

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.83 OF 2017

HITEN SHANTILAL DOSHI

)...PETITIONER

V/s.

THE STATE OF MAHARASHTRA

)...RESPONDENT

Mr.Manish Bohra i/b. A.S.Khan & Associates, Advocate for the Petitioner.

Mr.Vinod Chate, APP for the Respondent - State.

CORAM : A. M. BADAR, J.

DATE : 18th SEPTEMBER 2017

P.C. :

1 Heard the learned advocate appearing for the petitioner. He submitted that as the petitioner /accused before the trial court was absent when his advocate the application for cancellation of non-bailable warrant, the said application came to be rejected. The learned advocate further argued that infact the learned trial court erred in observing that there are no sufficient

grounds for recalling the warrant issued against the writ petitioner, in the wake of specific averment in the application to the effect that because of oversight, his advocate had written wrong date in the diary. The learned advocate for the writ petitioner / accused further makes a statement that the next date fixed for the appearance of the accused before the learned trial court is 9th October 2017 and on that date, the writ petitioner / accused will positively attend the trial court. The learned APP opposed the petition by contending that the petitioner may file fresh application for cancellation of non-bailable warrant.

2 I have carefully considered the rival submissions and perused the impugned order dated 18th November 2016 passed by the learned 47th Additional Chief Metropolitan Magistrate Court, Esplanade, Mumbai.

3 As the petitioner / accused was absent and as no application for his exemption from personal attendance was moved, the learned Addl.Chief Metropolitan Magistrate had issued

non-bailable warrant against him. The learned advocate for the writ petitioner/ accused then moved an application for recalling the non-bailable warrant with a specific averment that because of oversight, wrong date was noted in the diary and therefore, he could not attend the proceedings on the last date of hearing resulting in issuance of non-bailable warrant. This contention is not considered by the learned Addl.Chief Metropolitan Magistrate. In a cryptic manner it is observed that no sufficient grounds are made out for recalling the warrant.

4 In view of the fact that the learned advocate for the writ petitioner has made a statement that the writ petitioner / accused will appear before the learned trial court on the next date of hearing, I see no reason to make him undergo ordeal of being arrested and produced before the learned trial court.

5 In this view of the matter, by accepting the statement of the learned advocate for the writ petitioner, the impugned order of rejecting the application for recalling the non-bailable

warrant issued against the writ petitioner by the learned trial court, is quashed and set aside.

6 The writ petitioner / accused to appear before the learned trial court on the next date of hearing and continue to do so until exempted by the learned trial court.

7 The writ petition is accordingly disposed of.

(A. M. BADAR, J.)