Sessions Court.

- D) Application is disposed of in above terms.
- E) Authenticated copy of order be issued to the applicant.

(V.L. ACHLIYA, J.)

SRM/26/7/17