

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

CRIMINAL WRIT PETITION NO. 634 OF 2022

Sachin Eknath Magar

...Petitioner

Versus

The State of Maharashtra

...Respondent

Mr. Abedali Catwala i/by Ms. Anjali Patil, Advocate for Petitioner.

Mr. S.R. Agarkar, APP for the Respondent - State

Ms. Pooja Gaikwad (WPSI), Kala chowki Police Station, Present.

CORAM : PRAKASH D. NAIK, J.

DATE : 20th AUGUST, 2022.

PER COURT:-

1. The Petitioner has impugned the show-cause notice dated 9th December, 2021 issued by the Special Executive Magistrate, Bhoiwada Division, Kala Chowki, Mumbai, under Section 111 invoking Section 110 (d) of Criminal Procedure Code.

2. The impugned show-cause notice states that the Petitioner and the other Accused had impersonated themselves as officers of N.I.A. and threatened the witness that he would be implicated in a case alleging that he is involved in sale of gold by using false bills and demanded Rs.25,00,000/- (Twenty Five Lakhs) from him. The offence was registered vide C.R. No.205 of 2020 under Sections 170, 171, 419, 420, 465, 468, 471, 474, 385, 392, 123-B of Indian Penal Code (for short 'IPC'). The Petitioner was arrested on 13th November, 2020 and presently he is on bail. Hence, by way of

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preventive measure the show-cause notice dated 9th December, 2021 is issued to him to show-cause why he should not execute the bond under Section 110(d) of Cr.P.C.

3. Learned Advocate for the Petitioner submitted that the issuance of show-cause notice is bad in law. The Petitioner has been granted bail in C.R. No.205 of 2020 vide order dated 30th November, 2021. The Petitioner has not committed any offence after release on bail nor committed breach of peace. Notice under Section 110(d) of Cr.P.C. is contrary to law. The Petitioner is not habitual offender. As per Section 2(e) of Habitual Offenders Act, 1959, habitual offender is a person who is convicted for not less than three occasions to a substantive term of imprisonment of one or more of the scheduled offences committed on separate offences being offences which are not so connected together as to form part of same transaction. The Petitioner has not been convicted and not sentenced for any offence and hence he cannot be called a habitual offender as per Section 110 of Cr.P.C.

4. Learned APP submitted that show-cause notice has been issued to the Petitioner. The final action is yet to be decided. The Petitioner was involved in a case registered in 2015. While on bail in earlier offence the Petitioner has committed the offence vide C.R. No.205 of 2020 on 12th November, 2020.

5. The show-cause notice dated 9th December, 2021 is in the nature of order to be made under Section 111 of Cr.P.C. which provides that where a Magistrate acting under Sections 107, 108, 109 and 110 deems it necessary to require any person to show-cause under such section, he shall order in writing setting forth the substance of information received, the amount of the bond to be executed, the term for which it is to be enforced, and the number, character and class of sureties (if any) required.

6. Section 110 of Cr.P.C. relates to security for good behavior of habitual offenders. As per Section 110(d) when an Executive Magistrate receives information that there is within his local jurisdiction a person who habitually commits and or attempts to commit or abets the commission of offence of kidnapping, abduction, extortion, cheating or mischief or any offence punishable under Chapter-XII of IPC or under Sections 489-A, 489-B, 489-C or 489-D of IPC, such Magistrate may in the matter provided in the code, require such person to show-cause why he should not be ordered to execute a bond with sureties for his good behavior not exceeding three years as the Magistrate things fit.

7. Powers under Section 110 are exercised to initiate preventive measure against a habitual offender for executing security for good behavior. The show-cause notice refers to C.R.

No.205 of 2020 registered with Kala Chowki Police Station in respect to the alleged incident dated 12th November, 2020. The show-cause notice was issued on 9th December, 2021. The Petitioner was granted bail by the Court of Sessions of Greater Bombay in relation to the said case vide order dated 30th November, 2021. Thus, the show-cause notice was issued after a period about one year from the date of registration of First Information Report and immediately after he was granted bail by the Court of Sessions. Except C.R. No.205 of 2020 in which the the Petitioner was granted bail, no other case or activity has been referred to in the show-cause notice for invoking action under Section 110 of Code of Criminal Procedure. There is no material on record to indicate that the Petitioner is habitual offender. In the absence of such material issuance of show-cause notice under the said provision itself is abuse of process of law. The notice does not indicate that the Petitioner has been convicted for any offence. It is not clear as to how the Special Executive Magistrate has recorded his opinion that it is necessary to initiate proceedings under Section 110(d) of Cr.PC. which relates to habitually committing the offences stipulated therein. The proceedings are contrary to provisions of law and deserves to be quashed and set aside.

ORDER

- i. Writ Petition No.634 of 2022 is allowed.
- ii. Proceedings initiated by Special Executive Magistrate, Bhoiwada Division, Kala Chowki, Mumbai, vide notice under Section 111 of Code of Criminal Procedure, vide Court Case No.137 of 2021 are quashed and set aside.
- iii. Writ Petition is disposed off.

[PRAKASH D. NAIK, J.]