

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

***CRIMINAL APPLICATION NO. 333 OF 2022
WITH
CRIMINAL APPLICATION NO. 332 OF 2022***

Josephine Norman Correa ...Applicant
Versus
Rahul Vijay Vani & Anr. ...Respondents

Mr. Narayanganesh M. Nadar for the Applicant

Mr. Ayush Pasbola for the Respondent No. 1

Mr. H. J. Dedhia, A.P.P for the Respondent No.2–State

CORAM : REVATI MOHITE DERE, J.
THURSDAY, 24th MARCH 2022

P.C. :

1 By these applications, the applicant seeks quashing and setting aside of the impugned order dated 10th March 2022 passed by the learned Metropolitan Magistrate, 7th Court at Dadar, Mumbai, in CC No. 2168/SS/2017 and 2641/SS/2017 by which the learned Judge issued non-bailable warrant *qua* the applicant.

2 Vide order dated 22nd March 2022, the said non-bailable

warrant was stayed till the next date by this Court, in view of the statement made by the learned counsel for the applicant on the said date.

3 Learned counsel for the applicant and respondent No. 1 informs that the Court was on leave on the last date. Learned counsel for the respondent No. 1 does not dispute that the advocate for the applicant was present in the Court on which date, the witness was to step into the witness box for cross-examination.

4 Perused the papers. The case as against the applicant is for the offence punishable under Section 138 of the Negotiable Instruments Act. On 13th November 2017, process was issued as against the applicant, pursuant to which, the applicant appeared before the trial Court. Thereafter, the respondent No. 1 filed his affidavit of evidence and documents were exhibited by the trial Court on 21st November 2019. On 28th January 2020, the respondent No. 1 was partly cross-examined by the advocate for the applicant. It appears that on a few dates thereafter i.e. on 23/3/2021, 30/7/2021, 11/10/2021 and 10/12/2021, the complainant i.e. the respondent No. 1 was absent and hence, cross-examination could not proceed.

Thereafter, on four occasions, the board was discharged. It appears that thereafter, 10th March 2022 was the first date, post the lock down. On the said date, an adjournment application was preferred by the learned counsel for the applicant seeking exemption of the applicant on the premise that her mother-in-law was admitted in the hospital for heart surgery. An application for issuance of non-bailable warrant was also filed on the same date by the advocate for the respondent No. 1. The learned Judge rejected the adjournment application preferred by the applicant and allowed the application filed by the respondent No. 1 and accordingly issued non-bailable warrant as against the applicant. Learned counsel for the applicant has annexed documents to show that the applicant's mother-in-law was admitted to the hospital for heart surgery during the said period.

5 The learned Judge ought to have seen that the applicant was present on earlier dates and ought not to have directly issued non-bailable warrant as against the applicant. It was always open for the learned Judge to issue a bailable warrant or adjourn the proceedings, having regard to the medical certificate filed by the applicant, which was also mentioned in the adjournment application.

6 Today, learned counsel for the applicant has tendered an undertaking of the applicant in both the aforesaid applications stating therein that she will attend the trial Court regularly on the dates given by the trial Court and will not seek any adjournment for any reason, except, for the reasons that are beyond her control; and that she will take every effort to cooperate in the conduct of the trial. The said undertaking is taken on record.

7 Considering the aforesaid, the impugned order dated 10th March 2022 passed by the learned Metropolitan Magistrate, 7th Court at Dadar, Mumbai in CC No. 2168/SS/2017 and 2641/SS/2017 issuing non-bailable warrant as against the applicant is quashed and set-aside.

8 Applications are allowed and disposed of on the aforesaid terms.

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

REVATI MOHITE DERE, J.