

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

WRIT PETITION No. 4980 OF 2018

Mani C. Kappen

...Petitioner

Versus

Mr. Dinesh Menon & Anr.

...Respondents

.....

Mr.Ganesh Bhujbal for the Petitioner.

Mrs.Veera Shinde, APP for Respondent No.2– State.

.....

**CORAM: MRS.MRIDULA BHATKAR, J.
DATED : 03 JANUARY 2019**

P.C.:

1. Rule. Rule made returnable forthwith. By consent of the parties, the Petition is heard finally and disposed of at the stage of admission.
2. Respondent No.1 i.e., the original complainant though served, none present.
3. This Petition is directed against the order dated 26th October, 2018 passed by the learned 43rd Metropolitan Magistrate Court, Borivali, Mumbai in C.C. No. 3277/SS/2015.

4. The learned counsel for the petitioner/accused submits that the petitioner/accused is facing charges under section 138 of the Negotiable Instrument Act for an amount of Rs. 2 Crores and the matter is pending before the learned 43rd Metropolitan Magistrate Court, Borivali, Mumbai. He further submits that the process was issued on 5th January 2018 and made returnable on 31st July, 2018. He further submits that on receipt of summons, the petitioner/accused through his advocate appeared before the learned Magistrate, filed Vakalatnama and also filed an application for exemption. He further submits that on that day, the learned Magistrate had passed the conditional order, directing the accused to appear on the next date and shall seek bail. Thereafter, the matter was fixed on 26th October, 2018. He further submits that on 26th October, 2018, the petitioner/accused could not attend the Court, as he was unwell and was residing at Palai, District Kottayam, Kerala. He points out a medical certificate dated 22nd October, 2018. He further submits that on 26th October, 2018, the learned Magistrate issued non-bailable warrant against the petitioner/ accused and, therefore, he is before this Court requesting to cancel the warrant. He further submits that now the matter is fixed before the learned Magistrate on 1st April, 2019 and

the petitioner/accused undertakes to appear on that day before the learned Magistrate.

5. The learned APP submits to the order passed by this Court.

6. Perused medical certificate dated 22nd October, 2018. Considered submissions made by the learned counsel for the petitioner/accused.

7. In view of the submissions and the medical certificate, Rule is made absolute in terms of prayer clause (a), on a condition that the petitioner/accused shall appear before the learned Magistrate without fail. If this direction is not followed, then the learned Magistrate may again pass necessary orders of issuance of non-bailable warrant.

8. Writ Petition is allowed and accordingly disposed of.

(MRIDULA BHATKAR, J.)