

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION [APL] NO.782 OF 2018

Joseph Almeida and ors. ... **Applicants**

V/s.

The State of Maharashtra ... **Respondent**

Mr.M.S. Mohite i/b. Mr.Baburav Dhondu Shinde for the applicants.

Mr.S.V. Gavand, APP for the respondent/State.

CORAM : A.M.BADAR J.

DATED : 23rd JULY 2018.

P.C. :

1. By this application under Section 482 of the Criminal Procedure Code, the applicant / original accused are praying for quashing of order of issuance of non-bailable warrant against applicants on 8th June, 2011 in Regular Criminal Case No.141 of 2017.

2. Heard both sides.

3. The applicants are accused in R.C.C. No.141 of 2017 pending on the file of the learned JMFC, 3rd Court, Vasai. During investigation, none of the applicants were arrested by the Investigating Officer, as

they had cooperated with the Investigating Officer and as their arrest was not found to be necessary.

4. After filing of the chargesheet, order of issuance of summons was passed. Summons was served on some of the accused persons but the remaining accused persons were not served with summons. The applicants herein are original accused nos.9 to 12 and 14 and 15.

5. The averments in the application show that the applicants were informed by the Police Authority that chargesheet will be filed before the learned JMFC, 3rd Court Vasai on 20th May, 2018. Though, 20th May, 2018 was Sunday, all applicants/accused remained present before the concerned Court. However, the Court holding charge, told them that the chargesheet will be filed before the concerned Court after giving due notice to the accused persons. According to the applicants, thereafter, they have not received any notice nor were aware of filing of chargesheet. Subsequently, the chargesheet was filed and therefore non-bailable warrant came to be issued against all accused persons.

6. It is the case of the applicants that they could not attend the concerned Court as they were not aware about date fixed for hearing.

They came to know about issuance of the non-bailable warrant when some other accused came to be arrested in execution of the non-bailable warrant.

7. Heard Shri Mohite, learned Counsel appearing for the applicants/accused. He argued that considering the nature of offence as well as the fact that during the course of investigation, arrest of the applicants was not found necessary, the learned Trial Court ought not to have issued non-bailable warrant against them.

8. The learned Additional Public Prosecutor opposed the application by contending that the applicants remained absent despite service of summons.

9. I have considered the rival submissions also perused the material made available. The chargesheet itself shows that arrest of the applicants was found not necessary by the Investigating Officer. The averments made in the application show that as per notice of the Investigating Officer, the applicants remained present before the learned Trial Court even on Sunday, but on that day chargesheet was not accepted.

10. It is well settled that arrest needs to be resorted, as a last resort. It cannot be made in routine manner for curtailing liberty of the citizens. When during investigation, arrest of the applicants was found not necessary the learned Trial Court ought to have resorted to the mode of securing presence of the applicant by issuing bailable warrant against them.

11. Shri Mohite, learned Counsel for the applicants relied on order dated 18th June, 2018 passed in the matter of *Sunderlal Aklinglal Jain and ors. Vs. The State of Maharashtra in Criminal Application No.821 of 2018* whereby order of issuance of non-bailable warrant against co-accused was set aside by the co-ordinate Bench of this Court. In this view of the matter, the following order;

:: ORDER ::

- (i) The application is allowed.
- (ii) Impugned order dated 8th June, 2018, directing issuance of non-bailable warrant against the present applicants is quashed and set aside.
- (iii) For securing presence before the Trial Court, the applicants to appear before the Trial Court on 27th July, 2018. The learned Trial Court is directed to accept his

bail bonds to the satisfaction of the learned Trial Court.

(iv) The applicants shall abide by the further orders of the learned Trial Court in the matter.

(v) The application is therefore disposed of.

Vina
Arvind
Khadpe

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signed by
Vina Arvind
Khadpe
Date:
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(A.M.BADAR J.)