

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

CRIMINAL APPLICATION No. 140 OF 2019

Shree Prakash Singh and Anr.

...Applicants

Versus

The State of Maharashtra

...Respondent

.....
Mr.Aabad Ponda i/b. Karma Vivan for the Applicants.
Mrs.M.M.Deshmukh, APP for the Respondent-State.
.....

**CORAM: MRS.MRIDULA BHATKAR, J.
DATED : 05 FEBRUARY, 2019**

P.C.:

1. This Criminal Application is filed invoking the powers of this Court under section 482 of the Criminal Procedure Code.
2. In this Criminal Application, the applicants are challenging the order dated 28th January, 2019 passed by the learned Metropolitan Magistrate, 40th Court, Girgaon, Mumbai, rejecting the application below exhibit 5 in Criminal Case No. 3193/PW/2016.
3. The applicants are prosecuted for the offence punishable under section 506 (ii) read with 34 of the Indian Penal Code (for short "the IPC"). The said case is pending since 2016. By an order

dated 25th October, 2016, the learned Magistrate, after taking cognizance, issued a non-bailable warrant against the applicants. Since 2016, the applicants did not appear before the learned Magistrate. Thereafter, the applicants moved an application before the learned Magistrate for exemption on the ground that they are wrongly shown as absconding accused and they are in process of filing anticipatory bail application. The said application was heard and by an order dated 28th January, 2019, the learned Magistrate rejected it. Now, the fresh non-bailable warrant is in force against the present applicants.

4. The learned counsel for the applicants has submitted that in the same proceeding, earlier Criminal Application No. 961 of 2013 was filed by the applicants for quashing of the F.I.R. before the Division Bench of this Court. By an order dated 7th October, 2013, the Division Bench of this Court has granted interim protection. He has further submitted that the said interim protection continued till 5th April, 2017. He has pointed out that when the learned Magistrate issued the non-bailable warrant against the applicants on 25th October, 2016, the said interim protection was in operation. He has further submitted that the summons was not issued before

issuance of non-bailable warrant. Moreover, he has further pointed out that this matter has travelled upto to the Supreme Court, challenging the order of issuance of process. However, the said prayer was dismissed. While dismissing Criminal Application No. 1480 of 2018, the Division Bench of this Court by an order dated 24th January, 2019 has granted liberty to the applicants to file discharge application.

5. The learned APP submits to the orders passed by this Court. She further submits that despite the interim protection granted by this Court, the learned Magistrate has issued the non-bailable warrant against the applicants in 2016.

6. Heard submissions. The learned Magistrate has rejected the application seeking exemption of the applicants on 28th January, 2019. At the relevant time, no interim protection was granted to the applicants. However, from the record produced before this Court, it appears that the applicants were prosecuting this matter before various Courts since 2013 and the Division Bench of this Court gave liberty to the applicants on 24th January, 2019 to file application for discharge.

7. The learned counsel for the applicants has further submitted that he is going to take appropriate steps to protect the applicants. The offence is registered under section 506 (ii) read with 34 of the IPC. The dispute is between the sister and the brother.

8. As per the allegations, threats were given telephonically. In view of these facts and the orders passed, no coercive action is to be taken against the applicants till 13th February, 2019. However, the applicants shall appear before the learned Magistrate on 12th February, 2019 at 11.00 a.m. and may move an application for discharge or bail. The learned Magistrate to consider the Bail Application, if filed, and decide the same on or before 12th February, 2019.

9. With this, Criminal Application is disposed of.

(MRIDULA BHATKAR, J.)