

IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR

CRIMINAL APPLICATION (APPA) NO.1198/2018

IN

CRIMINAL APPEAL NO.58/2006

Bhola s/o Vijayprasad Gupta

..VS..

The State of Mah., thr. Police Station Officer, Washim, District
Washim

.....
Office Notes, Office Memoranda of Coram,
appearances, Court orders or directions
and Registrar's orders

Court's or Judge's Order

.....
Shri Anil Mardikar, Senior Counsel with Adv. Shri J.B.
Kasat and Vinay Dahat for the applicant/appellant.
Mrs. S.V. Kolhe, Addl.P.P. for the State.

CORAM : V.M. DESHPANDE, J.

DATED : DECEMBER 11, 2018.

1. In the year 2006, this Court (Coram : B.R. Gavai, J.) suspended substantive jail sentence imposed upon the applicant and released him on bail.

2. It appears from record that on 24.10.2018 the matter was notified by the Registry that paper-book is ready and, therefore, it was expected on the part of learned counsel Shri J.B. Kasat for the applicant to collect the paper-book. However, the said was not collected. Therefore, the matter was listed before this Court on 1.11.2018. On the said day, Advocate Shri Vinay Dahat stated that the applicant is not in contact with him and, therefore, this Court (Coram : Z.A. Haq,

.....2/-

J.) recalled the order of the bail and Non Bail Bailable Warrant was issued.

3. Prior to execution of the Non Bailable Warrant, the applicant filed the present application for cancellation of the Non Bailable Warrant and continuation of the bail.

4. Learned senior counsel Shri Anil Mardikar with Advocate Shri J.B. Kasat is appearing.

5. It is submission of learned senior counsel Shri Anil Mardikar that the applicant was facing various ailments and was required to undergo by-pass in the year 2016 and also failure of kidney. Therefore, on instructions from Advocate Shri Kasat, learned senior counsel Shri Mardikar submits that there was no contact.

6. Till the bail was cancelled by this Court, at no point of time the prosecution pointed out that from year 2006 to year 2018 the applicant misused the liberty granted to him in his favour. Today, the applicant is personally present and duly identified by Advocate Shri J.B. Kasat.

7. Since the Non Bailable Warrant is not executed as on today and the applicant was on bail since 2006, in my view, especially when there was no complaint on the part of the prosecution that the applicant has misused the liberty granted to him in his

favour and further for fault of an Advocate the litigant should not suffer, the application is required to be considered favourably. Accordingly, the said application is allowed. However, Advocate Shri J.B. Kasat cannot submit that merely because the applicant was not in touch with him he did not collect the paper-book. Till the Advocate is discharged, it is the duty of the counsel to represent the applicant. Advocate Shri J.B. Kasat could have filed an appropriate application before this Court seeking discharge from this Court. Advocate Shri Kasat volunteers that he is ready to pay costs from his own pocket. Consequently, I pass following order:

ORDER

- (i) Non Bailable Warrant issued on 1.11.2018, in view of the fact that it is not executed, is hereby recalled and concern police station is directed not to execute the said Non Bailable Warrant.
- (ii) Learned Additional Public Prosecutor is directed to communicate the said order to the police authorities.
- (iii) The applicant shall be entitled to the protection as granted by this Court on 18.3.2006, till disposal of the present appeal.
- (iv) Advocate Shri J.B. Kasat is directed to pay costs of Rs.500/- with the High Court Bar Association at Nagpur within a period of one week from today.
- (v) Since presently this Court is taking only jail appeals,

place the present appeal for final hearing as per its seniority after Christmas Vacations 2018.

(vi) The applicant is directed to remain personally present at the time of final hearing of the appeal.

(vii) Needless to mention that Advocate Ms A.M. Kshirsagar appointed for the applicant stands discharged.

(viii) With this, the criminal application is disposed of accordingly.

JUDGE

!! BRW !!

...../-