

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.753 OF 2018

DAMODAR KRISHNA DESHMUKH & ORS.)...APPLICANTS

V/s.

THE STATE OF MAHARASHTRA & ANR.)...RESPONDENTS

Mr.M.S.Mohite i/b. Ms.Vrishali Raje, Advocate for the Applicants.

Mr.S.V.Gavand, APP for the Respondent – State.

Mr.Shahuraj Ranaware, Assistant Police Inspector, Tulij Police Station, present in the court.

CORAM : A. M. BADAR, J.

DATE : 29th JUNE 2018

P.C. :

1 Applicant nos.1 to 3 are accused nos.9, 8 and 7 respectively in Regular Criminal Case No.568 of 2018 pending on the file of the learned Judicial Magistrate First Class, 3rd Court, Vasai, for offences punishable under Sections 420, 465, 467, 468, 471 read with 34 of the Indian Penal Code. By this application

under Section 482 of the Code of Criminal Procedure, they are praying for quashing and setting aside the order dated 12th June 2018 passed in the said case directing issuance of non-bailable warrant against them.

2 Heard Shri Mohite, the learned counsel appearing for applicants/original accused. He argued that during the pendency of the investigation, as seen from the endorsement made on the charge-sheet, all applicants/accused were never arrested. On the contrary, the Investigator has endorsed on the charge-sheet that as these applicants had co-operated the investigation and nothing is to be seized from them, their arrest is not necessary. It is further argued by the learned counsel for applicants that summons issued to applicant no.1/accused no.9 and applicant no.2/accused no.8 were, infact, served on applicant no.3/accused no.7, and as such, though summons were not actually served on applicant no.1/accused no.9 and applicant no.2/accused no.8, without application of mind, non-bailable warrant came to be issued against them. It is further argued that, applicants could not

attend the court as applicant no.1/accused no.9 was out of India and applicant no.3/accused no.7 was indisposed. Applicant no.2/accused no.8 was out of station. The learned trial court erred in issuing non-bailable warrant against these applicants/accused directly without resorting to alternate method of securing their presence in the wake of the fact that they were not arrested during the course of investigation.

3 The learned APP opposed the application by contending that, infact, with notice to all accused persons, charge-sheet came to be filed in the court of the Judicial Magistrate First Class, applicants ought to have attended the trial court regularly, instead of waiting for any summons.

4 I have carefully considered the rival submissions. It is well settled that arrest cannot be made in a routine manner. It curtails liberty of an individual apart from violating the fundamental rights as envisaged by Article 21 of the Constitution of India. Arrest brings humiliation, curtails freedom and casts

scars forever. In the case in hand, during pendency of the investigation also, the Investigator came to the conclusion that arrest of applicants/original accused was not at all warranted. The impugned order shows that the learned trial court recorded the finding that despite service of summons, accused persons including the present applicants/accused are absent. It is seen that necessary care was not taken in order to verify whether summons were actually served on applicants/accused nos.7 to 9. Infact, as averred in the duly sworn application, summonses meant for applicant nos.1 and 2 i.e. accused nos.9 and 8, were served on applicant no.3/accused no.7. This fact is not scrutinized while passing the impugned order of issuance of non-bailable warrant against the accused persons. Considering the fact that arrest of applicants/accused was not found necessary by the Investigating Officer, the learned trial court ought to have first attempted to secure their presence by issuing bailable warrant against them. Issuance of non-bailable warrant straightaway was not at all warranted. Viewed from this angle, for preventing abuse of the process of the court, the impugned order needs to be set

aside.

5 Be that as it may, the learned counsel for applicants/accused submits that applicant nos.2 and 3 i.e. original accused nos.8 and 7 will appear before the learned trial court on 5th July 2018 when the Regular Criminal Case No.568 of 2018 is fixed and they will furnish bail bonds in order to secure their presence before the court in future. Similarly, the learned counsel for applicants/accused further states that applicant no.1 i.e. original accused no.9 would return to India on 10th September 2018 and he will appear before the learned trial court on 17th September 2018 to furnish bail bonds for securing his presence in future. This arrangement will meet the ends of justice. In this view of the matter, the following order :

ORDER

- i) The application is allowed.
- ii) The impugned order dated 12th June 2018, so far as it relates to issuance of non-bailable warrant against present applicants i.e. original accused nos.7 to 9, is quashed and set

aside.

- iii) For securing their presence for the trial, the learned trial court is directed to accept the bail bonds of applicant nos.2 and 3 i.e. original accused nos.8 and 7 on 5th July 2018 when they undertake to appear before the trial court.
- iv) Similarly, applicant no.1 i.e. original accused no.9 should appear before the learned trial court on 17th September 2018 for furnishing bail bond for securing his presence for the purpose of trial.
- v) Applicants/accused shall abide by further directions of the learned trial court.
- vi) The application is accordingly disposed of.

(A. M. BADAR, J.)