

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

CRIMINAL BAIL APPLICATION NO. 176 OF 2020

Nandu Bharat Kale
V/s.

.. Applicant

The State of Maharashtra

..Respondent

Mr. Priyal Sarda for the Applicant.

Mr. Y.M. Nakhwa, APP for the Respondent-State.

CORAM : C.V. BHADANG, J.

DATE : 04th DECEMBER, 2020

P.C.

1. The applicant (accused No.2) along with co-accused is facing prosecution for the offence punishable under Section 395 read with Section 324 of I.P.C. The offence in this case is of the year 2006. It appears that the applicant after his arrest was released on default bail under Section 167(2) of Cr.P.C. on 30.10.2006. The record indicates that after this, the applicant and some of the co-accused continued to remain present before the learned Magistrate atleast till the year 2008 and thereafter, failed to remain present on account of which a non-bailable warrant was issued against the applicant on

22.02.2010. The applicant was arrested on 27.09.2019 and since then, he is in custody.

2. In the meantime, the learned Judicial Magistrate First Class, Solapur by an order dated 09.06.2015 committed the case to the Court of Sessions. The said order refers to a permission granted for committal in the absence of accused vide outward No. 2149 of 2015. None of the parties have placed on record a copy of the said order granting permission.

3. Be that as it may. It is submitted by the learned counsel for the applicant that the committal order of the year 2015 is illegal, as it is passed in breach of provisions of Section 209 of Cr.P.C. It is submitted that the said order could not have been passed in the absence of the applicant and therefore, the entire proceedings before the learned Session Judge and consequent arrest are illegal and applicant is entitled to be released on bail.

4. The learned A.P.P. has placed on record a report dated 21.10.2020 from P.I. Solapur Taluka police station, which shows that in the interregnum, that is from the year 2011 to 2015, the applicant has committed seven similar offences, while he was absconding. He

submits that the committal order cannot be said to be illegal. In any event, this was not the ground raised before the learned Sessions Judge.

5. I have carefully considered the circumstances and the submissions made.

6. Prima facie, it appears that after the applicant was released on default bail, the chargesheet came to be filed in the year 2007 and the applicant was attending the case before the learned Judicial Magistrate First Class at least till the year 2008. A perusal of roznama dated 10.01.2008 (at page 24) shows that a pursis was filed by present applicant along with accused Nos. 1 and 8 (Exhibit D-22), on the basis of which the case was closed for committal to the Court of Sessions. Prima facie it cannot be accepted, that the order of committal was passed in breach of Section 207 and 208 of Cr.P.C. Nothing is brought on record that there was non-compliance with these provisions. That apart, this was not the ground raised before the learned Sessions Judge. The learned Counsel for the applicant submits that this being a legal issue, can be allowed to be raised for the first time before this Court. It is true that the legal point can be raised before this Court. However, the factual

foundation on the basis of which said legal ground is raised has to be made out before the learned Sessions Judge. That apart, in my considered view, the legality of the committal order cannot be examined in the present application under Section 439 of Cr.P.C.

7. Considering the fact that the offence is of the year 2006, the applicant was absconding from the year 2010 and the applicant came to be arrested in the year 2019 in pursuance of the non-bailable warrant issued by the learned Sessions Judge and in the interregnum it is alleged that there are seven similar offences registered against the applicant, I do not find that a case for grant of bail is made out.

8. In the result, the Criminal application is dismissed.

C.V. BHADANG, J.