

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

CRIMINAL APPLICATION NO. 821 OF 2018

Sunderlal Aklinglal Jain and Ors	... Applicants
Vs.	
The State of Maharashtra	... Respondents
...	
Mr. Girish Kulkarni I/b Mr. Tarun S. Sharma for the applicant.	
Mr. A.R. Kapadnis, APP for the Respondent-State.	
...	

**CORAM : PRAKASH D. NAIK, J.
DATE : 18th JULY, 2018.**

P.C.

1. Although the matter was circulated, alongwith Criminal Application No. 815 of 2018, the same is not listed on board. At the request of the learned counsel for applicants, the matter is taken on board by allowing production of papers
2. This is an application challenging the order dated 12th June, 2018 passed by the learned Judicial Magistrate First Class, 3rd Court, Vasai in Regular Criminal Case No.586 of 2018 issuing non bailable warrants against the applicants.
3. Applicants are arraigned as accused in the aforesaid proceedings. The offences were registered under Sections 420,

465, 467, 468, 471 read with Section 34 of Indian Penal Code. On completing the investigation, the chargesheet was filed before the concerned Court on 25th May, 2018. During the course of investigation, the applicants were not arrested. Pursuant to filing of chargesheet, the trial court had issued summons to the accused since the accused did not appear non-bailable warrant was issued on 12th June, 2018.

4. Apprehending that the applicants may be taken into custody, the applicants preferred anticipatory bail before the Sessions Court on 29th May, 2018. The said application was adjourned to 19th July, 2018 without any interim orders. The advocate representing the applicants thereafter preferred an application for exemption as well as stay of the execution of the warrants before the trial Court, the exemption application was rejected and the application for stay of the execution of the warrant was kept pending and the same was adjourned to 19th July, 2018. The next date before the trial court is 19th July, 2018.

5. Learned counsel for the applicant submits that during the course of investigation, the investigating authorities never sought custody of the applicant. However, on account of issuance of non-bailable warrant, the application was preferred by the applicants

before the Sessions Court. It is submitted that the accused No.7, 8 and 9 in the same proceedings had approached this Court by preferring an Criminal Application No. 753 of 2018 for setting aside non-bailable warrant issued on 12th June, 2018. This Court had allowed the said application vide order dated 29th June, 2018 by setting aside the order dated 12th June, 2018 issued against the said accused. It was further directed for securing their presence the trial court to accept the bail bonds when they undertake to appear before the said Court. Learned counsel for the applicant also pointed out another order passed in Criminal Application No. 803 of 2018 in respect to other accused who had assailed the order issuing non-bailable warrant dated 12th June, 2018. The said application was also allowed by order dated 11th July, 2018 and the order of issuing of non-bailable warrant was set aside. The applicant therein were directed to appear before the trial Court on 19th July, 2018 for securing their presence to furnish bail bond on that day to the satisfaction of the trial Court. The trial Court was also directed to accept those bail bonds.

6. Learned APP submitted that the non-bailable warrant was issued since the applicants did not remain present before the trial Court inspite of issuance of summons to them. There was no

interim order protecting them in the application of anticipatory bail preferred by them before the Sessions Court. Learned APP pointed out the report filed by the police in connection with the application for anticipatory bail preferred by the applicants before the Sessions Court. The said report is taken on record. In the report dated 15th June, 2018 filed in ABA No. 401 of 2018 it was stated that in pursuant to notice under Section 41(a) of Code of Criminal Procedure, the accused had appeared for investigation and investigation was conducted with them. Since the investigation was over and there was no need to arrest them chargesheet was filed against them.

7. In the light of the aforesaid factual aspect relief as sought in this application deserves to be allowed. It is pertinent to note that the court issued non-bailable warrant against the applicants. Considering the fact that arrest of accused was not found necessitated by Investigating Machinery, the Court could have attempted to secure their presence by issuing bailable warrant, against them. Similar protection as prayed in this application was granted by this Court in Criminal Application No. 753 of 2018 and Criminal Application No. 803 of 2018. The learned advocate for applicants submit that the applicants will appear before the trial

Court on 21st July, 2018 and will furnish bail bond in order to secure their presence before the Court. In the circumstances, the non-bailable warrant issued by the trial Court deserves to be set aside with similar directions as contemplated in the order passed by this Court in respect to co-accused as referred hereinabove.

ORDER

- (i) Application is allowed;
- (ii) Impugned order dated 12th June, 2018 issuing non-bailable warrant against the applicants passed by Judicial Magistrate First Class, 3rd Court, Vasai in Regular Criminal Case No.586 of 2018 is quashed and set aside;
- (iv) For securing the presence for trial, the applicants to appear before the trial Court on 21st July, 2018 to furnish bail bonds on that day to the satisfaction of the trial Court. The trial court to accept the bail bonds. Applicants shall abide by the further orders of the trial Court thereafter;
- (v) Application stands disposed of.

Sachidanand
Kuttan Nair

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by Sachidanand
Kuttan Nair
Date: 2018.07.19
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(PRAKASH D. NAIK, J.)