

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

CRIMINAL APPLICATION NO.176 OF 2022

Madhu Prabhakaran & Anr. ...Applicants
Versus
The State of Maharashtra & Anr. ...Respondents

Ms. Karishma Mungekar i/b Mr. Sahil Mahajan for the Applicants

Ms. P. P. Shinde, A.P.P for the Respondent No.1–State

None for the Respondent No. 2

CORAM : REVATI MOHITE DERE, J.
MONDAY, 7th MARCH 2022

P.C. :

1 Heard learned counsel for the applicants and the learned A.P.P
for the respondent No.1-State.

2 Learned counsel for the applicants has tendered an affidavit-
cum-undertaking of the applicants, stating therein that they undertake to
appear before the trial Court on all the dates, except in exceptional

circumstances. They have also undertaken to appear before the trial Court on 25th March 2022. The said affidavit-cum-undertaking is taken on record.

3 Perused the papers. By this application, the applicants seek quashing and setting aside of the impugned order dated 28th December 2021 passed by the learned Metropolitan Magistrate, 58th Court, Bandra, Mumbai, by which the learned Magistrate was pleased to issue non-bailable warrants as against the applicants in CC No. 180/SS/2021.

4 Learned counsel for the applicants submits that the applicants are facing the prosecution under Section 138 of the Negotiable Instruments Act. She submits that the learned Magistrate had issued summons to the applicants on 9th April 2021, pursuant to which, the applicants entered their appearance through their advocate on 7th October 2021 and filed vakalatnama along with an application seeking exemption in the said complaint. The matter was thereafter posted on 28th December 2021. It appears that on 28th December 2021, the advocate for the applicants appeared before the learned Magistrate and filed an exemption application on the ground of ailment of applicant No. 1 and that the applicant No. 2 had

to take care of the applicant No. 1. It appears that the learned Magistrate rejected the said application seeking exemption and issued non-ailable warrants as against the applicants and adjourned the matter to 25th March 2022. Learned counsel for the applicants had tendered the medical certificate of the applicant No. 1 issued by Dr. Aruna Pohare, a Medical Officer attached to Dr. Nanasaheb Dharmadhikari Sub-District Hospital, Panvel.

5 A perusal of the said Certificate dated 29th January 2022 which is on page 28 of the application shows that she had examined the applicant No. 1 on 27th January 2022 at 12:45 p.m. and that the applicant No. 1 was admitted in the hospital and was diagnosed with right sided WAP reinfarct with accelerated hypertension. It is further stated that the applicant No. 1 was under her treatment till about 29th January 2022. It is further stated that as the patient's condition was serious, he needed hospitalization. It appears that the applicant No. 2 is the wife of the applicant No. 1 and she was with the applicant No. 1.

6 The learned Magistrate, on an application made by the respondent No. 2, issued non-bailable warrants on 28th December 2021, which order has been impugned in the aforesaid application. It appears that after the non-bailable warrants were issued, the applicants filed an application and sought recall of the said non-bailable warrants on the grounds mentioned in the application. The applicants in the aforesaid application, in para 8 has specifically stated that they requested the learned Magistrate to take the application on record and pass appropriate order, recalling the order issuing non-bailable warrants, however, the learned Magistrate refused to take the application on record and returned the same back to the advocate.

7 The learned Magistrate could have well taken the application on record and considered the said application on merits having regard to the condition of the applicant No. 1 and the Medical Certificate produced by him, however, the same was not done.

8 Considering the Medical Certificate and the grounds set out in the application for non appearance on the day when the matter was posted,

the impugned order dated 28th December 2021 issuing non-bailable warrants as against the applicants, is quashed and set-aside.

9 The applicants to abide by the affidavit-cum-undertaking tendered today. In the event, an exemption application is filed by the applicant No. 1, the learned Magistrate to consider the same on its own merits.

10 Application is disposed of accordingly.

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

REVATI MOHITE DERE, J.