

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

CRIMINAL APPLICATION NO. 970 OF 2017

Pramod Ramdarash Vishwakarma ... **Applicant**

V/s.

The State of Maharashtra and Anr. ... **Respondents**

Mr. Rammani Upadhyay for the Applicant.
Mr. S.H. Yadav APP for the Respondent/State.
Mr. Sachin Mhaske for Respondent No.2.

CORAM : A.S.GADKARI, J.
DATE : 15th SEPTEMBER, 2017

P.C.:

. This is an application under Section 482 of Cr.P.C. praying for quashing of order dated 07.08.2017 passed by the learned Metropolitan Magistrate, 73rd Court, Vikroli, Mumbai in C.C. No. 1717/ss/2015 dated 07.08.2017, issuing Non Bailable Warrant against the Applicant.

2 The record indicates that Respondent No.2 has instituted the aforesaid complaint under Section 138 of the Negotiable Instruments Act. That on 07.08.2017, the Applicant could not attend the Court as he was suffering from viral fever and therefore, an application below Exh.54 seeking exemption from attending the Court was filed on his behalf by his Advocate. It is stated in the said application that the Advocate for the Applicant is ready and willing to cross-

examine the concerned witness in the absence of the accused. However, the Trial Court rejected the said application on the ground that no justifiable ground exists for granting exemption. The record further indicates that the complainant thereafter, immediately filed an application on the same date for issuance of Non Bailable Warrant, below Exh.55, which has been allowed by the impugned order. That the application for cancellation or stay of the said warrant has been turned down by the Magistrate.

3 Learned Counsel for the Applicant submitted that as a matter of fact, the Applicant was suffering from viral fever on that date and because of the said reason, he was unable to attend the Court. However, the said fact has not been taken into consideration by the Trial Court in its proper perspective. It is submitted that the Applicant will regularly attend all dates before the Trial Court, unless prohibited by circumstances which are beyond his control and in that event also the Advocate for the Applicant will remain present before the Trial Court.

4 Learned Counsel appearing for Respondent No.2 with utmost fairness command invited appropriate orders from this Court.

5 In view of the fact that proceeding before Trial Court is under Section 138 of Negotiable Instruments Act and that the Applicant and/or his Advocate hereinafter will without fail remain present before the Trial Court, the order dated 07.08.2017 passed below Exh.55 is hereby set aside. Application is allowed

in terms of prayer clause (a).

5 It is submitted by the learned Counsel for Respondent No.2 that the next date for hearing of the said complaint is scheduled tomorrow i.e. on 16.09.2017. It is made clear that the Applicant shall remain present before the concerned Court tomorrow.

6 This order is passed in presence of the learned Counsel for Respondent No.2 and Respondent No.2 shall not insist for certified copy or authenticated copy of this order while proceeding with the matter tomorrow and the Respondent No.2 shall inform the concerned Court about the present order.

7 Application is allowed in the aforesaid terms.

(A.S.GADKARI, J.)