

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

923 WRIT PETITION NO.752 OF 2023

**RAVINDRA @ RAMU SHIVAJI BHILWANDE & ANR
VERSUS
THE STATE OF MAHARASHTRA**

...
Mr. U.B. Deshmukh, Advocate for the Petitioners.
...

**CORAM : S.G. CHAPALGAONKAR, J.
(VACATION COURT)**

DATE : 17th MAY, 2023

PER COURT :

1. The petitioners challenge the order dated 09th May, 2023 passed by the learned Judicial Magistrate First Class, Naigaon Bz., in Regular Criminal Case No.149 of 2010 by which the prayer for cancellation of N.B.W. has been turned down.

2. Mr. U.B. Deshmukh, learned Counsel appearing for petitioners would submit that the NBW was issued against the petitioners which was subsequently cancelled on 14th October, 2021. Thereafter the matter was kept in dormant stage in accordance with Chapter-VI, paragraph no.83 (i) of the Criminal Manual and standing NBW was issued against the petitioners. On 09th May, 2023 the petitioners applied for cancellation of NBW, however said application is rejected vide impugned order for the reason that petitioners were not present before the Court on the date of hearing of the case.

3. Learned counsel appearing for petitioners would rely upon the judgment of this Court in the matter of **Arunkumar N. Chaturvedi vs. The State of Maharashtra and Anr.** decided on **24th December, 2013 in Writ Petition No.4429 of 2013** to contend that the presence of the accused is not necessary. While prosecuting the application for cancellation of NBW accused need not personally present before Court and such prayer can be made through the advocate engaged by the accused. Therefore, the reason that has been given for rejection of the prayer of the accused, is contrary to the law laid down by this Court.

4. Mr. A.V. Deshmukh, learned APP would oppose the application on the ground that petitioners have committed consistent default in attending the matter. He would point out that twice NBW has been issued against the petitioners. He would submit that it would be difficult to secure the presence of petitioners during the course of the trial. He points out that now the case is committed to the learned Sessions Court. Some of the accused persons are behind the bars. Due to the conduct of the petitioners, the trial has been delayed.

5. Having considered the submissions advanced by the learned counsel appearing for the respective parties, it can be gathered that accused persons were enlarged on pre-arrest bail and

the matter was pending since the year 2010 before 5th Judicial Magistrate First Class. Now, the matter has been committed to the Sessions Court. Meanwhile, file was kept in dormant condition. According to petitioners, there was communication gap between them and their advocate and their absence before the Court was unintentional.

6. Learned advocate appearing for petitioners would submit that the petitioners would attend each and every date without seeking further adjournment in the matter and would cooperate for early disposal of the proceeding before the Sessions Court.

7. The contents of Roznama would show that on 14th February, 2022 the file was kept in dormant condition and thereafter the NBW has been issued against petitioners. Now, the matter has been committed to the Sessions Court.

8. Considering the totality of the circumstances, it would be appropriate to cancel the NBW subject to payment of costs of Rs.10,000/- to be deposited by each of the petitioners with the Sessions Court by 24th May, 2023. Subject to deposit of said costs and petitioners' attending the proceedings without seeking frivolous adjournments before the Sessions Court for early disposal of the sessions case, the writ petition is allowed in terms of prayer clause

'D', in default the NBW issued against the petitioners would be restored to operate.

9. Writ petition is disposed of in the aforesaid terms.

(S.G. CHAPALGAONKAR)
VACATION JUDGE

GG Punde, PA