

CRIMINAL APPLICATION NO.175 OF 2022

Versus

State of Maharashtra ...Respondent

Mr. A. I. Nizami i/b Mr. Mohammed Umar Kazi, for the Applicant.

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

Mr. Pramod Jadhav, Deputy Superintendent of Police, Anti Corruption Bureau, Thane, is present.

CORAM : REVATI MOHITE DERE, J.

DATE : 28th FEBRUARY 2022

P.C. :

1 Heard learned counsel for the parties.

2 By this application, the applicant seeks cancellation of the Non-Bailable Warrant ('NBW), issued as against the applicant, aged 73 years, vide order dated 1st December 2021, passed by the learned District Judge-6 and Additional Sessions Judge, Kalyan, in Special Case ACB No.500002 of 2006.

3. Learned Counsel for the applicant has tendered an affidavit of the applicant, wherein the applicant, aged 73 years has undertaken to remain present before the trial Court on each and every date, unless exempted by the trial Court, due to extremely unavoidable circumstances. The applicant has also undertaken to co-operate in the expeditious conduct of the trial. The said affidavit dated 28th February 2022 is taken on record and marked 'X' for identification.

4. Learned APP has tendered a police report dated 28th February 2022. The same is taken on record. The report shows that the police have verified the address of the applicant and the applicant is found to be residing at the address as mentioned in the affidavit.

5. Perused the papers. The applicant, aged 73 years alongwith other co-accused was arrested in connection with C.R. No.II-201 of 1996, registered with the Ulhasnagar Police Station, Thane, for the alleged offences punishable under Sections 120B, 109, 465, 466, 467, 468, 471, 477(A), 409, 420, 201 of the Indian Penal Code as well as the provisions of the Prevention of Corruption Act. The applicant was subsequently released

on bail. After investigation, charge-sheet was filed as against the applicant and other co-accused. It appears that thereafter the case was transferred to the learned Special Judge, Kalyan and numbered as Special Case ACB No.500002 of 2006, and is presently pending before the learned District Judge-6 and Additional Sessions Judge, Kalyan. According to the learned counsel for the applicant, the applicant had not received any notice of appearance nor any communication directing the applicant to appear before any Court and as such he was unaware with respect to what was happening before the trial Court. He submits that later the applicant received a summons on his Whatsapp from an unknown number that a NBW was issued as against him. Learned Counsel for the applicant states that the case is of the year 1996 and that the applicant learnt only recently that an NBW was issued as against him. He submits that the learned Judge ought to have issued a bailable warrant against the applicant before NBW was issued against him. He submits that the applicant was also unaware of the transfer of the case to the learned Special Judge, Kalyan in 2006. He submits that the applicant is aged 73 years and that in the peculiar facts having regard to the affidavit filed by the applicant, the NBW issued as against the applicant, be cancelled. He submits that the applicant is

suffering from various ailments and was operated for his heart ailment in 2021. He submits that the applicant apprehends that the learned Special Judge would take him in custody as he had done with the other co-accused.

6. No doubt, the applicant ought to have been diligent in pursuing his case, considering the fact that he was arrested in the said case and subsequently released on bail. It is a matter of record that no bailable warrant was issued as against the applicant. This Court vide order dated 23rd February 2022 directed the learned APP to verify the address proofs furnished by the applicant. Pursuant thereto, the police have filed a report that the applicant is residing at the address as mentioned in the affidavit, with his son. The applicant has filed an affidavit stating therein that he would remain present before the trial Court on each and every date, unless exempted by the trial Court, due to extremely unavoidable circumstances and that he will co-operate in the expeditious conduct of the trial. Learned Counsel for the applicant to place a xerox copy of the said affidavit on the file of the learned Special Judge.

7. In the peculiar facts of the case, only considering the age of the applicant and the fact that the case is of 1996 and the NBW was issued for the first time in 2021, the impugned order dated 1st December 2021, passed by the learned District Judge-6 and Additional Sessions Judge, Kalyan, in Special Case ACB No.500002 of 2006, is quashed and set aside. The applicant to appear before the trial Court on every date of hearing, unless exempted by the trial Court, due to exceptional reasons warranting non-appearance.

8. The application is allowed in the aforesaid terms and is accordingly disposed of.

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

REVATI MOHITE DERE, J.