

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

CRI. WRIT PETITION NO. 3630 OF 2017

Mukeshbhai Bhikubhai Patel

... Petitioner.

V/s.

Union Territory of Dadra and Nagar Haveli,
Silvassa

... Respondent.

Mr. Bhavesh Parmar, Advocate i/by Mr. Devmani J. Shukla, for
the Petitioner.

Ms. Purnima H. Kantharia for the Respondent No.1.

Mr. H. J. Dedhia, APP for the State.

Mukeshbhai B. Patel, the Petitioner -in-person present.

CORAM : REVATI MOHITE DERE, J.

DATE : FEBRUARY 21, 2018

P.C. :

1 Heard the learned counsel for the parties.

2 By this petition, the petitioner has impugned the
order dated 16.07.2016 as well as the order dated 30.01.2017
passed by the trial court in Special Case No. 3 of 2016.

3 Learned counsel for the Petitioner has tendered an
affidavit-cum-undertaking of the petitioner - Mukeshbhai B.

Patel dated 20.02.2018. The said affidavit/undertaking is taken on record and marked "X" for identification. He submits that the petitioner has given an undertaking that hereinafter, he will attend the trial court, on all the dates fixed by the trial court, personally and also through his Advocate (appointed by him for conducting the trial). He submits on instructions of the petitioner, who is present in the court, that neither he (petitioner) nor his Advocate will take any unnecessary adjournments before the trial court and that they will proceed with the case on merits. He further submits that in view of the affidavit-cum-undertaking, this court be pleased to quash the order dated 16.07.2016, issuing NBW against the petitioner as well as the order dated 30.01.2017 by which the learned Judge was pleased to issue proclamation.

4 Learned counsel for the Respondent opposed the petition. She submits that the conduct of the petitioner shows that he is not co-operating with the conduct of the trial, pursuant to which the aforesaid impugned orders were passed. She submits that no interference is warranted in the orders.

5 Perused the papers as well as the impugned orders. It appears that on 27.06.2016 charges were framed as against the petitioner and the matter was adjourned to 2nd July, 2016. On 2nd July, 2016 the applicant was not present and his Advocate filed an exemption application which was granted

and the matter was adjourned to 16.07.2016. On 16.07.2016 again the petitioner was absent and hence, the petitioner's Advocate preferring an application (Exh. 15, seeking his exemption from appearance), however, the learned trial Judge was pleased to issue non-bailable warrant as against the petitioner. It is not in dispute that the Advocate for the Petitioner was present on 16.07.2016. On the next date i.e. on 30.01.2017 neither the petitioner nor his Advocate were present, pursuant to which, the trial court was pleased to pass the impugned order dated 30.01.2017, issuing proclamation. The petitioner has tendered his affidavit-cum- undertaking dated 20.02.2018. The Petitioner is also present in the court. The Petitioner, by way of an undertaking, has agreed to attend all dates of the scheduled hearing, including the next schedule date in the trial court i.e. on 12.03.2018 personally and through his Advocate. He also agrees to co-operate in the conduct of the trial. The learned counsel for the petitioner on instructions of the petitioner, who is present in the court, also states that the petitioner does not wish to pursue the criminal writ petition no. 2689 of 2017 filed by the petitioner in this court, challenging the order, framing charge. Statement accepted.

6 Considering the aforesaid, only by way of indulgence, the impugned orders dated 16.07.2016 and 30.01.2017 are quashed and set aside.

7 The Petitioner shall place on record the xerox copy of the affidavit / undertaking also before the trial court, before whom the case is pending. The Petitioner shall abide by the affidavit-cum-undertaking filed by him.

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

 All parties to act on an authenticated copy of this order duly issued by the Registry of this Court.

(REVATI MOHITE DERE, J.)

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