

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
WRIT PETITION NO.4422 OF 2021
WITH
INTERIM APPLICATION NO.982 OF 2022
IN
WRIT PETITION NO.4422 OF 2021

Brahmanand Rajmani Pandey .. Petitioner
Versus
The State of Maharashtra and ors. .. Respondents
...

Mr. Brahmanand Pandey, Petitioner in person present.
Mr. S.R. Agarkar, APP for the State.
Mr. Vaibhav Khade, PSI, D.N. Nagar, Police Station.

CORAM: BHARATI DANGRE, J.
DATED : 16th OCTOBER, 2023

P.C:-

1 The present Writ Petition is filed by Mr. Brahmanand Pandey, and who was permitted to present his case in person.

The petition filed in Hindi seek five distinct prayers and as far as prayer clause (1) is concerned, it is for quashing and setting aside of the order 12/06/2017 as well as two other orders dated, 5/07/2019 and 28/1/2020. Another prayer in the petition is concluding the proceedings within a time bound period.

2 I have heard Mr. Pandey, and with the assistance of the learned APP, Mr. Agarkar, I have perused the impugned orders.

As far as the first order dated 12/06/2017, is concerned, it is an order passed below the remand application dated 12/06/2017, when the accused was produced before the Court. On consideration of the case diary, which was produced by the Investigating Officer, the Metropolitan Magistrate arrived at a conclusion that there is no justification for a police custody remand as the Investigating Officer has already seized the Maruti Van and cash amount of Rs. 1,29,000/- and hence by rejecting the request of the PCR the accused was taken in MCR till 23/06/2017.

I do not think any propriety remains in considering the justiciability or legality of the said order, almost after 5 years of the same being passed.

3 As far as other two orders i.e. 5/07/2019 (Exh. 31) and order dated 28/01/2020 (Exh. 37) are concerned, it is evident that the accused did not remain present on the given dates and as a result NBW warrants were issued. Applications were subsequently filed for cancellation of NBW, by clarifying about the confusion that had occurred in the dates.

The Metropolitan Magistrate on considering the applications, cancelled the NBWs against the accused persons by accepting an undertaking that they shall remain present on each and every date without fail.

Even these orders at this stage, do not deserve any consideration in the Writ Petition as on date, it is informed that all the four accused persons are absconding and Mr. Agarkar, learned APP has made a categorical statement that the

prosecution has filed an application on 28/08/2022, under Section 82 of the Cr.P.C for declaring the accused as absconding and it is informed that till date, no order has been passed by the Magistrate. The learned APP state that the next date before the Magistrate is 8/12/2023.

4 It is surprising that an application filed for limited purpose is pending before the Magistrate for almost 1 year.

In any case, I deem it appropriate to direct the Metropolitan Magistrate to pass appropriate order on the said application on the date on which the matter is scheduled for hearing and on no count shall any further adjournment be granted.

Once the accused are declared absconding, by following the procedure prescribed under the code of criminal procedure, the Metropolitan Magistrate shall proceed with the trial.

Since it is the grievance of Mr. Pandey that the Police case is of the year 2017 with minimal progress, since the accused themselves are absconding, I find sufficient justification in his grievance.

Directing the Metropolitan Magistrate to take the necessary steps under Section 82 and further proceeding with the trial as expeditiously as possible, the present Writ Petition along with the Interim Application stand disposed off.

(SMT. BHARATI DANGRE, J.)