

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

CRIMINAL APPLICATION NO. 614 OF 2023

Perumal Nadar & Ors.

..Applicants

Versus

The State of Maharashtra & Anr.

..Respondents

Mr. Sahil Mahajan for Applicants.

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

CORAM : SARANG V. KOTWAL, J.

DATE : 26 JUNE 2023

PC :

1. The Applicants are facing the prosecution vide C.C.No.171/SW/2021 before the Metropolitan Magistrate, 23rd Court, Esplanade, Mumbai. Learned Magistrate had issued non bailable warrant against the Applicants. The Applicants had approached this Court vide Criminal Application No.381 of 2023. This Court (Coram: Amit Borkar, J.) vide order dated 21/04/2023 permitted the application to be filed for cancellation of N.B.W. Learned Magistrate was directed to accept the application and to decide it in accordance with law. After that the application for cancellation of the Warrant was taken on record, it was considered

and was rejected by learned Magistrate vide order dated 29/04/2023. In the application for cancellation of warrant, there was a specific reference to the guidelines issued by a single Judge Bench of this Court (Coram: M.L.Tahaliyani, J.) in the case of ***Arunkumar N. Chaturvedi Vs. The State of Maharashtra and Anr.*** In Writ Petition No.4429 of 2023 decided on 24/12/2013. It was observed that, for cancellation of warrant there was no law that the accused had to personally remain present. Certain guidelines were issued. Therefore, this order was directed to be forwarded to the Chief Metropolitan Magistrate, Mumbai for being circulated to all the Metropolitan Magistrates. The guidelines mentions that the Magistrate must know that the appearance of the applicant/accused was not necessary when an application for cancellation of warrant was made. In spite of this direction and in spite of this particular order being mentioned in the application for cancellation of warrant, learned Metropolitan Magistrate passed the following order:

“Perused the application. In the present matter accused no.6 to 8 still not appeared & furnish surety. Hence Judgment cited by Advocate for accused is not

helpful to him. Hence request to cancel NBW in absence of accused stands rejected.”

2. This order is completely in contrast to the directions issued in *Arunkumar Chaturvedi's case (supra)*. Be that as it may, learned counsel for the Applicants submits that the applicants are willing to appear before the said Court to show their bonafides. His request is that, for a reasonable period, execution of warrant be stayed, so that, they can appear before the Court and they can make appropriate application. The request is reasonable.

3. Hence, the following order:

ORDER

- i) The order dated 29/04/2023 passed by learned Metropolitan Magistrate, 23rd Court, Esplanade, Mumbai, in C.C.No.171/SW/2021, is set aside.
- ii) The execution of Non Bailable Warrant pending against the Applicants before the said Court is stayed for a period of four weeks from today.
- iii) In the meantime, the Applicants can appear before the said Court and submit to further orders by making appropriate application for

cancellation of the Non Bailable Warrant.

iv) With this observation, the application is disposed of.

(SARANG V. KOTWAL, J.)