

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

CRIMINAL APPLICATION (APPW) NO. 261 OF 2019

IN

CRIMINAL WRIT PETITION NO. 58 OF 2019 (Decided on 03.04.2019)

Sachin Pandey .Vs. State of Maharashtra, through PSO, P.S. Yavatmal.

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions Court's or Judge's orders.
and Registrar's Orders.

Mr. M.J. Khan, A.P.P. for applicant-State.

CORAM : V. M. DESHPANDE, J.

DATED : DECEMBER 04, 2019

Heard Mr. M.J. Khan, learned Additional Public Prosecutor for the State who has moved this application for recalling of the order dated 03.04.2019 passed by this Court (Coram: Mrs. Swapna Joshi, J.). None for the original petitioner Sachin Pande (hereinafter referred as “the accused” for the sake of brevity).

The record shows that on 14.10.2019 notice to the accused was issued by this Court on this application. On 18.11.2019, this application was placed before this Court for consideration. That time one Advocate appeared for the accused and requested for adjournment. Accordingly hearing of the application was deferred to 27.11.2019. On 27.11.2019, nobody appeared for the accused. Therefore, in order to give one chance, the matter was adjourned and today it is placed before this Court.

The accused is facing trial vide Sessions Trial No.98/2013 pending on the file of learned Additional Sessions Judge, Yavatmal for the offence punishable under

Sections 376, 417 and 493 of the Indian Penal Code. The offence against him was registered vide Crime No.192/2012 on 23.05.2012 on the report lodged by the victim.

The accused was released on bail during the pendency of the trial. However, it appears that the accused used to remain absent from the trial. Consequently, the learned Additional Sessions Judge, Yavatmal on 26.09.2018, after rejecting the application filed by the accused for exemption, issued non-bailable warrant against him. The accused filed a writ petition i.e. Criminal Writ Petition No. 58/2019 challenging the order dated 26.09.2018. The said writ petition came up for hearing on 03.04.2019 and on the said date, a statement was made by the petitioner/accused through his Advocate that the petitioner/accused could not remain present due to unavoidable circumstances and gave an undertaking to this Court through his Advocate to remain present in the Court during the pendency of the trial. After hearing the learned counsel for the petitioner/accused and the learned Additional Public Prosecutor Mr. M.J. Khan, this Court (Mrs. Swapna Joshi, J.) disposed of the writ petition with following observations:

“For the reasons mentioned in the application and considering that the petitioner undertakes to remain present before the trial Court on the adjourned date, the petition stands disposed of with a direction that the trial Court to decide the application filed by the petitioner for cancellation of non-bailable warrant on its own merits. Till that time, no coercive action be taken against the petitioner. The application, if filed, be decided within a period of two weeks. With this order, the petition stands disposed of.”

From the aforesaid it is clear that the accused was to file an application for cancellation of non-bailable warrant before the learned trial Court and the learned trial Court was directed to decide the same on its own merits and till that time no coercive action was to be taken against the accused.

As per order dated 03.04.2019, after the application is filed for cancellation of non-bailable warrant, the Court below was directed to decide the same within a period of two weeks.

On 16.08.2019, the learned Additional Sessions Judge, Yavatmal before whom the trial of the accused is pending, intimated to the Registrar (Judicial) of this Court by letter having outward no.34/2019, wherein it was intimated that neither the accused appeared before the Additional Sessions Judge as directed by this Court nor any application is filed for cancellation of non-bailable warrant. It is also brought to the notice to this Court by learned Additional Sessions Judge that because of the direction given in order dated 03.04.2019 the said Court is unable to take any step and the trial has been protracted.

After hearing the learned Additional Public Prosecutor and after perusing the letter dated 16.08.2019 given by learned Additional Sessions Judge, Yavatmal. It is clear that accused was absent for more than 50 dates. In the past, when non-bailable warrants were used to be issued, most of the times those warrants could not be executed and sometime in execution when he used to appear, he used to

file application for cancellation of warrant and the warrant used to be cancelled. The learned Judge also informed that several times exemption to the personal attendance were given very liberally. However, on 26.09.2018, ultimately learned Judge of the Court below rejected the application (Exh.39) for personal exemption and Exh.40 for adjournment since the trial was not proceeding and the witnesses of the prosecution namely the victim and her brother were present and thereafter issued non-bailable warrant which was challenged before this Court.

From the aforesaid chronology, it is clear that accused is having scant respect to the process of law. He has enjoyed the order of bail however did not follow the conditions. Thus he has jumped the bail. Not only that on earlier occasion when non-bailable warrant was cancelled by the learned trial Court, he continued his habit of remaining absent. This Court cannot give blind eye to the conduct of the accused that only because of him the trial is not proceeding and on 50 occasions he remained absent before the Court below.

Not only that when this Court protected him by order dated 03.04.2019 with a condition that he should remain present before the Court below and should file application for cancellation of non-bailable warrant, neither he appeared before the learned Judge of the trial Court nor filed any application. Consequently this is a fit case wherein this Court should recall the order dated 03.04.2019. Consequently, I pass the following order:

ORDER

- (i) The application filed by the State is allowed.
- (ii) The order dated 03.04.2019 is hereby recalled.
- (iii) Issue non-bailable warrant against accused- Sachin Pandey.
- (iv) Not only the Superintendent of Police, Yavatmal but the Commissioner of Police, Nagpur are directed to ensure the execution of non-bailable warrant without losing any precious time. After execution of the non-bailable warrant, the accused be produced before the learned Additional Sessions Judge, Yavatmal and the learned Additional Sessions Judge, Yavatmal to proceed with the trial i.e. Sessions Trial No.98/2013 immediately. If any application is moved for bail before the learned Judge of the trial Court, while deciding the said application it is expected from the learned Additional Session Judge to keep in mind the past conduct of jumping the bail and not adhering to the conditions imposed by this Court in the writ petition.
- (v) The Superintendent of Police, Yavatmal and the Commissioner of Police, Nagpur are directed to file compliance report before this Court within 10 days.
- (vi) The criminal writ petition is disposed of.
- (vii) A copy of this order, duly authenticated, be supplied to the learned Additional Public Prosecutor for taking effective steps.

JUDGE