

Vidya Amin.

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

CRIMINAL APPLICATION NO. 1351 OF 2018

Bablu Hiralal Sarwan ... Applicant

VS.

The State of Maharashtra ... Respondent

Mr. Manoj M. Gadkari, Advocate for the applicant.

Mr. A.R. Patil, APP for the respondent/State.

CORAM: Mrs.MRIDULA BHATKAR, J.

DATED: 14th January, 2019

P.C. :

The applicant has moved this Application under section 482 of Cr. P.C. challenging the order dated 17th September, 2018 passed by the learned Additional Sessions Judge, Baramati wherein the Judge has issued Non-Bailable Warrant and also passed the order of issuance of proclamation under section 82 of Cr. P.C. against accused nos. 6 to 15.

2. The learned counsel for the applicant has rightly pointed out that on the same day, the orders of Non-Bailable warrant and proclamation cannot be passed.

3. Learned APP has submitted that though the orders of

issuance of Non-Bailable warrant and proclamation are passed on 17th September, 2018, the order of proclamation was executed on 15th December, 2018 , i.e., only after receiving the report of Non-Bailable Warrant. Thus, the order is not bad in law.

4. Only after receiving the report of Non Bailable Warrant, the accused is not traceable to the police and he is not appearing before the Judicial Magistrate First Class and before the Additional Sessions Judge. Therefore, the learned Additional Sessions Judge passed the order of Non-Bailable Warrant. The order of proclamation should not have been passed in anticipation that he would be found pursuant to the execution of Non-Bailable Warrant. Hence, the order of proclamation passed by the learned Additional Sessions Judge on 17th September, 2018 is bad in law and the order of proclamation only is hereby set aside. Further, the execution of the said order of proclamation also is set aside. The learned Sessions Judge has not mentioned any date in the roznama about the report of the police pursuant to the execution of Non-Bailable Warrant. It is necessary for the learned Additional Sessions Judge to specifically mention in roznama about the receipt of the police report and he has perused the police report of

non-execution of Non-Bailable Warrant and thereafter he may take further steps of issuance of proclamation. The Investigating officer may place the report of non-execution of Non-Bailable Warrant against accused nos. 6 to 15.

5. Criminal Application is allowed.

(MRIDULA BHATKAR, J.)