

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO. 20 OF 2018**

Manoj Singh R. Thakur

...Applicant

Versus

State of Maharashtra

...Respondent

Mr. Dilip Harishchandra Shukla a/w Mr. Govind Prajapati for the Applicant

Mr. H. J. Dedhia, A.P.P for the Respondent-State

CORAM : REVATI MOHITE DERE, J.
WEDNESDAY, 10th JANUARY, 2018

P.C. :

1 Heard learned counsel for the parties.

2 By this application, the applicant has impugned the order issuing non-bailable warrant dated 23rd November, 2017 (reissued on 1st January, 2018) passed by the learned Additional Chief Judicial Magistrate, Thane, below Exhibit 39 in SCC No. 528 of 2004.

3 Learned counsel for the applicant submits that the applicant could not remain present before the trial Court due to certain unavoidable circumstances i.e. as he was wanted in two cases registered in Uttar

Pradesh and was pursuing his applications for anticipatory bail and thereafter, the applicant was in custody, during which time, the learned Magistrate was pleased to issue a non-bailable warrant as against the applicant on 23rd November, 2017.

4 Learned A.P.P does not dispute the fact that the applicant was in custody in connection with two cases registered in Uttar Pradesh on the date when non-bailable warrant was issued as against the applicant.

5 Perused the papers. On 13th September, 2017, this Court (Coram : A. S. Gadkari, J.) was pleased to quash and set-aside the orders dated 5th August, 2010, 19th March, 2013 and 12th July, 2017 passed by the learned 9th Joint Civil Judge, Senior Division and Additional Chief Judicial Magistrate, Thane, on certain terms and conditions, One of the term was that in case of any exigency, the applicant was to instruct his Advocate to appear before the Court and produce necessary documents in support of his absentee. The applicant was also directed vide the said order to appear before the trial Court on 22nd September, 2017 and file an affidavit/undertaking to comply with the order dated 13th September, 2017.

6 Pursuant to the order dated 13th September, 2017, the applicant appeared before the trial Court on 22nd September, 2017 and filed an undertaking. It appears that there were two cases which were registered as against the applicant in Uttar Pradesh. In one case, the Apex Court vide order dated 11th October, 2017 disposed of the SLP (for quashing) and granted one week's time to the applicant to surrender and observed that the applicant was not to be arrested for a period of one week. In the second case, this Court vide order dated 27th October, 2017 granted transit bail to the applicant. The protection was till 3rd November, 2017. Despite the transit bail being granted, in the said case, the applicant was arrested by the Uttar Pradesh Police on 30th October, 2017. It appears that the applicant was granted bail in one case on 20th November 2017 and in the second case on 25th November, 2017 and the applicant came out only in the first week of December, 2017. The learned Magistrate was pleased to issue non-bailable warrant as against the applicant on 23rd November, 2017 i.e. when the applicant was in the custody of the Uttar Pradesh Police. Hence, it cannot be said that the applicant has breached the undertaking and has deliberately remained absent. Hence, the impugned order issuing non-

bailable warrant dated 23rd November, 2017 passed by the learned Additional Chief Judicial Magistrate, Thane, below Exhibit 39 in SCC No. 528 of 2004 and re-issued on 1st January, 2018 are quashed and set-aside. The applicant shall abide by the undertaking given by him pursuant to the order dated 13th September, 2017.

7 The application is allowed and is disposed of in the above terms.

8 All concerned to act on the authenticated copy of this order.

REVATI MOHITE DERE, J.