

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

WRIT PETITION NO.537 OF 2017

Manoj Sinngh Thakur ...Petitioner
Versus
The State (at the instance of EOW, Unit I) ...Respondent

Mr.D.H.Shukla, for the Petitioner.

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

CORAM : REVATI MOHITE DERE, J.

DATE : 31st JANUARY, 2018

P.C. :

1. Heard learned Counsel for the parties.
2. By this petition, the petitioner has impugned the order dated 1st January, 2016, passed by the learned Additional Chief Metropolitan Magistrate, 19th Court, Esplanade, Mumbai in C.C.No.722/PW/2008, by which, the learned Magistrate was pleased to issue NBW as well as proclamation, as against the petitioner.
3. Learned Counsel for the petitioner submits that the petitioner

and his Advocate was absent on 2 occasions prior to 1st January, 2016 and hence the learned Magistrate passed the impugned order dated 1st January, 2016. He submitted that the learned Magistrate was not justified in issuing proclamation alongwith the NBW. Learned Counsel has tendered an undertaking of the petitioner, wherein the petitioner has undertaken to this Court to remain present before the Trial Court on each and every date of the hearing either himself or through his Advocate. He has further stated that he will appear before the learned Magistrate and file an appropriate application seeking cancellation of his NBW as well as proclamation, issued by the learned Magistrate vide order dated 1st January, 2016. The said undertaking is taken on record and marked 'X' for identification.

4. Learned APP does not dispute the fact, that proclamation could not have been issued on the very same day, till the report on the NBW was received. He submitted that the petitioner be directed to appear before the learned Magistrate in person and file an appropriate application seeking cancellation of NBW as well as proclamation issued by the learned Magistrate.

5. Perused the papers as well as the impugned order. The petitioner is being prosecuted in connection with the C.R.No.110 of 2006, registered with the EOW, Unit – I, Mumbai, for the alleged offences punishable under Sections 465, 467, 468, 471, 420, 120B of the Indian Penal Code. It is not in dispute that the petitioner was granted Anticipatory Bail by the learned Sessions Judge, vide order dated 28th February, 2006. After investigation, charge-sheet was filed as against the petitioner and other accused. It appears that as the petitioner was not present on 2 dates, learned APP filed an application dated 1st January, 2016, and sought issuance of NBW as well as proclamation, as against the petitioner. Accordingly, the learned Magistrate was pleased to issue NBW and proclamation against the petitioner. The application filed by the learned APP to issue both i.e. NBW and proclamation, was misconceived. Normally the practice is to first issue bailable warrants, then non-bailable-warrants, and thereafter proclamation.

6. In view of the undertaking tendered by the petitioner today in this Court as well as the undertaking given that he will submit to the orders/directions passed by this Court, the petition is allowed on the

following terms and conditions:-

ORDER

- (i) The impugned order dated 1st January, 2016, passed by the learned Additional Chief Metropolitan Magistrate, 19th Court, Esplanade, Mumbai in C.C.No.722/PW/2008, shall not be executed for a period of three weeks from today;
- (ii) The petitioner shall remain present before the learned Magistrate and file an appropriate application for taking the matter on Board for cancelling the order issuing NBW as well as proclamation, within the aforesaid period of three weeks;
- (iii) If such an application is filed, the learned Magistrate shall decide the same, preferably on the very same day and the petitioner shall remain present when the said application is filed before the learned Magistrate;
- (iv) The petitioner shall file a copy of the undertaking filed in this Court as well as file an undertaking in the Trial Court stating therein, that he will remain present on every date of hearing either himself or through his Advocate and in case the petitioner is absent and the prosecution witnesses are to be examined, the petitioner shall not challenge the identity of the witnesses or the evidence so recorded in his absence. The petitioner shall also undertake to remain present before the learned Magistrate, as and when, so directed by the Trial Court;

- (v) The petitioner shall also state in his undertaking that if he remains absent on 2 consecutive dates, appropriate orders may be passed by the Trial Court;
- (vi) The petitioner shall file the undertaking in the Trial Court alongwith the application for cancellation of NBW and proclamation.

7. The Petition is allowed in the aforesaid terms and is accordingly disposed of.

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

REVATI MOHITE DERE, J.