

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

**WRIT PETITION NO. 4969 OF 2019
WITH
WRIT PETITION NO. 4977 OF 2019**

Manoj Sudeshpal Katiyal ...Petitioner
Versus
Rajesh Sumermal Munot and Anr. ...Respondents

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Mr. Ganesh Gole i/b Mr. Ateet Shirodkar, for the Petitioner in both
Petitions.

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

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**CORAM : PRAKASH D. NAIK, J.
DATE : 12th August 2022.**

1. The Petitioner in both these petitions is prosecuted for the offence punishable under section 138 of Negotiable Instrument Act, vide Summary Case No. 1403616/SS/2016 and Summary Case No. 1403617/SS/2016. Both the cases are pending in the Court of learned Metropolitan Magistrate, 14th Court, Girgaon, Mumbai. The complaints were filed by Respondent No. 1 in both the Petitions.

2. Although served, Respondent No. 1 is absent.

3. Petitioner in both these Petitions is aggrieved by issuance of proclamation dated 3rd August 2019 and non

bailable warrant dated 18th December 2018 issued in Summary Case No. 1403616/SS/2016, which is impugned in Criminal Case No. 4969 of 2019 as well as the non-bailable warrant dated 1st June 2019 issued in Summary Case No. 1403617/SS/2016 which is subject matter of Criminal Case No. 4977 of 2019.

4. Learned advocate for the Petitioner submitted that on account of the circumstances mentioned in this Petition, the Petitioner could not remain present before the Court which has resulted in passing of the impugned orders by the concerned Court. The Petitioner is willing to appear before the trial Court and face the prosecution.

5. The Petitioner has stated that somewhere in May 2018, he was not keeping well. In the month of August he was diagnosed with mouth cancer (tongue). Thereafter, he was admitted in Prince Aly Khan Hospital to undergo surgery and after the surgery he was discharged on 21st August 2018. He was advised not to go in public on account of risk for infection and also to take rest. Due to surgery, the petitioner was unable to speak. He could not give instructions to the advocate appearing for him before the trial Court. With the fear of infection he was unable to attend the trial Court. He is

now willing to attend the trial on the next date of hearing.

6. Learned advocate for the Petitioner submitted that there is no intention to avoid proceeding. The petitioner would continue to appear before the trial Court unless exempted by the trial Court.

7. Considering the explanation and grounds urged in these Petitions and since the Petitioner is willing to appear before the trial Court and attend the proceedings which are subject matter of both these petitions, the impugned orders can be set aside.

8. Hence, I pass the following order.

ORDER

- (i) Orders dated 18th December 2018 and 3rd August 2019 passed by the Court of Learned Metropolitan Magistrate, 14th Court, Girgaon, Mumbai, issuing non-bailable warrant and proclamation in Summary Case No. 1403616/SS/2016 and order dated 1st June 2019 passed in Summary Case No. 1403617/SS/2016 issuing non bailable warrant are quashed and set aside.
- (ii) The Petitioner is directed to appear before the trial

Court on the next date of hearing. He shall appear before the trial Court and would co-operate with the trial Court in proceeding further with the matter.

- (iii) The proceeding before the trial Court are expedited and the trial Court is requested to make an endeavour to complete the proceedings within a period of one year from the date of receipt of this order.

4. Both Writ Petitions are disposed of.

Digitally
Signed by
YUGANNDHARA SHARAD
PATIL
Date: 2022.08.19
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(PRAKASH D. NAIK, J.)