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

***CRIMINAL APPLICATION NO.497 OF 2020
(CRIMINAL APPLICATION (STAMP) NO.5898 OF 2020)***

Waryam Singh	...Applicant
Versus	
The State of Maharashtra and Anr.	...Respondents

Ms. Foram Vora, for the Applicant.

Mr. A. R. Patil, A.P.P for the Respondent No.1– State.

Mr. Aamir Malik a/w Mr. Ashish Gabhale i/b Jay & Co., for the Intervener
– Punjab & Maharashtra Co-op. Bank.

CORAM : REVATI MOHITE DERE, J.

DATE : 9th DECEMBER, 2020

P.C. :

1. Heard learned counsel for the parties.
2. The applicant is aggrieved by the order dated 10th November 2020, passed by the learned Additional Chief Metropolitan Magistrate, 47th Court, Esplanade, Mumbai, by which the learned Magistrate was pleased to cancel the facility of home food provided to the applicant in jail, on an application preferred by the Superintendent, Taloja Central Prison.

3. Learned Counsel for the applicant submits that the learned Magistrate vide order dated 17th October, 2019 had permitted the applicant to have home food, whilst in jail. She submits that subsequently the Jailor, Mumbai Central Prison had preferred an application for reconsideration of the order permitting home food to the applicant, which application was rejected by the learned Magistrate vide order dated 24th October, 2019. According to the learned counsel for the applicant, subsequently the jail authorities i.e. the Superintendent, Taloja Central Prison again preferred an application and again sought cancellation of the facility of home food provided to the applicant. Learned Counsel for the applicant submits that the advocate for the applicant was not heard by the learned Magistrate before the impugned order was passed. From the order it appears that notice was issued to the applicant in jail through e-mail and that no reply was filed by the applicant. Since home food was earlier permitted by the learned Magistrate, the learned Magistrate ought to have given an opportunity to the applicant's advocate to represent him so that he/she could be heard before the impugned order was passed.

4. Learned APP also states that from the order it appears that the advocate for the applicant was not heard.

5. Considering that the advocate for the applicant/nor the applicant was heard before the impugned order was passed, the impugned order dated 10th November 2020, passed by the learned Additional Chief Metropolitan Magistrate, 47th Court, Esplanade, Mumbai, is quashed and set aside and the matter is remitted back to the trial Court for fresh consideration. The application preferred by the Superintendent, Talaja Central Prison is restored back to its original file. The learned Magistrate to pass appropriate orders on the said application preferred by the Superintendent, Talaja Central Prison for cancellation of the order providing home food to the applicant, on its own merits, after hearing the parties, uninfluenced by the earlier order. The learned Magistrate to decide the said application, as expeditiously as possible, and in any event, within two weeks from the date of receipt of this order.

6. It is made clear, that this Court has not gone into the merits of the aforesaid application filed by the applicant and as such all contentions of all parties are kept open.

7. Application is accordingly disposed of on the aforesaid terms.

8. All concerned to act on the copy of this order, digitally signed by the Private Secretary of this Court.

REVATI MOHITE DERE, J.