

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

CRIMINAL APPLICATION NO. 843 OF 2022

Parthesh Developers & Ors.	...Petitioners
Versus	
The State Of Maharashtra And Anr	...Respondents

□ □ □ □

Mr. Dilip H. Shukla a/w Ms. Priya Pandey, Advocate for the Applicant.

Mr. A. R. Patil, APP for the Respondent – State.

□ □ □ □

CORAM : PRAKASH D. NAIK, J.

DATE : 13th SEPTEMBER, 2022

PC :

1. This is an application for cancellation of Non-bailable warrant issued against the applicant Nos.2 and 3 by the Sessions Court, Mumbai vide order dated 26.08.2022.

2. The applicant No.1 is the firm and applicant Nos. 2 and 3 are partners of applicant No.1. The applicants are convicted for offence under Section 138 of Negotiable Instruments Act vide judgment and order dated 24.06.2019 passed by learned Metropolitan Magistrate, 33rd Court, Ballard Pier, Mumbai. The judgment of conviction has been challenged by the applicants before the Sessions Court by preferring Criminal Appeal No. 774 of 2019. On 26.08.2022,

application for exemption was filed by advocate for applicants. The advocate for applicants also filed application for adjournment. The respondent filed say and objected application. The Court noted that at the earlier point of time, bailable and non-bailable warrants were issued against applicants. Matter is old. Approach of appellant is not fair. Hence, application was rejected. Non-bailable warrant was issued against the applicants. Application for adjournment was rejected.

3. Learned Advocate for the applicant submitted that on 26.08.2022 the advocate representing the applicant was present in the Court. There was no intention to delay the proceedings. On account of absence of the applicants, the Court issued non-bailable warrant. The appellant would appear before the Court on next date of hearing and during the hearing of the appeal pending before the Sessions Court. Next date before the trial Court on 17.09.2022, the applicants are willing to proceed with the hearing that the appeal pending before the Sessions Court.

4. It is submitted that notice of hearing has been given to complainant. Affidavit of service is filed on record.

5. Since the applicant Nos. 2 and 3 has submitted that they would appear before the Sessions Court and in the light of factual matrix as stated above and submissions of learned advocate for the applicants, I pass the following order:-

ORDER

- (i) Order dated 26.08.2022 passed by Learned Special Court in Criminal Appeal No.774 of 2019 issuing non-bailable warrant against the applicant Nos. 2 and 3 is set aside.
- (ii) The Applicants (Applicant Nos. 2 and 3) shall appear before the Sessions Court on 17.09.2022.
- (iii) The advocate for the appellants/applicants shall proceed with the hearing of the appeal pending before the Sessions Court.
- (iv) The Sessions Court shall decided the appeal within three months from 17.09.2022.
- (v) Application is disposed off.

(PRAKASH D. NAIK, J.)