

**IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD**

CRIMINAL WRIT PETITION NO. 548 OF 2022

Syed Akbar	... Petitioner
Versus	
The State of Maharashtra	... Respondent

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Mr. Vikas Nawatle, Advocate h/f Mr. Shehzad Naqvi, Advocate for petitioner

Mrs. Geeta L. Deshpande, APP for respondent - State

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CORAM : R. G. AVACHAT, J.

DATED : 22nd APRIL, 2022

PER COURT :-

1. The challenge in this petition is to the orders dated 03.03.2022 and 24.03.2022, passed by the learned Sessions Judge, Nanded, in Criminal Appeal No.10 of 2008.

2. Heard.

The petitioner is one of the appellants in Criminal Appeal No.10 of 2008. It is an appeal against conviction. The petitioner and his parents have been convicted for the offence punishable under Section 498-A and related offences under the Indian Penal Code. The appeal has therefore been preferred by them.

3. It is submitted by the learned Advocate for the petitioner that the appellate Court has issued non bailable warrant (NBW) for securing presence of the petitioner herein. The judgment is ready for pronouncement for little over six months. The presence of the appellant is not necessary before the appellate Court. Insistence for his presence suggests what would be the result of the appeal. He, therefore, urged for grant of petition with a direction to the appellate Court to pronounce the judgment at once.

4. The learned APP supported the impugned order.

5. Considered the submissions advanced. This Court, initially, was not inclined to interfere with the impugned order. However, after having perused the relevant provisions of the Code of Criminal Procedure (Cr.P.C.), the Court has changed its mind.

6. Section 387 Cr.P.C. speaks of judgments of subordinate appellate Court. The rules contained in Chapter XXVII as to the judgment of a Criminal Court of original jurisdiction shall apply, so far as may be practicable, to the judgment in appeal of a Court of Session or Chief Judicial Magistrate. Proviso to Section 387 Cr.P.C.

mandates that unless the appellate Court otherwise directs, the accused shall not be brought up, or required to attend, to hear judgment delivered.

Admittedly, execution of substantive sentence appears to have been suspended pending the appeal. The learned Sessions Judge has not given reasons as to why presence of the petitioner herein is a must before the Court.

7. Section 418 of the Code of Criminal Procedure speaks of execution of sentence of imprisonment. Section 418(2) reads thus:

“Where the accused is not present in Court when he is sentenced to such imprisonment as is mentioned in subsection (1), the Court shall issue a warrant for his arrest for the purpose of forwarding him to the jail or other place in which he is to be confined; and in such case, the sentence shall commence on the date of his arrest.”

8. In view of this Court, presence of the appellant in his appeal against conviction is not a must unless otherwise directed. It is reiterated that the order passed by the learned Sessions Judge is silent to state reasons as to requirement of the petitioner's presence before it. In view of the same, NBW, if any, issued by the learned Sessions Judge against the petitioner herein, is hereby cancelled.

9. The learned Sessions Judge is requested to pronounce the judgment, if ready in all respects, at once.
10. The criminal writ petition is accordingly disposed of.

[R. G. AVACHAT, J.]

SMS