

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

**CRIMINAL APPLICATION NO.1320 OF 2019
WITH
CRIMINAL APPLICATION NO.1321 OF 2019
WITH
CRIMINAL APPLICATION NO.1322 OF 2019**

Puneet Kumar ... **Applicant**
Versus
The State of Maharashtra & Anr. ... **Respondent**

Mr.Diwakar Singh, Advocate for the Applicant.

Mr.A.R.Kapadnis, APP for the Respondent No.1/State in APL/1320 /2019.

Mr.A.A.Palkar, APP for the Respondent No.1/State in APL/1321/2019.

Mr.Vinod Chate,APP for the Respondent No.1/State in APL/1322 / 2019 .

CORAM : A.M.BADAR J.

DATED : 9th OCTOBER 2019.

P.C. :

1 Not on board. Taken on board at the request of the
learned Counsel for the applicant.

2 Heard the learned Counsel appearing for the applicant/original accused in proceedings under Section 138 of the Negotiable Instruments Act, 1881 filed by the respondent No.2. The learned Counsel for the applicant drew my attention to the pleading made in the application and argued that the learned trial Court is not cancelling the non-bailable warrant, but is taking the accused in custody and, therefore, liberty of the applicant be protected and the Order issuing non-bailable warrant be quashed and set aside.

3 I see absolutely no merit in these applications under Section 482 of the Code of Criminal Procedure as such powers conferred to this Court requires to be exercised sparingly and that too in appropriate cases. In the case in hand, Order directing issuance of non-bailable warrant against the accused is challenged. Perusal of *roznama* relied by the applicant in each cases shows that the complaints of offence under Section 138 of the Negotiable Instruments Act, 1881 were part heard. Way back on 19/04/2018, because of absence of the accused in part heard cases, order directing issuance of non-bailable warrant was passed by the learned trial Magistrate. It is seen that on 25/07/2018 on application for cancellation of non-bailable warrant, the learned trial Magistrate has shown indulgence and cancelled the non-bailable warrant by imposing penalty of Rs.500/-. However, it appears that again in the part heard complaints, the accused failed

to attend despite rejection of his application for permanent exemption. Hence, ultimately on 11/02/2019, the learned trial Magistrate had again issued non-bailable warrant against the applicant/original accused. No infirmity can be found in such course of conduct adopted by the learned trial Magistrate as the cases under Section 138 of the Negotiable Instruments Act, 1881 are required to be decided in time bound manner under the provisions of Negotiable Instruments Act itself. Ultimately, the cases involved in these applications are part heard. Hence, the applications are devoid of merit. Therefore, the Order :

ORDER

- (i) The applications are rejected.
- (ii) However, the applicants are at liberty to approach the learned trial Magistrate by filing suitable application for cancellation of non-bailable warrant and if such applications are filed, the learned trial Magistrate is free to exercise its jurisdiction in entertaining those applications.
- (iii) Needless to mention that if the application for taking the case on board is moved along with the application for cancellation of non-bailable warrant, the learned trial Magistrate should take the case on board and should pass the Order immediately.

(A.M.BADAR, J.)