



3. The applicant herein had filed an application under section 389 of the Code of Criminal Procedure. The said application was allowed by this Court vide an order dated 10th July, 2012 and substantive sentence of the applicant was suspended. One of the ground for enlargement of the applicant on bail was that he had tested HIV positive and at the relevant time i. e. on 2nd July, 2012 his T.D Count was 768. The applicant was directed to mark attendance before the concerned Police Station once in a quarter till disposal of the appeal. It is not known as to whether the said condition was complied or not as there is no report from the concerned Police Station.

4. The appeal was enlisted before this Court for final hearing, however, none appeared for the appellant (applicant herein). The learned Counsel representing the appellant had apparently informed the Court that although he had filed Vakalatnama on behalf of the appellant, he had not received instructions to prosecute the said appeal. Hence, the Court was constrained to issue bailable warrant against the appellant. The bailable warrant was executed. Advocate Mr. Aniket Vagal had appeared before the Court and submitted that he was representing the appellant, however, he had failed to file *Vakalatnama* on behalf of the appellant. Hence, by an order dated 13th September, 2021, this Court had issued non bailable warrant against the appellant. On 22nd October, 2021, non bailable warrant was executed and the appellant has been taken into the custody and is lodged in Bombay Central Prison, Arthur Road.

5. Since the applicant was not being represented by any lawyer, we had requested Mr. Mihir Joshi, learned Counsel to espouse the cause of the applicant. He graciously accepted the request to represent the applicant.

6. After execution of the non bailable warrant, Mr. Joshi, learned Counsel so appointed for the applicant has filed this application seeking enlargement on bail. The applicant has tendered unconditional apology as he could not mark presence for hearing of the appeal. It is stated that he had no intention to disobey the orders of the Court and there is no *mala fide* or ulterior motive on the part of the applicant. Learned Counsel for the applicant vehemently submits that the applicant is tested H.I.V positive and his compromised immunity system due to HIV leaves, the applicant highly susceptible to Covid 19, especially in light of the fact that the applicant is in judicial custody.

7. Taking into consideration the above aspects, the applicant deserves to be enlarged on bail on the following conditions;

- (a) The applicant be enlarged on bail on furnishing P.R. bond in the sum of Rs.20,000/- and one or more solvent sureties in the like amount;
- (b) The applicant shall mark his presence before the Sessions Court, Mumbai on 1st November, 2021, 8th November, 2021 and 15th November, 2021;
- (c) The Sessions Court, Mumbai, shall sent the report of his presence to this Court before 22nd November, 2021.

8. This order be conveyed to the applicant in jail.
9. Learned Counsel for the applicant is entitled to the professional fees for filing the application and making submissions in the present application.
10. The application stands disposed of.

[PRITHVIRAJ K. CHAVAN, J.] [SMT. SADHANA S. JADHAV, J.]