

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

CRIMINAL WRIT PETITION NO.470 OF 2018

Shri Krishnakumar Pittie @ Pappu

... Petitioner

Vs

S. B. Gaud (Enforcement Officer) & Anr.

... Respondents

Mr. Manish Jain i/b. S. M. Jain & Associates for the Petitioner.

Mr. Shahaji R. Shinde, APP, for the Respondent No.2 – State.

Mr. H. S. Venegaonkar for Respondent No. 1.

CORAM : REVATI MOHITE DERE, J.

DATE : 06.02.2018

P.C. :

1. Heard the learned counsel for the parties.
2. By this petition, the petitioner has impugned the orders dated 28.07.2010 and 21.12.2017 passed by the learned Additional Chief Metropolitan Magistrate, 19th Court Esplanade, Mumbai, in CC No.341/1997 and prays that the non-bailable warrant issued as against the Petitioner be cancelled.
3. Learned counsel for the Petitioner submits that as the Petitioner had not received summons in the said case i.e. CC No.341/1997, he learnt about the case, only on 12.01.2018. He submits that hence, the Petitioner's Advocate filed an application on 16.01.2018 and sought cancellation of the NBW issued against the Petitioner. He submits that the

learned Magistrate insisted on the presence of the Petitioner and as such did not pass any order on the said application.

4. Learned counsel for the Respondent No.1 – Enforcement Officer disputes the fact, that the Petitioner learnt of the case only in January 2018. He submits that the Petitioner was well aware of the proceedings and that his Advocate was filing exemption applications in the Trial Court and as such no interference was warranted in the impugned order.

5. Learned Counsel for the Petitioner submits that the Petitioner is ready to file an undertaking in the Trial Court, that he will attend the Court proceedings and that he will remain present on every date, either himself or through his advocate or as and when directed by the Trial Court. In view of the statement made by the learned counsel for the Petitioner, without going into the merits, the petition is allowed on the following terms and conditions:

- i) The impugned order dated 28.07.2010 and 21.12.2017 passed by the learned Additional Chief Metropolitan Magistrate, 19th Court Esplanade, Mumbai, in CC No.341/1997 is stayed for a period of three weeks, to

enable the Petitioner to appear personally before the learned Magistrate for cancellation of the NBW. If the Petitioner files an application for cancellation of the NBW, within the said period, the learned Magistrate shall decide the same and pass appropriate orders thereon.

- ii) Petitioner shall also file an undertaking in the Trial Court, stating that he will remain present in the Court on every date, himself or through his Advocate and also as and when directed by the Trial Court; and that he will cooperate in the conduct of the trial. The said undertaking shall be filed by the Petitioner alongwith the application seeking cancellation of the NBW.

6. Application is allowed in the aforesaid terms and is accordingly disposed of.

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

(REVATI MOHITE DERE, J.)