

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Proceedings through Video Conferencing****Criminal Revision No.469 of 2021**

- Yogesh Nirmalkar S/o. Harishchand Nirmalkar, aged about 31 years, R/o. Village Gahiranawgaon, Police Station Devri, District Balod (CG)

---- Applicant**Versus**

- State Of Chhattisgarh Through District Magistrate Balod, Police Station Devri District Balod (CG)

---- Respondent

 For Applicant : Shri Ajay Thakre, Advocate
 For respondent/State : Shri Dinesh Tiwari, Dy. Govt. Advocate

Hon'ble Shri Justice N.K. Chandravanshi**Order On Board****30.7.2021.**

1. With the consent of both the parties, the revision is heard finally.
2. This revision petition has been preferred against order dated 05.7.2021 passed by First Additional Sessions Judge, Balod in Criminal Appeal No.19/2017 (Yogesh Nirmalkar Vs. State of Chhattisgarh) whereby application filed by the applicant under Section 70(2) of the CrPC has been rejected.
3. Learned counsel for the applicant submits that the appeal was fixed for final arguments on 20.3.2020 but due to spread of Covid-19 pandemic and lockdown, movement of persons from one place to another place was restricted and the applicant could

not appear before the Court on 20.3.2020 and thereafter further dates i.e. 22.12.2020, 12.01.2021, 05.02.2021, 26.02.2021 and 12.3.2021 were given by the appellate Court but due to non-appearance of the applicant on 12.3.2021 for final arguments, order for issuance of warrant of arrest against the applicant has been passed by the learned appellate Court. Learned counsel for the applicant further submits that looking to the spread of Covid-19 pandemic situation, the learned appellate Court ought to have allowed the application filed by the applicant, but without considering the facts, the order passed by the appellate Court is erroneous and not sustainable, therefore, the revision petition may be allowed and the order impugned may be set aside and also order for issuance of non-bailable warrant against the applicant may be cancelled in the interest of justice.

4. Per contra, learned counsel for the State submits that despite giving many opportunities to appear before the appellate Court, the applicant failed to appear, therefore, order for issuance of warrant of arrest has been passed against him.

5. It is not disputed that those dates fixed for final hearing were pandemic days and due to lockdown and spreading of Covid-19, public movements were restricted. The applicant seems to be residing in a village, therefore, looking to the totality of the facts and also considering that order for issuance of warrant of arrest has already been passed against him, I am not inclined to set aside the impugned order dated 05.7.2021 passed

by learned First Additional Sessions judge, Balod in Criminal Appeal No.19/2017. However, it is directed that if the applicant appears before the concerned appellate Court and files an application under Section 70(2) of the CrPC afresh, then the learned appellate Court shall consider and decide the said application by taking liberal view, looking to the pandemic situation and lockdown restrictions imposed upon the public in general in those days.

6. In view of the above, the revision petition stands disposed of accordingly.

Sd/-
(N.K. Chandravanshi)
JUDGE