

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

928 CRIMINAL WRIT PETITION NO.530 OF 2019

Kiran s/o Chandrakant Kadam,
Age : 25 years, Occu.: Agrilculture,
R/o.; Kedgaon, Ahmednagar,
Taluka & District : Ahmednagar PETITIONER
(Orig. accused No.3)

VERSUS

The State of Maharashtra RESPONDENT

.....
Mr. N. C. Garud, learned counsel for the petitioner.
Mr. S. Y. Mahajan, learned Additional Public Prosecutor.
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CORAM : V. M. DESHPANDE, J.

DATE : 29.03.2019

ORAL JUDGMENT :-

Rule. Rule is made returnable forthwith. By consent of both the parties, heard finally.

2. Though the writ petition is coming for the first time at this stage alone, the writ petition can be disposed of finally.

3. Heard Mr. N. C. Garud, learned counsel for the petitioner

and Mr. S. Y. Mahajan, learned Additional Public Prosecutor for the respondent-State.

4. The petitioner is accused No.3 in Crime No. 185 of 2015 registered with Kotwali Police Station, Ahmednagar. The Petitioner was released on regular bail by the learned Additional Sessions Judge, Ahmednagar on 28.10.2015 after filing of the charge sheet. The learned Judicial Magistrate committed the case to the Court of Sessions and after its committal, it was registered as Sessions Case No. 353 of 2015. The petitioner has annexed the Roznama of Sessions trial. It shows that as on today the charge is not framed. From 18.07.2018 the trial was adjourned for appropriate order on application filed by the learned prosecutor under Section 294 of Code of Criminal Procedure. On 03.01.2019, the petitioner submitted an application for exemption. The said application was allowed and the case was fixed on 11.02.2019. On the said day, it appears that the petitioner was absent and therefore, the non-bailable warrant was issued to the petitioner

(accused No.3) and ultimately the petitioner was brought before the Court under the execution of non-bailable warrant.

5. When the petitioner was produced before the Additional Sessions Judge, Ahmednagar in execution of non-bailable warrant, an application Exh.46 was filed on behalf of the petitioner for releasing him on bail. However, the said application was rejected by the impugned order on 27.02.2019. Hence, this writ petition.

6. It is to be noted that after considering prima facie nature of the accusation against the petitioner, he was released on bail by the Court below on 28.10.2015. The Roznama shows that after the case was committed to the Court of Sessions and petitioner was appearing before the Court and occasionally his application for exemptions were also allowed by the Court below. It appears that the trial was at the stage of passing an appropriate order on the application filed by the learned prosecutor, in-charge of the brief, under Section 294 of the

Code of Criminal Procedure. It appears that only on one date the petitioner remained absent. Though the conduct of the petitioner is not remaining present even on one day before the Court below is deprecated by this Court. However, looking to the stage of the trial, in my view, the Court below ought not to have rejected the application for bail. The petitioner could have been put stringent conditions. Consequently, I pass following order.

ORDER

- I) The writ petition is allowed.
- II) The order below Exh.-46, dated 27.02.2019 in Sessions Case No. 353 of 2015 is hereby quashed and set aside.
- III) Application Exh.46 in Sessions Case No. 353 of 2015 is hereby allowed.
- IV) Petitioner Kiran s/o Chandrakant Kadam (accused No.3) be released on bail, on his executing P.R. Bond of Rs.25,000/- with two solvent sureties in the like amount.

V) Bail before the learned Additional Sessions Judge, Ahmednagar.

VI) Petitioner is directed to remain present personally on each and every date of the Sessions trial.

VII) The petitioner should not file application for personal exemption, unnecessarily. Even when the application for the personal exemption is filed by the petitioner before the Court below and if it is noticed that it is not supported by any document, the Court below shall treat the said application as an attempt on the part of the petitioner to prolong the trial and in such case it shall be open for the learned Judge of the Court below to take appropriate steps against the present petitioner.

Rule is made absolute in above terms.

(V. M. DESHPANDE, J.)

vsm/-