

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**  
**CRIMINAL APPELLATE JURISDICTION**  
**CRIMINAL BAIL APPLICATION NO.2460 OF 2021**

Ganesh @ Chiknya Dinkar Gaikwad .. Applicant  
Versus  
The State of Maharashtra .. Respondent

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Mr.Kuldeep U. Nikam i/b Mr.Prasad Avhad for the Applicant.  
Ms.Rutuja Ambekar, APP for the State.

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**CORAM: BHARATI DANGRE, J.**  
**DATED : 11<sup>th</sup> AUGUST, 2021**

**P.C:-**

1. The applicant is charge-sheeted in C.R.No.156 of 2013 registered with Dahiwadi Police Station, which invokes Sections 307, 336, 324, 141, 142, 143, 144, 147, 148, 149, 506 of the IPC and Section 37(1)(3) read with Section 135 of the Maharashtra Police Act.

2. The applicant was protected from arrest and his status as such continued till the trial commenced before the learned Additional Sessions Judge, Vaduj on 20/01/2021. On the said date, the complainant came to be examined and the case was posted on 09/02/2021. The applicant's absence was marked on the said date and NBW came to be issued against him. The applicant appeared in the Court on 30/03/2021 and filed an application for cancellation of NBW. In the application seeking

cancellation, the applicant relied upon an important event, which compelled him to remain absent from the proceedings, being he was admitted in Anandvan De-Addiction cum Rehabilitation Center from 21/01/2021 and came to be discharged 29/03/2021 and that is the date when he gained knowledge about the NBW being issued and he moved the application. The submission is that the absence was *bona fide* and for the reason beyond his control.

3. Learned Additional Sessions Judge, taking note of the earlier conduct of the applicant, being his absence on 18/03/2020, when NBW was issued against him, but later on recalled on account of sufficient ground being shown, hold this conduct against him. Apart from this, registration of another case under the POCSO Act is also accounted against the relief of cancellation of NBW and his release on bail. The apprehension expressed is that the applicant will again remain absent and the trial will be prolonged.

4. Perusal of the impugned order would reveal that the trial commenced on 20/1/2021 and on the next date i.e. on 09/02/2021, the applicant remained absent. The NBW came to be issued on the same day. The reasons for his absence have surfaced on record from the certificate, which has been annexed with the application. True that the trial of the matter is pending since 2014 and the applicant without any justifiable reason should not absent himself as this would delay the trial. However, taking into account the fact that the applicant was already admitted to interim protection and continued to enjoy

the same till date, the applicant is held entitled to be released on bail by setting aside the order dated 01/06/2021. This is however, subject to the stipulation that the absence of the applicant on any single date of the trial, without seeking exemption from the learned Sessions Judge before whom the trial is proceeding, would entitle the prosecution to apply for cancellation of his bail and in such contingency, the applicant will not be entitled to be released on bail. Hence, the following order.

: **ORDER** :

- (a) The application is allowed.
- (b) Applicant – Ganesh @ Chiknya Dinkar Gaikwad shall be released on bail in C.R.No.156 of 2013 registered with Dahiwadi Police Station on furnishing P.R. bond to the extent of Rs.20,000/- with one or two sureties of the like amount.
- (c) The applicant shall attend the trial on every date of hearing unless specifically exempted by the Sessions Court.
- (d) The failure on part of the applicant to do so would entitle the prosecution to move for cancellation of his bail.
- (e) The applicant shall not directly or indirectly make any inducement, threat or promise to any person acquainted with facts of case so as to dissuade him from disclosing the facts to Court

or any Police Officer and shall not tamper with the prosecution evidence.

**( SMT. BHARATI DANGRE, J.)**