

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

CRIMINAL WRIT PETITION NO.8 OF 2019

Shri Aushim Khetarpal

... Petitioner

Vs

The State of Maharashtra & anr.

... Respondents

Mr.Shivanand A. Mishra for the Petitioner

Mr.C.A. Malgaonkar with Dharmesh Shah i/b malgaonkar Shah &
Co. for Respondent No.2

Mr.A.R. Patil, APP, for the Respondent – State

**CORAM: Mrs.MRIDULA BHATKAR, J.
DATED: FEBRUARY 22, 2019**

P.C.:

1. This petition is directed against the order of issuance of proclamation by the learned Metropolitan Magistrate on 12.1.2018 in Case No.1869/SS of 2018. The case is pending since 2008. I am informed by the learned Counsel for the complainant that out of 54 to 56 dates before the trial Court i.e., 43rd Court, Metropolitan Magistrate, Borivali, Mumbai, barring 3 to 4 appearances, he did not appear before the Court. It is also informed that he shifted his residence from Delhi to Ahmedabad, however, the address was not given.

2. The learned Counsel for the petitioner submits that the petitioner had to shift from Delhi to Ahmedabad due to his financial difficulties. He prays that the order of proclamation is to be set aside as the applicant/accused is ready to appear before the learned Metropolitan Magistrate, 43rd Court at Borivali, Mumbai on the scheduled date i.e., 27.2.2019.

3. Learned Prosecutor has opposed the application.

4. Perused exhibit 72, the application preferred by the complainant for issuance of proclamation against the accused and the order passed therein. In view of the continuous absence of the petitioner before the learned Metropolitan Magistrate, for a period of 8 to 9 years, the learned Magistrate has taken proper steps for procuring the presence of the accused. Under such circumstances, it is necessary for the petitioner to appear before the trial Court and seek order of cancellation of non-bailable warrant. This Court will not interfere with the same.

5. Hence, the petition is dismissed. However, the trial Court to consider the application for bail, if preferred by the petitioner.

(MRIDULA BHATKAR, J.)