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

REVISION APPLICATION NO.184 OF 2021

Nitin Sitaram Wankhede ... Applicant
Vs
The State of Maharashtra ... Respondents
...

Mr. Sayaji D. Nangre for the Applicant.

Mr. Y.M.Nakhawa, APP for the Respondent-State.

CORAM : SANDEEP K. SHINDE J.
DATE : OCTOBER 12, 2021.

JUDGMENT :

Rule.

2 Rule made returnable forthwith. With consent of the learned counsel for the parties, revision is taken up for final hearing.

3 This revision challenges the correctness, legality and propriety of the orders; one dated 17th September, 2021 issuing non-bailable warrant; second dated 27th September, 2021 by which the learned Judge declined to recall the order issuing non-bailable warrants and third; dated 8th October, 2021 rejecting applicant's request to cancel the warrant by imposing the cost of Rs.1,000/-.

4 Admittedly, whilst applicant-accused was present before the Court on 17th September, 2021 in the morning session, co-accused was not present and thus, case was called out in the second session. At that time, applicant was not present. Thus, non-bailable warrant was issued. Applicant's applications to recall the order issuing non-bailable warrants were rejected by the learned Sessions Judge. One of the orders declining to cancel non-bailable warrant reads as under:

“ Before the Court accused not produced from jail. Their advocate present. Rest accused

absent. His advocate present. Application filed by Advocate Shri Ankushe for cancellation of warrant of accused no.4 (No plausible reasons given. Rejected)”

It appears, next hearing date was 8th October, 2021. Roznama of this date shows, advocate of the applicant (Accused No.4) filed application for cancellation of warrant. It was rejected with cost of Rs.1,000/-. Feeling aggrieved by the orders stated above, this Revision Application is preferred.

5 Mr. Nangre, the learned counsel for the applicant submitted that the learned Court was not justified in issuing non-bailable warrants and further committed an error by refusing to recall the orders issuing non-bailable warrants, in-as-much as on the scheduled date for hearing, applicant was present in the Court in the morning session and circumstances much less records and proceedings were not indicating that the applicant will not voluntarily appear.

6 In consideration of the facts of the case, in my view, the orders impugned, were unwarranted, having passed by overlooking the authoritative pronouncements of the Hon'ble Apex Court on the subject in hand in the case of **Inder Mohan Goswami v. State of Uttaranchal 2008 AIR (SC)**

251. Paragraphs 52 and 53 of which 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.”

7 Thus, in view of the settled law, three impugned orders dated 17th September, 2021, 27th September, 2021 and 8th October, 2021 passed in Sessions Case No.212 of 2018 pending on the file of the learned Additional Sessions Judge, Kalyan are quashed and set aside.

8 Needless to state that applicant shall mark his presence in the subject case unless his presence is exempted by the learned Court.

9 Application is allowed in the aforesaid terms and disposed off.

10 Rule is discharged.

(SANDEEP K. SHINDE, J.)