

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

**CRIMINAL WRIT PETITION NO. 3076 OF 2023
WITH
INTERIM APPLICATION (ST) NO. 20314 OF 2023**

Rakesh Kumar Paswan

..Petitioner

Versus

The State of Maharashtra & Anr.

..Respondents

Ms. Renuka Sarswat a/w. Amitabh Azad i/b. Shyam Sunder Tiwari
for Petitioner.

Mr. Arfan Sait, APP for State/Respondent No.1.

Ms. Shabnam Latiwala for Respondent No.2.

CORAM : SARANG V. KOTWAL, J.

DATE : 30 NOVEMBER 2023

PC :

1. The present petition is filed by the original accused No.2 in C.C.No.2839/SS/2019 pending before the Metropolitan Magistrate, 44th Court, Andheri, Mumbai. At the outset, learned counsel for the petitioner states that she is not pressing the prayer clause (III). The main prayer in this petition is for quashing and/or setting aside the N.B.W. issued by the learned Magistrate.

2. Heard Ms. Renuka Sarswat, learned counsel for the Petitioner, Ms. Shabnam Latiwala, learned counsel for the

Respondent No.2 and Mr. Arfan Sait, learned APP for the State/Respondent No.1.

3. The Petitioner is facing trial for commission of offence punishable U/s.138 of the Negotiable Instruments Act. After issuance of process, the petitioner was not remaining present before the Trial Court. Therefore, the complainant i.e. the Respondent No.2 herein preferred an application for issuing proclamation against the accused. The learned Magistrate vide the impugned order dated 11.04.2023 issued N.B.W. against the accused Nos.2 and 3. The petitioner is the accused No.2.

4. Learned counsel for the petitioner, on instructions, states that the petitioner shall remain present before the Trial Court and make an application for cancellation of warrant. She submitted that the petitioner shall remain present before the Trial Court on every date unless exempted for a reasonable cause. The statement is recorded and accepted. The petitioner shall thus show his bonafides.

5. Learned counsel for the Respondent No.2-complainant

submitted that the petitioner has not been giving his correct residential address and, therefore, there was difficulty in executing the warrant. She submitted that the petitioner be directed to furnish his correct residential address before the learned Magistrate.

6. Considering that the petitioner has showed his willingness to remain present before the Trial Court and also considering the statement made by the petitioner, he can be protected; so that, he can appear before the learned Magistrate and face the prosecution.

7. Hence, the following order:

ORDER

- i) The N.B.W. issued against the petitioner on 11.04.2023 in C.C.No.2839/SS/2019 by the Metropolitan Magistrate, 44th Court, Andheri, Mumbai, is stayed for the period of one month from today.
- ii) During that period, the petitioner is at liberty to make appropriate application for cancellation of

N.B.W. before the learned Magistrate by giving advance notice to the Respondent No.2-complainant.

- iii) The petitioner shall furnish his correct residential address where he will be available in future. He shall furnish that address before the learned Magistrate.
- iv) With this direction, the petition, as well as, the interim application are disposed of.

(SARANG V. KOTWAL, J.)