

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

WRIT PETITION NO.3441 OF 2021

Baldevbhai R. Patel ... Petitioner
Vs
The State of Maharashtra ... Respondents
...

Ms. Alpa T. Javeri for the Petitioner.

Smt. Sharmila Kaushik, APP for the Respondent-State.

CORAM : SANDEEP K. SHINDE J.
DATE : OCTOBER 4, 2021.

P.C. :

Heard.

2 Petitioner is accused in Criminal Case No. 606/PW/2019 pending in the Court of Metropolitan Magistrate 71st at Bandra. His attendance in the said proceedings was exempted by the learned Magistrate on 2nd March, 2021 upon an assurance that he will remain present on 3rd September, 2021 so that charge

could be framed against him. An application was moved on 3rd September, 2021 seeking exemption of his presence. The application was rejected by the learned Magistrate may be in view of the order passed on 2nd March, 2021 followed by order, 'issue Non-bailable Warrant', an application was moved, seeking cancellation of NBW, but was rejected on 8th September, 2021. Feeling aggrieved by this order, this Writ Petition is preferred.

3 Heard Ms. Javeri, the learned counsel for the petitioner and the learned prosecutor for the State.

4 The learned counsel for the petitioner would contend that accused was unable to attend the proceedings on 3rd September, 2021 for the reason that there was a marriage in the family and it was not possible for him to travel from Gujarat to Mumbai being

a Senior Citizen. Learned counsel for the petitioner would rely on, marriage invitation card. It is further submitted that the learned Magistrate ought not to have issued NBW unless circumstances justify that accused will not voluntarily appear. The learned counsel relied on paragraphs 52 and 53 of the Apex Court in the case of **Inder Mohan Goswami v. State of Uttaranchal 2008 AIR (SC) 251**. These paragraphs read as under:

“52 Non-bailable warrant should be issued to bring a person to court when summons of bailable warrants would be unlikely to have the desired result. This could be when:

**it is reasonable to believe that the person will not voluntarily appear in court; or*

**the police authorities are unable to find the person to serve him with a summon; or*

**it is considered that the person could harm someone if not placed into custody immediately.*

53 As far as possible, if the court is of the opinion that a summon will suffice in getting the appearance of the accused in the court, the summon or the bailable warrants should be preferred. The warrants either bailable or non-bailable should never be issued without proper scrutiny of facts and complete application of mind, due to the extremely serious consequences and ramifications which ensue

on issuance of warrants. The court must very carefully examine whether the Criminal Complaint or FIR has not been filed with an oblique motive.”

5 Thus, in view of the guidelines laid down in the afore-stated judgment, the learned Magistrate ought not to have issued NBW. Yet, in the case in hand, it appears on 2nd March, 2021 when petitioner’s presence was exempted upon understanding that he would remain present on 3rd September, 2021, a date scheduled for framing the charge, but since he did not appear, in the circumstances, the learned Magistrate proceeded to issue NBW. Be that as it may, in consideration of the facts of the case, the order issuing NBW against the petitioner in the Criminal Case No. 606/PW/2019 pending in the Court of Metropolitan Magistrate 71st at Bandra is hereby recalled and quashed, subject to cost quantified at Rs.5,000/-, which the petitioner shall deposit with Tata Memorial Hospital, Parel within four weeks from today.

6 The learned counsel for the petitioner on instructions undertakes that the petitioner shall attend the proceedings before the learned Magistrate on scheduled date and co-operate in the trial. For the reasons stated above, petition is allowed in the aforesaid terms and disposed off.

(SANDEEP K. SHINDE, J.)