

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

Criminal Application (APL) No. 566 / 2021

Ashok Kumar Agarwal and Anr. .. Applicants
Versus.
The State of Maharashtra and Anr. .. Respondents

Advocate Ashish Raghuwanshi i/by Mr. Jugal Kanani, for
the Applicant.

Mr. Akshay Shah, Advocate for Respondent No.2.

Mr. Y.M. Nakhawa, APP for State.

CORAM : SANDEEP K. SHINDE J.

DATE : 20th DECEMBER, 2021.

P.C. : -

Heard. Learned Counsel for the parties.

1. The learned Metropolitan Magistrate, 63rd Court, Andheri, Mumbai declined to cancel the Non-Bailable Warrant, issued against the Applicants. That order is assailed before me.

2. Prima-facie, it appears from the impugned order

that the Applicants-Accused were irregular in attending the Court proceedings, who are resident of Delhi. Complainant's grievance is that Applicants were not found on the given address, when the process was sought, to be served on them. Next grievance is that even Delhi Police were not taking efforts to serve the process on the Applicants, issued by the learned Magistrate. In the context of these facts, the learned Magistrate in order declining to cancel the Non-Bailable Warrant, has observed the continuous absence of Accused, has hampered the trial and therefore it was not just and proper to cancel the Non-Bailable Warrant. Still and all, Applicants are facing prosecution under Section 138 of the Negotiable Instruments Act and the trial has reached the stage of cross-examination of the witnesses. The next date scheduled before the trial Court is 27th January, 2022. Learned Counsel appearing for the Applicants, on instructions undertakes that the Applicants shall remain present before the trial Court on each day; unless their presence is exempted, in the extra-ordinary circumstances, Applicants thus, undertake

to file an Undertaking before this Court, whereby they shall set-out their correct address, contact details and email Id. A copy of the Undertaking shall be also given to the Complainant.

3. The Applicants are present in the Court. They shall file an Undertaking before this Court on or before 23rd December, 2021.

4. Having regard to the facts of the case, I deem it appropriate to impose the cost of Rs. 25000/-. The cost shall be paid to the Complainant or to their Advocate on or before 23rd December, 2021.

5. Thus, in view of the Undertaking, that Applicants have agreed to file before this Court, the Non-Bailable Warrant/s issued against the Applicants in Summary Criminal Case No. 5739/SS/2017 are recalled and cancelled. Application is allowed and disposed of.

6. List the application to verify the compliance on 23rd December, 2021.

MOHAMMAD
NAJEEB
MOHAMMAD
QAYYUM

Digitally signed
by MOHAMMAD
NAJEEB
MOHAMMAD
QAYYUM
Date: 2021.12.21
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(SANDEEP K. SHINDE, J.)