

Vidya Amin.

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

CRIMINAL APPLICATION NO. 1296 OF 2018

Prashant s/o. Anant Patil & Anr. ... Applicants

VS.

The State of Maharashtra ... Respondent

Mr. A.M. Saraogi, Advocate for the applicants.

Mrs. Rutuja Ambekar, APP for the respondent/State.

**CORAM: Mrs.MRIDULA BHATKAR, J.
DATED: 31st October, 2018**

P.C. :

In this Application, the order dated 20th October, 2018 passed by the learned Judicial Magistrate First Class, Vasai for issuance of non-bailable warrant is challenged.

2. Though on the face it appears as a routine matter of cancellation of non-bailable warrant issued by the learned Judicial Magistrate First Class, I am of the view that it is a serious matter raising issues in respect of observance of law and procedure by the police.

3. The learned counsel for the applicants has submitted that the applicants/accused nos. 3 and 4 were not given notice when the charge sheet was filed, so they were not aware of the filing of the charge sheet and hence they did not remain present in the Court. Despite this, the learned Judge issued non-bailable warrant, which may be cancelled.

4. Learned APP has defended the order passed by the learned Judicial Magistrate First Class and has submitted that the applicants/accused were supposed to remain present in the Court, however, they were not present so the Magistrate has rightly issued non-bailable warrant.

5. Investigating officer is present in the Court. Learned APP was directed to take instructions from the Investigating officer on the point of arrest of the applicants/accused. She informs that the accused were never arrested in the present case and therefore, there was no question of praying bail by the accused and grant of bail by the Court.

6. The learned counsel Mr. Saraogi has submitted that the

applicants/accused were attending the police station and have cooperated the police in the investigation, therefore, they were not arrested. He further submitted that it is not necessary for each and every offence, the accused are to be arrested.

7. Learned APP, on instructions, confirms that the applicants/accused have attended the police station in the course of investigation, however, she submits that they were not traceable after Superintendent of Police issued permission on 7th July, 2018 to arrest the applicants/accused.

8. In order to ascertain the status of the applicants/accused, the charge sheet is perused. In the police report, both the accused nos. 3 and 4 are shown as not arrested. However, at the end of the report, it is mentioned that the Investigating officer whenever has visited to the residence of the applicants/accused, they are not found there. The status of the accused persons is not shown as absconding.

9. It is necessary to note the time sequence, which is as follows:

On 4th October, 2017 FIR No. 556 of 2017 was lodged where the applicants/accused is prosecuted for the offences punishable under sections 420, 465, 467, 468, 471, 474 r/w. 34 of the Indian Penal Code and under sections 52, 53 and 54 of M.R.T.P. Act. Sections 467 and 468 are non-bailable offence. The Investigating officer received permission from Superintendent of Police on 7th July, 2018 to arrest the applicants/accused. The charge sheet was filed on 5th October, 2018 and the learned Judicial Magistrate First Class issued arrest warrant on 20th October, 2018. Thus, from 7th July, 2018 till 20th October, 2018, i.e. nearly for 3 months, the applicants/accused were not found. Thus, they are absconding. When the applicants/accused are absconding and they are never arrested though permission is sought from the Superintendent of Police, there is no question of protecting these applicants/accused by cancellation of non-bailable warrant.

10. It is to be noted that in the charge sheet, the Investigating officer has mentioned that the orders be issued under section 299 of Cr. P.C. It is to be specifically noted by the Investigating officer and the prosecution that the said section of Cr. P.C. cannot be applied in this matter. It is only for the Court to dispense with the

presence of the accused at the time of trial. The order of issuance of non-bailable warrant is legal and fully justified. This Court is not inclined to pass any order of protection to the applicants/accused. Hence, Application is dismissed.

(MRIDULA BHATKAR, J.)