

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.481 OF 2023

AND

CRIMINAL APPLICATION NO.482 OF 2023

AND

CRIMINAL APPLICATION NO.483 OF 2023

AND

CRIMINAL APPLICATION NO.484 OF 2023

AND

CRIMINAL APPLICATION NO.485 OF 2023

AND

CRIMINAL APPLICATION NO.486 OF 2023

AND

CRIMINAL APPLICATION NO.487 OF 2023

Ashish Mahendrakar And Ors. .. Applicants

v/s.

The State of Maharashtra And Anr. .. Respondents

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Mr. Sunny Punamiya, a/w. Mr. Ravi Agrawal, for the Applicant.

Ms. M.R. Tidke, APP, for Respondent State in APL/481/2023, APL/484/2023 and APL/486/2023.

Mr. S.H. Yadav, APP, for Respondent State in APL/482/2023, APL/485/2023 and APL/487/2023.

Ms. P.N. Dabholkar, APP, for Respondent State in APL/483/2023.

Mr. Kewal B. Ahya, for Respondent No.2.

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CORAM : RAJESH S. PATIL, J.
(VACATION COURT)

SMITA
JOHNSON
GONSALVES

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DATE : 12 MAY 2023

P.C.:

This criminal application under Section 482 of Cr.P.C. is filed for quashing and setting aside the order dated 30 March 2023 passed by Metropolitan Magistrate, 27th Court, Mulund, Mumbai, below application dated 11 January 2023 in C.C. No.1699/SS/2015.

2. This is a proceeding under Section 138 of the Negotiable Instruments Act. The Applicants are arraigned as accused in the said complaint. Respondent No.2 is the original complainant.

3. The Advocate for the Applicants states that, on 30 March 2023, on an application made by the accused under Section 317 of the Cr.P.C., they sought exemption of accused from personal appearance for a day. On previous date of hearing, i.e. on 11 January 2023, the complainant had filed an application for issuance of non-bailable warrant against the accused persons, as they had failed to remain preset in the Court. It is the case of the complainant's Advocate that the application of the accused for exemption on 11 January 2023 was rejected. On 30 March 2023, the Metropolitan Magistrate, seems after hearing the parties, had rejected the exemption application and had issued a non-bailable warrant. The Advocate for the Applicants/accused states that, as per his instructions, as of now, the

said order dated 30 March 2023 has not been executed. He states that, at any time, the order dated 30 March 2023 will be executed and his client will be arrested. The Advocate for the complainant states that these applications are not maintainable and the accused had option to approach the Metropolitan Magistrate for cancellation of arrest warrant could have been preferred.

4. I have gone through the application and the impugned order and the judgment passed by this Hon'ble Court in *Bhaskar Sen vs. State of Maharashtra and Others*¹. The said judgment was under Section 138 of the Negotiable Instruments Act, wherein the scope of exemption from personal appearance of the accused was considered. Para 10 of the said judgment reads thus:-

“10. A large number of cases are being filed in this Court seeking cancellation of NBW issued either while rejecting the application for exemption or for non-appearance of the accused on one date of hearing even if Advocate for the accused appears on his behalf. It is also observed that the complaints under Section 138 of the Act are being filed against the companies in which all the directors are being arraigned as accused and their presence is being insisted on every date of hearing and no proceedings are being taken up in their absence. It is further observed that the progress of the cases under Section 138 impedes for want of their presence. The fact remains as to why their presence is being insisted on every date of hearing. The idea is to see that the progress of the

¹ 2004(4) Mh.L.J. 1115

case is not hindered for want of presence of the accused or even the complainant for that matter. Keeping this in view and against a backdrop of the observations made in the foregoing paragraphs, I deem it appropriate to issue the following directions to the Courts trying summons cases and in particular, cases under Section 138 of the Act.

(i)

(ii)

(iii)

(iv)

(v)

(vi)

(vii)

(viii) If a counsel for the accused fails to appear in the matter and his absence impedes further progress of the proceedings including examination of witnesses, the Court may resort to any other course as may be available under the provisions of the Code to secure presence of the accused, including issuance of NBW and may cancel the order of exemption and in such case may or may not grant exemption any more.

(ix)

(x)

(xi)"

5. The Advocate for the Applicants also referred to judgment of this Hon'ble Court of *Arunkumar N. Chaturvedi vs. State of Maharashtra and Another*². The said judgment is also under Negotiable Instruments Act and deals with exemption of accused from personal appearance. Para no.5 of the said judgment reads as under:-

² 2013 SCC OnLine 1607

“5. In my considered opinion, there is no law that the accused shall personally remain present for cancellation of warrant. If the lawyer makes an application for cancellation of warrant, the same needs to be considered on merits by the learned Magistrate without insisting the for appearance of the Applicant/accused. It is noted by this Court that many Writ Petitions are filed in this Court only because the learned Magistrate straight way take a view that warrant cannot be cancelled unless accused appears before the Court. The view taken by a few of the Magistrates particularly in the city of Bombay, in my opinion, is not correct. It is high time that this Court lets the Magistrate note that the appearance of the applicant/accused is not necessary when application for cancellation of warrant is made. In the circumstances, I pass the following order:-

(I) The non bailable warrant issued against the Applicant stands cancelled.

(II) The Applicant shall appear before the Trial Court on next date of hearing.

(III) The copy of this order shall be forwarded to the Chief Metropolitan Magistrate, Bombay for being circulated to all the Additional Chief Metropolitan Magistrate and Metropolitan Magistrate.

(IV) The Writ Petition stands disposed of.”

6. Considering the facts of the judgment and since both the Counsels have not shown me any order passed by the Metropolitan Magistrate rejecting any application whereby in the present matter, the Metropolitan Magistrate had rejected exemption and issued any kind

of bailable warrant. Therefore, it seems that on 30 March 2023, the Metropolitan Magistrate, while rejecting the exemption application of the accused, has issued a non-bailable warrant.

7. Therefore, the impugned order dated 30 March 2023, passed by the Metropolitan Magistrate, is quashed and set aside. The Applicants should co-operate for early disposal of the matter and attend the matter on the next date of the hearing.

8. Writ petitions are, accordingly, disposed of.

9. Parties to act on the authenticated copy of the order.

(RAJESH S. PATIL, J.)