

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CRIMINAL APPELLATE JURISDICTION****CRIMINAL WRIT PETITION NO. 689 OF 2021**

Prakash Manohar Varude

....Petitioner.

Vs.

Shreyas Nagari Sahakari
Patsanstha And Anr.

....Respondents.

Mr.J.P. Kharge for the Petitioner.

Smt. Rutuja Ambekar, APP for the Respondent-State.

CORAM : A. S. GADKARI, J.**DATE : 5th APRIL, 2021.****PC.:-**

It is the settled position of law that, dismissal of Appeal against the conviction simplicitor for non-prosecution, is not contemplated. The Hon'ble Supreme Court in the case of *Bani Singh Vs. State of U.P.* reported in AIR 1996 SC 2439 : (1996) 4 SCC 720 has held that, "*the bar clearly expects the Appellate Court to dispose off the appeal on merits- by cross checking the reasoning with the evidence on record with a view to satisfying itself that the reasoning and findings recorded by the trial Court are consistent with the material on record.*"

2 The Appellate Court by its impugned Order dated 4th September, 2019 has dismissed Appeal No.107 OF 2006, against conviction

filed by the Petitioner for non-prosecution.

3 Perusal of record indicates that, on 31st March, 2018, the Appellate Court (page No.37 of the Petition) had written that, *“This is an appeal against conviction & matter is of 2006. Being an appeal against conviction, it can’t be dismissed for default & hence its stage is changed and it be fixed for hearing.”*

Despite the said fact, the successor in title of the concerned Appellate Court has dismissed the Appeal for want of non-prosecution. After dismissal of the Appeal, a standing non-bailable warrant has been issued against the Petitioner by the learned Judicial Magistrate, First Class, Vita.

4 As noted earlier, the Appeal against conviction preferred by the Petitioner, ought not have been dismissed by the Appellate Court.

In view of the above, Order dated 4th September, 2019 passed in Appeal No.107 OF 2006, by the learned District and Sessions Judge, Sangli dismissing the said Appeal, is quashed and set aside.

As a consequence thereof, the standing non-bailable warrant issued against the Petitioner by Order dated 11th October, 2019 by the learned Judicial Magistrate, First Class, Vita District Sangli is also set aside.

5 Appeal No.107 of 2006 is restored to the file of learned District and Sessions Judge, Sangli. The said Appeal be listed on Board before the

learned District and Sessions Judge, Sangli on 30th April, 2021, “*for directions*”. The Appellant is directed to attend each and every date of hearing before the Appellate Court, except precluded for medical reasons.

6 Petition is allowed in the aforesaid terms.

(A.S. GADKARI, J.)