

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.1324 OF 2019

Sharad Shankar Mulot ... **Applicant**
Versus
The State of Maharashtra ... **Respondents**

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Mr.Gaurav Parkar, Advocate for the Applicant.

Mr.A.R.Kapadnis, APP for the Respondent/State.

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CORAM : A.M.BADAR J.

DATED : 11th OCTOBER 2019.

P.C. :

1 By this application under Section 482 of the Code of Criminal Procedure what is sought to be impugned is the Order directing issuance of the non-bailable warrant and consequent Orders dated 18/08/2017 and 03/09/2019 passed by the learned Special Judge, Pune in N.D.PS.Special Case No.24 of 2007.

2 Heard the learned Counsel appearing for the applicant/original accused. He argued that offences alleged against him under Sections 20(b)(ii)(A) and 27 of the Narcotic Drugs and Psychotropic Substances Act (hereinafter referred to as 'the N.D.PS.Act' for the sake of brevity) are bailable. He was released on bail. The learned Counsel has moved application for

exemption from personal appearance and that application was rejected. Therefore, in submission of the learned Counsel for the applicant, the learned trial Court ought not to have issued the non-bailable warrant for securing presence of the applicant for facing the trial. The mistake was, according to the learned counsel for the applicant, that of the Counsel engaged by the applicant against whom the action is taken.

3 I have considered the submissions so advanced and also perused the Order sheet of the N.D.P.S.A Case No.24 of 2007.

4 Along with other co-accused, the applicant herein is also being prosecuted for the offences punishable under Sections 20(b)(ii)(a) and 27 of the N.D.P.S.Act. This Court has expedited the trial of that case. It is seen from *roznama* that as the applicant/accused remained absent, his learned Counsel moved an application for exemption from personal appearance on 18/08/2017. That application came to be rejected on that day. Non-bailable warrant came to be issued against the applicant as well as the co-accused. It is seen that thereafter the trial was adjourned for a period of two years and the non-bailable warrant could not be executed as against applicant as well as other accused persons. This has resulted in protraction of the trial. The learned Counsel for the applicant argued that the witnesses are not remaining present. However, when the accused were not

cooperating with the learned trial Court by appearing on the date fixed for conduct of the trial there was no point of issuing witness summons. After passage of two years, ultimately the applicant through his counsel filed an application for cancellation of the non-bailable warrant on 03/09/2019. On that day also, the applicant remained absent and reason stated is ailment of father of the applicant. This reason itself reflects that the applicant does not want to appear before the learned trial Court for facing the trial. It is writ large that the applicant jumped the bail causing inconvenience to the trial Court in disposal of the expedited special case in time bound manner as directed by this Court. Be that as it may, it is seen that on 03/09/2019, the learned trial Court has directed appearance of the applicant before the said Court. It is seen that thereafter the applicant has not remained present before the Court and has approached this Court for getting the non-bailable warrant quashed

5 The record reflected from the Order sheet shows that the applicant has jumped the bail and the learned trial has rightly issued non-bailable warrant against him. Throughout the period the applicant remained absent and had not attended a single date before the learned trial Court. Therefore, no case for exercise of powers under Section 482 of the Code of Criminal Procedure is made out as such powers are to be exercised sparingly and that too in appropriate cases. In the result, the following Order :

ORDER

- (i) The application is disposed of with a liberty to the applicant to remain present before the learned trial Court as directed and the learned trial Court is directed to consider the application for cancellation of non-bailable warrant issued against the applicant by keeping in mind that offences are bailable in nature, as stated by his learned Counsel.
- (ii) Needless to mention that the application so filed by the applicant should be decided according to law on the date on which he appears without granting any adjournment to the prosecution for giving say on that application and by taking the case on the board.
- (iii) The Application is disposed of accordingly.

(A.M.BADAR, J.)