

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO. 836 OF 2017

Shri Ganesh Baburao Wadkar & Ors.] Petitioners

Vs.

STATE OF MAHARASHTRA] Respondents

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Mr. Abdul Karim Pathan, for the petitioners.

Mr. S.R. Agarkar, APP for State.

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CORAM: RAVINDRA V. GHUGE, J.

DATE : 24TH MARCH, 2017.

P.C.

I have heard learned Counsel Mr. Abdul Karim Pathan for the petitioners and learned A.P.P Mr. Agarkar on behalf of the State.

2. Petitioners categorically submit on instructions that since the non bailable warrant [N.B.W] was issued on 7th day from the date of proclamation, the said order would be unsustainable

under Section 82 of Cr. P.C. If the said order is set aside, they will appear before the trial Court on or before 31st March, 2017 and shall participate in the proceedings.

3. Considering the above, I am not required to advert to the entire submissions of the learned Advocates.

4. Section 82 of the Cr. P.C. mandates that the Court will publish a written proclamation requiring the concerned person to appear on a specified place and specified time and such person would be granted not less than 30 days for causing his appearance. There is no dispute between the litigating sides that the trial Court though passed the order of issuing the proclamation on 22nd July, 2016, the proclamation was in fact published on 23rd January, 2017 and copy of the same was affixed on the residence of the petitioners. However, on 30th January, 2017, the trial Court has issued a nonailable warrant.

5. In light of the above, this petition is partly allowed. Issuance of N.B.W on 31st January, 2017 shall be kept in abeyance

by recording the statement of the petitioners that they would appear before the learned Metropolitan Magistrate 47th Court, Esplanade Bombay in Case No. 117/P.W./2015 on or before 31st March, 2017. Needless to state, if the petitioners so appear on or before the said date, the order dated 31st January, 2017 would lose its efficacy. However, if the petitioners do not appear before the said Court as stated above, the order dated 30th January, 2017 shall stand restored.

[RAVINDRA V. GHUGE, J.]