

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

CRIMINAL WRIT PETITION NO. 1900 OF 2017

Mandar Namdev Kerkar. ... Petitioner.
Versus
The State of Maharashtra. ... Respondent.

Mr. Kapil P. Dave, advocate for petitioner.

Mr. V.V. Gangurde, APP for State.

**CORAM : SMT.SADHANA S. JADHAV,J
DATE : MAY 5, 2017**

P.C.:

1 Heard the learned counsel for the petitioner and the learned respondent.

2 Rule. Rule made returnable forthwith with the consent of the parties.

3 The Petitioner herein happens to be an accused in C.C. No. 1347/PW/2016 pending before the Learned Metropolitan Magistrate, 17th Court at Borivali. The prayer in the petition is -

“ (b) The order issuing Non-bailable Warrant dated 21/4/2017 and proclamation in C.C. No. 1347/PW/2016 passed by the Learned Metropolitan Magistrate, 17th Court, at Borivali, Mumbai be quashed and set aside as against the Petitioner.”

4 The learned Counsel submits that the Petitioner was attending all the stipulated dates before the learned Magistrate. The evidence was being recorded. Since January, 2017, the Petitioner had not remained present before the Court. On 19/1/2017 exemption application filed by the present petitioner was granted. It was also granted on 30/1/2017, 7/2/2017, 14/2/2017, 28/2/2017 and 10/3/2017. The Court had received extension of time from the High Court.

5 On 31st March, 2017 exemption application was once again allowed. On 3rd April, 2017 the advocate representing present petitioner had informed the Court that the accused is not in his contact and therefore, he had initially refused to submit exemption application. The Court was constrained to direct the learned Counsel to withdraw his vakalatnama. On that day, the matter was scheduled to be heard on 7th April, 2017.

6 On 7th April, 2017 the learned Counsel representing the present petition had filed purshish of no instructions and therefore, the learned Magistrate was constrained to issue non-bailable warrant against the present petitioner. The warrant could not be executed. On 11th April, 2017 “evidence closed” purshish was filed and Court had issued proclamation against the present petitioner and the matter was scheduled for recording of the statement under section 313 of the Code of Criminal Procedure, 1973 on 20th April, 2017. On 20th April, 2017 the proclamation was issued against the present petitioner. The

statement of the co-accused was recorded under section 313 of the Code of Criminal Procedure, 1973 and the matter was proceeded for recorded defence evidence on 24/4/2017. In the meanwhile i.e. on 20th April, 2017 the present petition is filed seeking quashing of non-bailable warrant.

7 The learned Counsel for the petitioner vehemently submits that the petitioner had been attending all the dates. That there was misunderstanding between the petitioner and his advocate and therefore, no instructions purshish was filed by the advocate. Upon perusal of roznama, it is clear that the Court had still granted exemption.

8 Today learned Counsel submits that the matter is scheduled on 8th May, 2017 before the trial Court for recording of statement under Section 313 of the Code of Criminal Procedure and that the petitioner

would appear before the Magistrate and file an application seeking recalling of the non-bailable warrant.

9 Needless to say that the Petitioner has approached this court only after proclamation was issued. It was incumbent upon the Petitioner to be diligent about the dates before the trial Court. It is submitted that since the Petitioner had faith in his advocate, he had not kept a track of the scheduled dates of the trial. The Petitioner submits that the learned Magistrate had issued non-bailable warrant because of some misunderstanding between the Petitioner and his advocate. The statement of the learned Counsel is accepted. The Petitioner shall remain present before the learned Magistrate on 8th May, 2017 and shall subject himself to recording of statement under section 313 of the Code of Criminal Procedure, 1973. At the stage of recording of statement under section 313 of the Code of Criminal Procedure, 1973, it would not be necessary to take the accused into custody. The learned Magistrate to decide the application sympathetically, as it

prima facie appears to be dispute between the petitioner and his advocate. The non-bailable warrant is stayed till 5 p.m. of 8/5/2017.

10 With these observations, Rule is made absolute and the Petition stands disposed of accordingly.

Parties to act on the authenticated copy of this order.

(SMT. SADHANA S. JADHAV,J)