

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

CRIMINAL WRIT PETITION NO.2663 OF 2017

Baburao Balkrishna Joshi .. Petitioner.

Vs.

The State of Maharashtra .. Respondent.

Ms.Krupali Rajani i/b Jaideep Thakker for the Petitioner.

Mr.S.V. Gavand APP for the Respondent.

CORAM : A. K. MENON, J.

DATED : 24TH JULY, 2017

P.C. :

1. Heard.
2. Rule. Rule made returnable forthwith. By consent of the parties taken up for final hearing.
3. The limited issue arising in this petition under Section 482 of the Code of Criminal Procedure pertains to orders passed on 24th March, 2017 and 7th June, 2017 by the Sessions Judge, Thane in Special Case MPID Case No.1/2017 firstly issuing a non bailable warrant and secondly refusing to cancel the non bailable warrant. The impugned order dated 7th June 2017 refer to an application made on behalf of accused no.13 to the effect that the accused could not remain present on the 7th June, 2017 since he was unwell.

The petitioner sought cancellation of the non bailable warrant.

4. The impugned order records that the matter is very old and considering the offence involved the non bailable warrant cannot be cancelled in absence of the accused. Hence, the application for cancellation was rejected. A reference to the roznama is required to understand the observation of the Sessions Judge, Thane. The roznama reveals that the offence was registered on 29th May, 2005. Thus, leading to the observation that the matter is very old. However, what is relevant is the date on which the case was committed to the Special Court. The case was assigned to Special Judge-10 and Additional Sessions Judge, Thane only on 24th March, 2004. The date fixed before said Special Court was 27th March, 2017. On 27th March, 2017 accused no.5 was shown to be present and other accused were absent. In view of absence of other accused the Court issued non bailable warrant on the very first day. According to the learned counsel for the petitioner no summons was issued, after the case was committed to the Special Court.

5. Heard parties. There is no dispute that the matter was listed for first time before the Special Court on 27th March, 2017. Learned APP confirms this fact. In the circumstances issuance of non bailable warrant on the very first day in my view was not justified. In view of the said order dated 24th March, 2017 the application for cancellation of warrant came to be filed on 7th June, 2017. It was rejected on the same day. The order of rejection appears

to have proceeded only on the basis that the non bailable warrant cannot be cancelled in absence of the accused. In my view the impugned orders cannot be sustained in the factual background of the case in hand. Hence, I pass the following order :

- (a) Rule is made absolute in terms of prayer clause (b). In the result the impugned orders dated 24th March, 2017 and 7th June, 2017 are set aside.
- (b) No order as to the costs.

(A.K. MENON, J.)