

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO.510 OF 2018
AND
INTERIM APPLICATION NO.1 OF 2020
ALONG WITH
CRIMINAL APPLICATION NO.511 OF 2018
AND
INTERIM APPLICATION NO.1 OF 2020**

State of Maharashtra

..

Applicant

Vs.

Mohiddin Abubakar Mulla

..

Respondent

...

Mr. P.P. Shinde, A.P.P. for the State

Mr. Wasim Samlewale for the Respondent.

...

CORAM: SMT. BHARATI DANGRE, J.

DATED : 25th FEBRUARY, 2020.

P.C:-

1. On 11/02/2020, non bailable warrant came to be issued against the Respondent-accused in the present Criminal

Applications filed by the State seeking cancellation of bail by invoking sub-section (2) of Section 439 of the Cr.P.C.

2. Interim Applications are taken out by the Respondent-accused praying for cancellation of non-bailable warrant issued by order dated 11/2/2020. In the said Applications, the Respondent-accused has placed reliance on the medical treatment taken by him for his fractured leg and he has placed on record a medical certificate dated 14/02/2020 issued by the Mmedical Officer, Miraj. He has also highlighted the other medical problems faced by him since he has only one kidney and the multiple health issues arise therefrom. He has categorically made a statement in the Applications that on account of aforesaid medical emergencies he could not attend the court proceedings. However, he has made a categorical statement which he requests the Court to accept as an undertaking that he will attend the police station as and when required and in this background, he makes a request for re-calling of the order dated 11/02/2020.

3. Perused the Interim Applications. Learned A.P.P. do not dispute the medical certificate placed on record since they are issued by the Government Hospital at Miraj. Perusal of the said document clearly reflects the medical condition of the accused and that on account of the fracture in his left leg he was unable to travel and attend to the court proceedings. In the light of the

medical certificate issued by the Department of Orthopedic and in view of the treatment to be followed as per the medical papers, the order dated 11/02/2020 is recalled. The recall is however made subject to the accused complying with the undertaking submitted by him in his application that as and when required, he will attend to the proceedings and, if he is required to undergo any medical treatment, due intimation to that effect will be made to the appropriate court through his counsel and on the court considering such a request.

4. As far as the Criminal Applications are concerned, the same are filed by the State seeking cancellation of bail order dated 20/03/2018 passed by the learned Additional Sessions Judge, Kolhapur thereby releasing the accused on bail in connection with the C.R. No.49 of 2017 and CR No.48 of 2017 subject to the terms and conditions imposed therein.

5. On perusal of the said Criminal Applications filed by the State invoking powers under sub-section (2) of Section 439 of the Cr.P.C., it can be seen that no grounds are made out for exercise of the said powers. The cancellation of bail is only permitted on the permitted grounds which occur pursuant to the release of the accused on bail or when there is an apparent illegality found in the order granting bail. The learned A.P.P. informs that similar applications filed have already been rejected by this court. In such

circumstances, she does not press these Criminal Applications. However, she insists that the conditions imposed in the said order requiring the attendance of the accused on the prescribed day and time fixed should continue during the trial.

6. The accused is directed to co-operate and report in terms of the order releasing him on bail. The learned A.P.P. fairly states that the accused has reported to the concerned police station and there is no grievance of the State in regard to the non-co-operation of the accused in the trial.

7. In such circumstances, the Interim Applications as well as the Applications filed by the State are dismissed.

[SMT. BHARATI DANGRE, J.]