

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

INTERIM APPLICATION NO. 400 OF 2023

IN

CRIMINAL APPEAL NO. 407 OF 2012

WITH

CRIMINAL APPEAL NO. 5 OF 2011

WITH

CRIMINAL APPEAL NO. 91 OF 2011

Shri Manish Arvindbhai Gajra (Bhanushali) .. Applicant.

In the matter between :

Shri Kanhayyalal @ Kanhayya Premji Sethiya
(Bhanushali) and Ors. .. Appellants.

Versus

The State of Maharashtra .. Respondent.

Mr. Vishal Kolekar for the Applicant.

Mrs. P.P. Shinde, APP for the Respondent–State.

Mr. Sachin Patil i/by Mr. I.M. Khairdi, for original complainant.

**CORAM : REVATI MOHITE DERE &
SHARMILA U. DESHMUKH, JJ.**

DATE : APRIL 19, 2023

ORDER - (Per : Sharmila U. Deshmukh, J.):

1. By this interim application, the Applicant seeks
cancellation of the Non-Bailable Warrant (NBW) issued by this

Court in Criminal Appeal No.407 of 2012, Criminal Appeal No. 5 of 2011 and Criminal Appeal No. 91 of 2011. As the Applicant, who was the Appellant in Criminal Appeal No. 407 of 2011 and the Respondent in Criminal Appeal No.5 of 2011 and Criminal Appeal No.91 of 2011, was not represented, this Court vide order dated 27th September, 2021 issued NBW against the Applicant to be executed through Manikpur Police Station, Vasai, District Thane. As the NBW remained unexecuted, by order dated 3rd January, 2023, fresh NBW against Applicant was issued.

2. Heard Mr. Kolekar, learned counsel appearing for the Applicant; Mrs. Shinde, APP for the Respondent–State and Mr. Sachin Patil, learned counsel appearing for original complainant.

3. Learned counsel for the Applicant submits that the Applicant was not aware that the State of Maharashtra had preferred the Criminal Appeal No. 5 of 2011 and Criminal Appeal No. 91 of 2011 seeking enhancement of sentence. He further submits that when the Applicant inquired with his Advocate as

regards the Criminal Appeal No.407 of 2011, the Applicant was informed about the NBW issued against the Applicant. He would further submit that the Applicant could not remain present, as he was unaware of the filing of the criminal appeals by the State Government.

4. The learned counsel for the Applicant has tendered an affidavit of the Applicant dated 19th April, 2023. The same is taken on record. The photocopy of Aadhar Card is annexed to the affidavit.

5. The Applicant is present in-person and the learned APP has verified the original Aadhar Card with the photocopy.

6. Considering that the Applicant was unaware of the filing of the Criminal Appeal No.5 of 2011 and Criminal Appeal No.91 of 2011, it cannot be said that there was willful default on the part of the Applicant in not appearing in the said criminal appeals. The Applicant has stated in the affidavit dated 19th April, 2023 that he has now engaged a lawyer to represent him in the aforesaid criminal appeals and also undertakes to remain present as

and when directed by this Court. The statement made in the affidavit is accepted as an undertaking to this Court.

7. In view of the above, interim application is allowed. The Non-Bailable Warrant issued by this Court against Manish Arvindbhai Gajra (Bhanushali), who is the appellant No.3 in Criminal Appeal No. 407 of 2012, the respondent No.3 in Criminal Appeal No.5 of 2011 and the respondent No.4 in Criminal Appeal No.91 of 2011 stands cancelled.

8. Interim Application stands disposed of.

9. All concerned to act on the authenticated copy of this order.

SHARMILA U. DESHMUKH, J.

REVATI MOHITE DERE, J.

This order is corrected pursuant to the Speaking to the Minutes order dated 4th May, 2023, the corrections are in the 'cause title' and in 'paragraph 7'.