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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

WRIT PETITION NO.3188 OF 2021

Ranbir A. Aggarwal

... Petitioner

Vs

The State of Maharashtra
& Anr.

... Respondents

...

Mr. Niranjana Bhavake with Ms. Chaitali Pachpute i/by
Bhavake & Associates for the Petitioner.

Mr. A.D. Khamkhedkar, APP for the Respondent-State.

CORAM : SANDEEP K. SHINDE J.
DATE : 9th SEPTEMBER, 2021.
(Through Video Conferencing)

P.C. :

Heard.

2 The petitioner challenges the order dated 2nd
September, 2021 in Case No. SS/2472/2014 passed by the
learned Metropolitan Magistrate, 16th Court at Ballard Pier,
Bombay. Petitioner/Accused in the proceedings under
Section 138 of the Negotiable Instruments Act, 1881 did not
attend the proceedings at the stage of recording his

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statement under Section 313 of the Criminal Procedure Code, 1973. Thus, non-bailable warrant was issued. It's execution was stayed on 16th March, 2021, on an assurance by the petitioner that he would attend the proceedings. On the next scheduled date, he did not remain present. In consequence, the learned Magistrate issued non-bailable warrant on 2nd September, 2021. This order is impugned in this petition.

3 The learned counsel for the petitioner would contend that the applicant was indisposed and his wife was suffering from Corona virus disease. He would rely on the medical certificates, at Pages 54 and 55 of the petition. I am satisfied that the petitioner-accused, was prevented by 'sufficient cause' from appearing before the learned Magistrate on 2nd September, 2021. Yet his absence on the earlier occasions has to be noted. In the circumstances, though I am setting aside the impugned order, it is subject to cost of Rs.25,000/- ,which the petitioner shall deposit with Tata Memorial Hospital within two weeks from today.

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The learned counsel for the petitioner undertakes that the petitioner shall remain present before the learned Magistrate on the next date scheduled for recording statement under Section 313 of the Code of Criminal Procedure, 1973 and continue to attend, unless his presence is exempted. Statement is accepted as Undertaking.

4 Petition is allowed in the aforesaid terms and disposed off.

(SANDEEP K. SHINDE, J.)