

**IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD**

CRIMINAL WRIT PETITION NO. 412 OF 2023

SHAIKH NAIM GORU SHAIKH SALIM
VERSUS
THE STATE OF MAHARASHTRA

...

Advocate for Petitioner : Mr. Sohail Subhedar
h/f. Mr. N.S. Ghanekar
APP for Respondent : Mr. V.S. Badakh

CORAM : R.M. JOSHI, J.
DATE : 06th June, 2023

PER COURT :

1. This petition is filed by under-trial prisoner in Sessions Case No. 228/2020 challenging the order dated 22.12.2022 passed below exhibit 68.
2. It is the contention of the petitioner that since the inception of the trial, he has claimed himself to be a person of unsound mind and an application was moved to that effect vide exhibit 68.
3. Learned counsel for the petitioner states that the Trial Court has committed error in rejecting the said application for want of prosecution. He further submits that considering the nature of application and claim of the accused of being of

unsound mind, it is duty and responsibility of Trial Court to ascertain the said fact and only after finding the accused of sound mind to proceed with the trial. He further undertakes that if opportunity of hearing on Exh. 68 is given, the same shall be worked out on next date of hearing i.e. 13/06/2023 before Trial Court.

4. Perusal of the order shows that after filing of application exhibit 68, none appeared for the accused and the said application was not prosecuted. Thus, no fault can be found in the order passed by the Trial Court in rejecting the said application.

5. However, at the same time it cannot be ignored that once a defence is taken of unsoundness of mind, it is for Trial Court to ascertain soundness of mind of the accused person and to record a finding as to whether accused is of sound mind or unsound before proceeding with the trial whenever such plea has been raised before it. The provisions of Section 328 and 329 of Cr.p.c. being mandatory in nature, learned Trial Court needs to be called upon to first consider the fact of unsoundness of mind and his capacity to make his defence.

6. Hence, in the interest of justice, impugned order is set aside.

7. Learned Trial Court to hear the counsel for the accused and APP on exhibit 68 on 13th June, 2023 and thereafter to decide said application in accordance with law.

8. It is clarified that in any event the said application is not prosecuted on that day, it is open for Trial Court to take appropriate decision after holding necessary enquiry with regard to plea raised by accused and thereafter to take further decision, with regard to the Trial.

9. Petition is disposed of in above terms.

10. Parties to act upon authenticated copy of this order.

[R.M. JOSHI, J.]

SPChauhan