

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CRIMINAL APPELLATE JURISDICTION****CRIMINAL APPLICATION NO. 920 OF 2021**

Prakash Shivchand JakheteApplicant

V/s.

The State of MaharashtraRespondent

* * * *

Mr. S.V. Marwadi a/w. Ms. Priyanka Pathak, i/by. Mr. S.R.
Mithare, *Advocate for the applicant.*

Smt. S.V. Sonawane, *APP for State.*

Coram : Sandeep K. Shinde, J.

Friday, 29th October, 2021.

P.C. :

1. Heard.
2. Applicant is accused in ECA Special Case No.02/2016, pending in the Court of Special Judge, Greater Bombay. The offence in this case was registered in the year 1996 under Sections 3, 7, 8 and 10 of the Essential Commodities Act, 1955. Applicant's application for discharge was rejected by the learned Special Judge on 6th June, 2019. On 6th July, 2019

applicant and his Advocate were absent. The learned Judge, therefore issued notice to the sureties and directed non-bailable warrant against the applicant-accused. It appears, the applicant successfully evaded execution of warrant. The learned Judge has noted this fact in his order dated 5th December, 2019. Therefore, a proclamation was issued under Section 82 of the Criminal Procedure Code. On 1st February, 2020 after reading the report of proclamation, the learned Judge has observed that, applicant-accused was evading the arrest. Therefore, the learned Judge directed warrant of attachment of properties against accused nos.1 and 2 and further directed to appoint a Special Police Officer and the compliance report was called for. Mr. Marwadi, learned Counsel for the applicant has rightly submitted that, the learned Judge has not followed the procedure before issuing, non-bailable warrant or proclamation or warrant attaching the properties. However, the fact remains that, the applicant, chose to remain absent and successfully kept himself away from the process of law, since, after rejection of his discharge application. It cannot be overlooked that crime

in question was registered in September, 1996 and the trial is pending since 2016. The learned Judge could not frame the charge in absence of the applicant-accused. In consideration of these facts, the applicant is granted liberty to move the concerned Court seeking cancellation of non-bailable warrant issued against him. If such an application is moved, the learned trial Judge shall decide the same in accordance with law, preferably within four weeks from today.

3. In the meanwhile, the execution of the non-bailable warrant issued against the applicant is stayed subject to cost, Rs.35,000/- (Rs. Thirty Five Thousand only), which the applicant shall deposit with Tata Memorial Hospital within three weeks from today.

4. Mr. Marwadi, learned Counsel for the applicant, on instructions, undertakes that the applicant shall remain present and attend the proceedings in the trial Court. Undertaking is accepted.

5. In consideration of the facts of the case and Undertaking, the application is partly allowed in the aforesaid terms and disposed off.

6. The trial Court to act on authenticated copy of
this order.

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(Sandeep K. Shinde, J.)