

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

***CRIMINAL WRIT PETITION NO. 226 OF 2020
WITH
CRIMINAL WRIT PETITION NO. 231 OF 2020***

Amol Vasant Patil	...Petitioner
Versus	
The State of Maharashtra	...Respondent

Mr. Rahul V. Shinde for the Petitioner

Ms. P. P. Shinde, A.P.P for the Respondent–State

CORAM : REVATI MOHITE DERE, J.
FRIDAY, 1st APRIL 2022

P.C. :

1 At the outset, learned counsel for the petitioner seeks leave to amend in Writ Petition No. 231/2020. Leave granted. Amendment be carried out forthwith.

2 Heard learned counsel for the petitioner and the learned A.P.P.

3 Rule. Rule is made returnable forthwith, with the consent of the parties and is taken up for final disposal. Learned APP waives notice on behalf of the Respondent– State.

4 Since the issue involved in both the petitions is identical, a common order is being passed.

5 By Writ Petition No. 226/2020, the petitioner seeks the following reliefs :

“a. That the Hon’ble Court be pleased to quash and set aside the impugned proclamation orders dated 21.07.2017 and 19th January, 2019 passed by the Additional Session Judge Thane in Session Case No. 196 of 2015 and Session Case No. 99 of 2015.

aa. That the Hon’ble Court be pleased to quash and set aside the impugned Non Bailable Warrant issued by the additional session judge Thane in Session Case No. 196 of 2015 and Session Case No. 99 of 2015.

b. The Hon'ble High Court be pleased to continue the bail and bond / surety furnished before the Ld. Session Judge Thane, in Session case No. 99 of 2015 & Session Case No. 196 of 2015.”

6 Similarly, in Writ Petition No. 231/2020, the petitioner seeks the following relief :

“a. That this Hon’ble Court be pleased to quash and set aside / Recall the impugned Non Bailable warrant issued against the petitioner in Session case No. 197 of 2015 pending before Ld. Add Session Judge at Thane on 02.02.2018.

b. That the Hon’ble Court be pleased to continue the bail and bond / surety furnished before the Ld. Session Judge Thane, in Session case No. 197 of 2015.”

7 Perused the papers. Three separate FIRs were lodged as against the petitioner with Narpoli Police Station for the alleged offences punishable under Sections 457, 427, 380, 411, 413 r/w 34 of the Indian Penal Code. After investigation, the Narpoli Police filed charge-sheet in all the said three cases. Since the offences were sessions triable, the cases came to be committed to the Court of Sessions. It appears that the learned 2nd Sessions Judge, Thane declared the petitioner as proclaimed offender vide orders dated 21st July 2017 and 19th January 2018 passed respectively in Sessions Cases Nos. 99/2015 and 196/2015. After proclamation was issued, the learned Sessions Judge issued non-bailable warrants ('NBWs') against the petitioner in both the said sessions cases.

8 As far as Writ Petition No. 231/2020 is concerned, the learned

Sessions Judge issued NBW as against the petitioner in the said case i.e. Sessions Case No. 197/2015 on 14th June 2016.

9 Learned A.P.P was asked to take instructions. Learned A.P.P on instructions submits that as far as proclamations issued in Sessions Cases Nos. 99/2015 and 196/2015 are concerned, the same were not served on the petitioner. The learned Judge ought to have verified that the proclamations were served on the petitioner. Instead, the learned Sessions Judge issued NBWs as against the petitioner, after proclamations were issued.

10 As far as Sessions Case No. 197/2015 is concerned, no proclamation has been issued, however, NBW was issued as against the petitioner.

11 Today, learned counsel for the petitioner has tendered two affidavits-cum-undertakings on behalf of the petitioner in both the writ petitions. The same are taken on record. In the said affidavit-cum-undertakings, the petitioner has stated that he was attending the Court till

January 2016 and thereafter, as he was suffering from T.B, was taking treatment at Saifee Hospital at Mumbai, and thereafter, he shifted to his native place at Vajoli for taking medical treatment at Krishna Medical Hospital, Karad. He has stated that the advocate on record had not informed him about the status of the case, as a result of which, he could not attend the same.

12 Needless to state that the reason given that the advocate on record had not informed him, cannot be *prima facie* accepted. None the less, the petitioner in para 4 has undertaken to remain present on each and every date of hearing before the learned Additional Sessions Judge, Thane, in all the three sessions cases.

13 As far as proclamations issued in Sessions Cases No. 99/2015 and 196/2015 are concerned, since the same were not served on the petitioner, the said orders of issuing proclamations are quashed and set-aside. Needless to state that if the occasion arises in future, it is always open for the learned Judge to issue a fresh proclamation in accordance with law.

14 As far as the NBWs issued against the petitioner in Sessions Cases No. 99/2015, 196/2015 and 197/2015 are concerned, having regard to the peculiar facts of this case and the affidavits-cum-undertakings tendered by the petitioner with undertaking to remain present on each and every date before the learned Additional Sessions Judge, Thane, the same are quashed and set-aside.

15 The petitioner to remain present before the learned Sessions Judge on the next date i.e. on 12th April 2022 and on all future dates given by the trial Court. The petitioner shall cooperate in the conduct of the trial and shall not seek any adjournment, except in exceptional circumstances.

16 Petitions are disposed of. Rule is made absolute on the aforesaid terms.

17 All concerned to act on the authenticated copy of this order.

REVATI MOHITE DERE, J.