

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO. 63 OF 2022

Ganesh Milind Todkari
Versus
The State of Maharashtra

...Applicant

...Respondent

Mr. Ritesh M. Thobde for the Applicant.

Mr. S.S.Pednekar, A.P.P for the Respondent-State.

CORAM : REVATI MOHITE DERE, J.
DATE : 21ST JANUARY, 2022
(Through Video Conferencing)

P.C. :

1. Heard learned Counsel for the parties.
2. The applicant has impugned the order dated 29th December, 2021 passed by the learned Additional Sessions Judge, Solapur, by which, the learned Judge was pleased to issue non-bailable warrant as against the applicant. The applicant has also impugned another order of the same date i.e. 29th December, 2021, by which, the learned Additional Sessions Judge, Solapur, rejected the applicant's application seeking anticipatory bail, on the ground, that the said application was not maintainable.

3. Learned Counsel for the applicant submits that there were sufficient grounds made out by the applicant for cancellation of the non-bailable warrant as well as for granting anticipatory bail to the applicant.

4. Learned APP vehemently opposes the application. He submitted that the anticipatory bail application filed by the applicant, pursuant to the issuance of non-bailable warrant was not maintainable and as such, was rightly rejected by the Trial Court. He submits that it was always open for the applicant to file an appropriate application seeking cancellation of the non-bailable warrant, issued by the Trial Court, as against the applicant.

5. Perused the papers. From the order dated 29th December, 2021, it appears that on the said date, despite repeated calls, neither the accused nor his Advocate is present. The learned Judge observed that the evidence cannot be recorded in the absence of the applicant/accused and as such, issued non-bailable warrant to the applicant/accused and notice to the surety. After the non-bailable warrant was issued, another application was filed by the applicant seeking anticipatory bail application. Learned Judge, after observing that the bail bond has been forfeited and non-bailable warrant has already been issued and hence, the application seeking

anticipatory bail was not maintainable and accordingly, rejected the same. As far as the order dated 29th December, 2021 is concerned, the observation of the learned Judge in the said order that, an anticipatory bail application was not maintainable, cannot be faulted with, inasmuch as, the applicant ought to have filed an application seeking cancellation of the non-bailable warrant instead of filing an application seeking anticipatory bail.

6. Without going into the merits, for the reasons for non-appearance of the applicant/accused on the said date i.e. on 29th December, 2021, liberty is granted to the applicant to file an appropriate application before the Trial Court seeking cancellation of the non-bailable warrant issued to the applicant.

7. If an application is filed seeking cancellation of the non-bailable warrant issued by the Trial Court on 29th December, 2021, the learned Judge to consider the same on its own merits after hearing the parties.

8. Leaned APP also has no objection if the applicant is permitted to file an appropriate application seeking cancellation of his non-bailable warrant before the Trial Court.

9. The application is accordingly disposed of on the aforesaid terms.

10. It is made clear that this Court has not gone into the merits of the application and as such, all contentions of the applicant are kept open.

11. All parties to act on the authenticated copy of this order.

REVATI MOHITE DERE, J.