

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

CRIMINAL APPLICATION NO. (APL) NO. 1179/2022

Noman Raza Parvez Rahim Khan,
Aged about 24 years, Occ. Student,
R/o. Khamb Talab, Dr. Jakir Hussain
Ward, Bhandara – 441904.

... **APPLICANT**

VERSUS

The State of Maharashtra,
through the Police Inspector,
Ambazari Police Station, Nagpur.

... **NON-APPLICANT**

Mr. R. S. Renu, Advocate for applicant.
Mr. H. D. Dubey, APP for non-applicant.

CORAM : **VINAY JOSHI, J.**
DATE OF JUDGMENT : **30.08.2022.**

ORAL JUDGMENT :

RULE. Rule is made returnable forthwith.

2. Heard finally by consent of respective parties at the stage of admission.

3. The applicant is accused No. 4 in Spl. POCSO Case No. 166/2022. He seeks to quash and set aside the order of the Trial Court dated 25.05.2022, by which non-bailable warrant ('NBW') was issued against him. The learned counsel appearing for the applicant has submitted that the applicant was released on bail by the Trial Court before filing charge-sheet. It is submitted that after filing charge-sheet, no summons was issued to the applicant/accused, however the Trial Court has directly issued NBW which is questioned herein.

4. By placing reliance on decision of the Supreme Court in case of *Free Legal Aid Committee, Jashedpur Vs. State of Bihar, 1982 CRI. L.J. 1943*, it is submitted that accused who is released on bail need not be required to appear before the Court until charge-sheet is filed and process is issued by Court. It reveals that the Trial Court has released the applicant/accused on bail vide order dated 30.03.2022. As per statement of the applicant, without issuance of summons directly NBW has been issued. If the facts are so, certainly the applicant is entitled for cancellation of NBW. However, since the applicant has not applied to the Trial Court for cancellation of NBW, the same course has to be adopted instead of approaching to this Court. The applicant undertakes to appear before the Trial Court on 05.09.2022 and would apply for cancellation of NBW.

5. In view of above, the Trial Court shall consider the aspect of non-issuance of prior summons and pass appropriate order on the application which would be filed by the applicant for cancellation of NBW order. In that view, NBW shall not be executed till 05.09.2022.

6. Application is disposed of in above terms.

(VINAY JOSHI, J.)

Gohane

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