

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

APPLICATION FOR LEAVE TO APPEAL NO. 37 OF 2022

Subhash Devchand Ahire ...Applicant
vs.
Kiran Uttam Sapkale and Anr. ...Respondents

Mr. Vivek B. Rane - Advocate for the Applicant
Mr. N. B. Patil - APP for the Respondent-State

CORAM : S. M. MODAK, J.

DATE : 03rd MARCH, 2023

P. C. :-

1. Heard learned Advocate for the Applicant-Complainant.
2. Applicant's complaint was dismissed by learned 9th Additional Chief Judicial Magistrate, Nashik vide order dated 10/12/2021 for not taking steps. The case is of the year 2012.
3. Even though learned Advocate for the Applicant admits that on certain dates he was not present but according to him case was fixed for return of non bailable warrant for which his presence was not required. Concerned copies of the Roznama are filed. A summary case can be dismissed under Section 256 of the Code of

Criminal Procedure. However for that purpose, stage needs to be considered. If case is fixed for return of warrant, as such presence of the complainant is not required. The order is exfacie illegal. Special leave is granted. Appeal is admitted.

4. Issue notice to the Respondent Nos. 1 and 2 returnable on 31st March, 2023. Learned APP Shri Patil waives notices for the Respondent-State.

5. Action be initiated against the Respondent Nos. 1 and 2 under Section 390 of the Criminal Procedure Code.

6. Considering the narrow controversy, the Appeal will be heard finally on the next date.

[S. M. MODAK, J.]