

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO. 410 OF 2022

Himmat Mangilal Tailor

...Applicant

Vs.

The State of Maharashtra

(At the instance of Vile Parle Police Station) ... Respondent

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signed by  
SHRADDHA  
KAMLESH  
TALEKAR  
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Mr.Kamlesh Narottam Gujar for applicant.

Mr.S.R. Aagarkar, APP for State.

PSI Narayan dalvi, Vile Parle Police Station.

**CORAM : N. J. JAMADAR, J.**

**DATE : 27<sup>th</sup> APRIL, 2022**

**P.C.:**

1. Heard the learned counsel for the applicant and the learned APP for State.

2. The applicant has invoked inherent jurisdiction of this Court as the learned Special Judge, Greater Bombay rejected the application preferred by the applicant, for cancellation of non-bailable warrant issued against him.

3. The applicant is being prosecuted in Special MCOC Case No.8 of 2016 for the offences punishable under sections 363, 395, 201, 412 and 468 of the Indian Penal Code, 1860 (the Penal

Code'), section 25 read with section 3 of the Indian Arms Act, 1878, and sections 3(1)(ii), 3(2), 3(4) of the Maharashtra Control of Organised Crime Act, 1999.

4. The learned Special Judge, MCOC issued a non-bailable warrant against the applicant on 22<sup>nd</sup> September 2021 as the applicant was absent.

5. The learned counsel for the applicant submits that the applicant could not have appeared before the Special Court as the applicant was arrested by Charbhujia Police Station, Rajasthan in connection with the offences punishable under sections 489(b) and 489 (c) of the Penal Code. The applicant was released on bail by the High Court of Rajasthan by order dated 21<sup>st</sup> February 2022. Hence, the application for cancellation of warrant would not have been rejected.

6. Perused the impugned order. On 10<sup>th</sup> March 2022, when the application for cancellation of non-bailable warrant was moved, the accused was absent. The learned Special Judge was persuaded to reject the application on the premise that the fact that the applicant was in custody was not brought to the notice of the Court by the counsel for the applicant. Since the bail bond of the accused was forfeited by the order dated 14<sup>th</sup> December 2021,

no case was made out by the applicant for cancellation of warrant.

7. Evidently, when the non-bailable warrant was issued, the applicant was in custody in connection with the C.R.No.187 of 2021, registered with Charbhujia Police Station, Rajasthan. The accused-applicant could not have appeared before the learned Special Judge on that date.

8. The learned APP has informed the Court that the applicant was released on bail pursuant to the order passed by the Rajasthan High Court on 22<sup>nd</sup> February 2022.

9. In these circumstances, it would be appropriate to direct the accused to appear before the learned Special Judge and file a fresh application for cancellation of warrant issued by the Special Court. If such an application is made, the Special Judge will surely consider the circumstances which prevented the applicant from appearing before the Special Court on the date on which the non-bailable warrant was issued and the subsequent dates.

10. The applicant-accused shall appear before the learned Special Judge, MCOC Court, on 5<sup>th</sup> May 2022 and file application for cancellation of non-bailable warrant.

11. In the meanwhile, the execution of the non-bailable warrant stands suspended.
12. The application disposed.

(N. J. JAMADAR, J.)