

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

CRIMINAL APPLICATION NO.1124 OF 2017

Girish Ganesh Sathe

...Applicant

vs.

The State of Maharashtra

...Respondent

Mr. Nandu Phadake i/b Mr. Amol Deshpande for the Applicant.

Ms. S. S. Kaushik, APP for the Respondent.

Mr.P.G. Sawant, PSI, Andheri Police Station, Mumbai.

CORAM : SMT. SADHANA S. JADHAV, J.

DATE : 14th December, 2017

P.C.:

1. Heard. This is an application under section 482 of Criminal Procedure Code. The Applicant herein is arrested in Crime No.289/2003 registered at Andheri Police Station for the offences punishable under sections 279, 304(A) of Indian Penal Code read with 134(a) (b) of the Motor Vehicle Act. The Applicant was enlarged on bail. That there was a formal arrest of the Applicant on 10/8/2003 and the Applicant had given his permanent address as 102, Shreyas, Mayur Colony, Karve Road, Pune. The nearest Police Station is Kothrud Police Station.

2. Mr.Phadke, learned counsel for the Applicant submits that he had not received summons from the Court either at his permanent address or at the address of the surety viz. Narendra Keshkamat. All of a sudden on 16/8/2017 the learned Magistrate had issued non bailable warrant against the Applicant and also issued proclamation under section 82 of Criminal Procedure Code. He further submits that in fact he desires to join the proceedings before the Court and was not absconding. The only impediment was that the summons was not served upon him and therefore, he was not aware of the scheduled date before the Magistrate's Court.

Learned counsel for the Applicant fairly submits that the learned Magistrate has overlooked the fact that service of summons report was awaited for a long time and there was no inquiry as to whether he was residing at the given address. The learned Court has observed in the order dated 16/8/2017 that the police were inquiring with the hotel owner Shridhar Poojari where the applicant was residing temporarily. There was no inquiry as to permanent address of the Applicant and the Police had only visited the hotel Captain off Nehru Road, Near Shivsagar Hotel, Vile Parle (E), Mumbai. The Applicant happens to be the permanent resident of Pune. It is under these circumstances, the learned counsel for the Applicant prays that the non bailable warrant and proclamation issued against the Applicant deserves to be quashed and set aside.

3. Mr. Phadke, Learned counsel for the Applicant seeks leave to amend. Amendment be carried out forthwith.

4. Upon considering the record of the case it is verified that no summons was issued at the permanent address of the Applicant. The Applicant undertakes to remain present before the Court on 21/12/2017 at 11.00 a.m. In view of this, the Application is allowed in terms of prayer clause (a). The impugned orders issuing non bailable warrant and proclamation dated 16/8/2017 are hereby quashed and set aside.

(SADHANA S. JADHAV, J.)