

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.803 OF 2018

Rakeshkumar Kuldipsingh Wadhavan ... **Applicant**

V/s.

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

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

Mr.A.R.Kapadnis, APP for the Respondent/State.

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CORAM : A.M.BADAR J.

DATED : 11th JULY 2018.

P.C. :

1 Heard finally by consent of parties.

2 By this petition under Section 482 of the Criminal Procedure Code, the applicant, who is accused No.1 in Regular Criminal Case No.586 of 2018 pending before the learned Judicial Magistrate First Class, Vasai is praying for quashing the Order dated 12/06/2018 passed by the said Court issuing non-bailable warrant against him as well as other accused persons. The applicant is further praying for releasing him on bail during pendency of the trial.

3 Facts in brief are thus :

- (a) On the basis of report lodged by one Kumar Prithviraj Ogade, in-charge Circle Officer, Mandvi on 21/03/2018, investigation started which ultimately ended in filing of final report for the offences punishable under Sections 420, 465, 467, 468, 471 read with Section 34 of the Indian Penal Code against the present applicant as well as other accused persons. Accordingly, Regular Criminal Case No.586 of 2018 came to be registered. Summons were issued to the accused persons including present applicant/accused No1..
- (b) Summons for appearance before the learned J.M.F.C., 3rd Court, Vasai on 12/06/018 is undisputedly served to the office of the applicant on 11/06/2018 at 6.00 p.m. The applicant appeared through an Advocate and had allegedly shown medical certificate demonstrating that he is unable to attend the Court. On that day i.e. 12/06/2018 itself, the learned J.M.F.C., 3rd Court, Vasai passed the impugned Order directing the issuance of NBW against accused Nos.1 to 17 by holding that despite service of summons they are absent.

4 Heard Shri.Mohite, the learned Counsel appearing for the applicant/accused No.1. He drew my attention the final report and particularly Column 11 thereof, wherein it is reported that as the applicant had appeared before the Investigating Officer in

pursuant to the notice issued under Section 41(A)(1) of the Criminal Procedure Code and as he has cooperated the Investigation Officer, no need to arrest him was found by the Investigating Officer. My attention is also drawn to the medical certificate dated 11/06/2018 reflecting the fact that the applicant was advised complete rest for few weeks. It is pointed out that immediately on the next date i.e. on 28/06/2018, an application for cancellation of NBW was moved by the applicant through his Advocate, but no Orders are passed thereon. Similarly, on 05/07/2018, the application for exemption was also filed which came to be rejected. With this, it is argued that the case in hand is fit case to exercise jurisdiction under Section 482 of the Criminal Procedure Code in order to prevent abuse of process of Court.

5 Heard Shri.Kapadnis, the learned Additional Public Prosecutor appearing for the respondent/State. He supported the impugned Order by submitting that because of lapse on the part of the applicant, the NBW is rightly issued by the learned trial Court.

6 I have considered the rival submissions. Undisputedly, the arrest of the applicant was not found necessary by the Investigating Officer during pendency of the investigation. Record shows that summons for appearance on 12/06/2018 was in fact served at the office of the applicant after office hours of 11/06/2018. Thus, summons was not served well in advance in

order to enable the applicant to appear before the learned trial Court in response thereto. Moreover, medical certificate dated 11/06/2018 shows that applicant was advised complete rest for few weeks. To crown this all, averments in the application dated 28/06/2018 which is reportedly pending before the learned J.M.F.C., at Vasai shows that the applicant had attended that Court through his Advocate on 12/06/2018 and prayed for exemption from appearance on that date due to sickness. The application is specific in averments to the fact that the Court below allowed the plea of the junior Advocate and asked him to complete the formality on the next date i.e. 28/06/2018 and prayer was made to the Court to keep the NBW in abeyance. Reportedly no Order is passed on this application.

7 It is seen that on the next date i.e. 05/07/2018, the application for exemption came to be filed on behalf of the applicant before the learned trial Court. However, it is rejected only on the ground that NBW already issued against the applicant is not yet cancelled. In fact, the applicant was not arrested during the course of investigation. He had shown diligence by responding to the summons received belatedly in his office by deputing his Advocate to the Court. Not only that, he has also applied for keeping the NBW in abeyance because the applicant was suffering from ailment and was advised rest. On backdrop of these facts, in the interest of justice, the learned Magistrate ought to have shown

indulgence by at least allowing the application for exemption of present accused. Instead of that, the same application came to be rejected on technical reason. Ultimately, the end result would be the arrest of the applicant in execution of the NBW. It is reported that the applicant is undergoing medical treatment as indoor patient in the Hospital at Delhi.

8 Arrest cannot be made in a routine manner and without there being any cause. Arrest curtails the liberty of an individual apart from violating his fundamental right as envisaged by Article 21 of the Constitution of India. It brings humiliation and curtails freedom. Therefore, great care is required to be taken while ordering arrest of an individual. The impugned Order and the happenings which took place thereafter, *prima facie*, demonstrate that no proper care was taken in order to secure presence of the applicant before the Court for facing the trial and particularly when it was the very first date of appearance before the learned trial Court. Instead of adopting coercive method for securing presence, ends of justice would have been served, if the applicant was directed to appear before the Court by issuing bailable warrant at the first instance. Subsequently, even his application for exemption came to be rejected purely on technical ground of subsistence of Order issuing NBW.

9 Powers under Section 482 of the Code of Criminal Procedure are required to be exercised sparingly and cautiously.

Such powers are to be exercised when no other remedy is available to the litigant. In the case in hand, the applicant had already applied for keeping the NBW in abeyance due to his ill health, so also, for grant of exemption from personal appearance. His one application is kept pending while other is rejected. Thus, the applicant has eminent threat of arrest in execution of the NBW issued by the court. Therefore, this is a fit case to exercise inherent power of this court.

10 In this view of the matter, in order to prevent abuse of process of the Court, the impugned Order dated 12/06/2018 so far as it relates to the present applicant needs to be quashed and set aside. It is stated at the bar that the next date of hearing before the learned trial Court is 19th July 2018 and on that day the applicant will appear before the learned trial Court. It is also stated that on the said date the applicant will furnish bail bond for securing his presence in future. In this view of the matter, I proceed to pass the following Order :

ORDER

- (i) The application is allowed.
- (ii) The impugned Order dated 12/06/2018 so far as it relates to issuing NBW against the present applicant i.e. original accused No.1, is quashed and set aside.
- (iii) For securing his presence for the trial, the applicant to appear before the learned trial Court on 19/07/2018 and

to furnish bail bond on that day to the satisfaction of the learned trial Court. The learned trial Court to accept those bail bonds. The applicant to abide by further Orders of the learned trial Court thereafter.

(iv) The application is accordingly disposed of.

Raju
Dattatraya
Gaikwad

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signed by
Raju
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Gaikwad
Date:
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(A.M.BADAR J.)