

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

WRIT PETITION NO. 1980 OF 2019

Moinuddin Khan son of Alam Khan

...Petitioner

Versus

State of Maharashtra
(At the instance of the
Senior Inspector of Police,
Vakola Police Station)

...Respondent

Ms.Anjali Awasthi for the Petitioner.

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

CORAM : MRS. MRIDULA BHATKAR, J.

DATE : 18 APRIL 2019

P.C.:

1. In this petition, the order dated 16th February, 2019 passed by the learned Additional Chief Metropolitan Magistrate, 71st Court, Bandra, Mumbai, issuing a non-bailable warrant against the petitioner/accused in C.C. No. PW/0001309/2016 so also the order dated 28th February, 2019 passed by the learned Additional Chief Metropolitan Magistrate, 71st Court, Bandra, Mumbai, refusing to cancel the said warrant are challenged.

2. The learned Counsel for the petitioner/accused submits that the chargesheet was filed in the month of July 2016. Thereafter, summons was issued. The stand taken in the Court by the petitioner/accused is that the

summons was not served on him, and as the petitioner/accused is on anticipatory bail, the bailable warrant should have been issued. She further submits that the petitioner/accused is ready to appear before the learned Magistrate if he is protected.

3. The learned APP for the respondent-State submits that in the order dated 16th February, 2019, the learned Magistrate has specifically mentioned that the summons was issued against the petitioner/accused and he has not complied with the conditions imposed by the learned Magistrate while granting the anticipatory bail. He further submits that the petitioner/accused did not appear before the learned Magistrate nearly for two years and, therefore, the learned Magistrate had no option, but to issue the non-bailable warrant to secure the presence of the petitioner/accused for framing of the charge.

4. The petitioner/accused is facing prosecution under sections 353, 332, 504 and 506 of the Indian Penal Code.

5. Heard submissions. In view of above, I pass the following order:

ORDER

- (i) The order of issuance of process dated 16th February, 2019 passed by the learned Additional Chief Metropolitan Magistrate, 71st Court, Bandra, Mumbai and the order dated 28th February, 2019 passed by the learned Additional Chief Metropolitan

Magistrate, 71st Court, Bandra, Mumbai are hereby quashed and set aside;

(ii) The petitioner/accused is directed to appear before the learned Magistrate on 20th April, 2019 at 11.00 a.m. without fail;

(iii) The petitioner/accused shall comply with all the conditions imposed by the learned Magistrate while granting anticipatory bail;

(vi) The petitioner/accused shall thereafter appear before the learned Magistrate regularly unless the order of exemption is granted by the learned Magistrate;

(v) The learned Magistrate to proceed with the matter.

6. Writ Petition is allowed and accordingly disposed of.

(MRIDULA BHATKAR, J.)