

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

CRIMINAL WRIT PETITION NO. 533/2022

Harshal S/o Bhagwanrao Umale
 Aged about 27 years, Occ. Private
 Business, R/o. Tulsibag Road, Ali Miya
 Khamb, Dist. Nagpur.

... **PETITIONER**

VERSUS

State of Maharashtra through
 PSO, Police Station, Kotwali,
 Nagpur City.

... **RESPONDENT**

Mr. D. H. Sharma, Advocate for petitioner.
 Ms. M. Deshmukh, APP for respondent/State.

CORAM : **VINAY JOSHI, J.**

DATE OF JUDGMENT : **03.08.2022.**

ORAL JUDGMENT :

RULE. Rule is made returnable forthwith.

2. Heard finally by consent of respective parties.

3. The applicant is arraigned as an accused in Sessions Case No. 599/2021 for the offence punishable under Sections 109, 302 read with Section 34 of the Indian Penal Code ('IPC') and Section 135 of the Maharashtra Police Act. The accused was released on bail during trial. On 22.07.2022, the petitioner (accused No.2) was absent, that is why the Trial Court has issued Non-Bailable Warrant ('NBW') and posted the matter on 06.08.2022. On 25.07.2022, an application has been moved to the Trial Court seeking cancellation of NBW (Exh.22), which was rejected, that is why the petition.

4. The learned counsel appearing for the petitioner would submit that only on a single default i.e. on 22.07.2022, the Trial Court has issued NBW. It is submitted that on all earlier dates, the petitioner was present in the Court. However, having regard to said fact, NBW was issued without taking preliminary step like issuance of summons or bailable warrant. According to the petitioner, there is no justification in rejecting his application at Exh. 22 for cancellation of NBW.

5. It appears from the record that on 25.07.2022, the petitioner did not remain present, but the application for cancellation of NBW was moved through Advocate. The record indicates that the application for cancellation was rejected. However, NBW remains as it is, since petitioner was not present in the Court. In-fact, while seeking

the cancellation, the petitioner ought to have remained present in the Court, otherwise, there would be no purpose in canceling the NBW or rejection of such urge as the situation would remain as its stand. The accused cannot take chance by filing application for cancellation by remaining absent in the Court.

6. Be that as it may, it reveals that yet the evidence has not been commenced. The sessions case was only for production and appearance of the accused person. It is informed that yet charge has not been framed. It reveals that on a single default that is absence of petitioner on 22.07.2022, NBW was issued. True, the Trial Court is well within his power to issue NBW as there is breach of bond condition. The matter would have been different, if the accused has been brought to the Court after execution of warrant. However, record indicates that accused shown his bona fides by taking matter on board and seeking for cancellation, but he was absent. It is not approvable that on such single default, the Trial Court shall keep the accused behind the bars, since already his entitlement for bail was tested on merits and has been released on bail. In view of that, the petitioner shall remain present before the Trial Court and seek for cancellation of NBW, on which the Trial Court shall reconsider and pass appropriate orders.

7. In view of above observations, petition stands disposed of in above terms.

8. The petitioner undertakes to appear before the Trial Court on 06.08.2022 on which the matter is fixed. In view of that, NBW shall not be executed against him till 06.08.2022.

(VINAY JOSHI, J.)

Gohane

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