

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL WRIT PETITION NO. 2395 OF 2021

Wasim Safiullah Ansari @

Mohammad Vasim

...Petitioner

Versus

The State of Maharashtra

...Respondent

Mr. Shashikant Chaudhari a/w Mr. Gyanprakash Pal, Pranot Pawar i/b
Maharashtra Law Juris for the Petitioner.

Mr. A.D.Kamkhedkar, APP for the Respondent/State.

Mr.Sapkale, PSI, Vinoba Bhave Nagar Police Station.

CORAM : REVATI MOHITE DERE, J.
DATE : 7th JULY, 2021
(Through Video Conferencing)

P.C. :

1. Heard learned Counsel for the parties.
2. At the outset, learned Counsel for the petitioner seeks leave to amend the prayer clause. Leave granted. Amendment to be carried out during the course of the day.
3. By this application, the petitioner seeks quashing of the non-

bailable warrant issued by the learned Special Judge, (POCSO), Mumbai vide order dated 23rd August, 2019 in Special Case (POCSO) No.37 of 2014.

4. Learned Counsel for the petitioner submits that the petitioner was present in Court on 1st August, 2019, on which date, PW-1's deposition was over. Learned Counsel for the petitioner submits that the petitioner could not remain present before the Trial Court after the aforesaid date as the petitioner's father suffered a paralytic stroke. He submits that as the petitioner was not present before the Trial Court on the subsequent date i.e. 23rd August, 2019, the Trial Court issued a non-bailable warrant as against the petitioner, on the said date. Learned Counsel for the petitioner further submits that the petitioner was in Uttar Pradesh taking care of his father who had suffered a paralytic stroke and that in March, 2020, there was lockdown in India, as a result of which, the petitioner could not travel to Mumbai. He submits that the petitioner's father expired on 9th December, 2020 and the petitioner had to complete the rituals for his father. He submits that at no point of time, it was the intention of the petitioner not to remain present before the Trial Court. He submits that the petitioner had contacted his Advocate who informed him that a non-bailable warrant has been issued against him and hence the petitioner engaged another Advocate

for cancelling his non-bailable warrant. Learned Counsel submits that the application filed by the petitioner was rejected by the Sessions Court on 5th February, 2021. He submits that the said application seeking cancellation of warrant was rejected essentially on the premise that the address mentioned by the petitioner was not correct and as the surety (petitioner's father) had expired and as the petitioner was not present on the date when the application was filed. Learned Counsel for the petitioner has filed an affidavit of undertaking of the petitioner dated 7th July, 2021. The same is taken on record.

5. Prima facie, no fault can be found with the impugned order. The petitioner ought to have remained present before the Trial Court. The Trial Court was constrained to issue non-bailable warrant as against the petitioner, as the petitioner failed to remain present before the Court and for the reason set out in the order. The petitioner ought to have been diligent.

6. Be that as it may. The petitioner's father had suffered a paralytic stroke in August, 2019, as a result of which, the petitioner had to go to Uttar Pradesh. On 9th December, 2020, the petitioner's father expired. Learned Counsel has annexed the death certificate of petitioner's father to the affidavit cum undertaking dated 7th July, 2021. It is not in dispute that

since end of March, 2020, there was lockdown. As noted above, the petitioner ought to have been diligent. The trial of the petitioner has already commenced. The petitioner has filed his affidavit cum undertaking stating therein that he will attend the Trial Court personally on each and every date of hearing and proceed with the trial without any further delay. He has also undertaken to engage an Advocate to appear before the Trial Court and as stated that he will ensure that the Advocate will remain present on each and every date. He has further assured that he will attend the Trial Court till the conclusion of the trial and will provide his local address to the Trial Court. Learned Counsel for the petitioner states that the petitioner will also furnish surety as his father who was standing as his surety, has now expired. He submits that the petitioner will furnish fresh surety within three weeks from today. Statement accepted.

7. In view of the aforesaid, and in particular, having regard to the undertaking filed by the petitioner that he will remain present on each and every date before the Trial Court personally and will ensure that his Advocate will remain present on each and every date and that he will not delay the trial, the application is allowed and the impugned order dated 23rd August, 2019 issuing non-bailable warrant is quashed and set aside. The petitioner to furnish fresh surety within three weeks from today. The

petitioner to remain present on each and every date before the Trial Court, failing which, it is open for the Trial Court to take appropriate steps to secure the presence of the petitioner. A copy of the undertaking filed by the petitioner in this Court also be placed before the Trial Court on 12th July, 2021 which is the next date in the Trial Court.

8. The petition is disposed of in the aforesaid terms and conditions.

9. All concerned to act on the authenticated copy of this order.

REVATI MOHITE DERE, J.