

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

CRIMINAL WRIT PETITION NO.2643 OF 2023

Santosh Maruti Jadhav
and another

.....Petitioners

Versus

The State of Maharashtra

.... Respondent

Ms. Manisha Devkar, Advocate a/w. Shankar M. Katkar, for
the Petitioners.

Mr. M.G. Patil, APP for the Respondent-State.

CORAM : SARANG V. KOTWAL, J.

DATE : 01st AUGUST, 2023

P.C. :

1. The present Petitioners are the original accused Nos.5 & 6 in Criminal Case No.861/PW/2011 before the Metropolitan Magistrate, 34th Court, Vikhroli, Mumbai. This case is pending since 2011. On 22.9.2022 when the case was called out before learned Magistrate, the Petitioners and other accused were absent. Even application for exemption was not preferred on their behalf. Therefore, learned Judge concluded that the accused, including the Petitioners, had jumped the bail bonds and, therefore, passed an order

forfeiting their bail bonds, issuing non-bailable warrant and recovery warrant against them. A show-cause notice was also issued to their surety.

2. Learned counsel for the Petitioners submitted that on that date the Advocate reached late and therefore, the application for exemption could not be filed. Learned counsel submitted that the matter is old and the Petitioners have been appearing in the trial Court quite regularly and when it was not possible for them to attend, they have made proper applications through their Advocates. On that date, learned Advocate for the Petitioners reached late and, therefore, there was nobody to represent the Petitioners and other accused before the trial Court. In those circumstances the impugned order came to be passed. Immediately within a short time, learned counsel for the accused made an application for setting aside said order. At that time, all other accused, who were present in Mumbai, could reach the Court after they received the message from their Advocate and, therefore, learned trial Judge on that very day set aside his own order as far as those accused who could remain

present before him were concerned. However, both the Petitioners were not in Mumbai. Therefore, they could not remain present and the order passed against them was not set aside.

3. Learned counsel for the Petitioners submitted that both the Petitioners are working with the ICICI Bank at Bandra. On that very day, they were in their native place and, therefore, they were not in Mumbai and, hence, could not attend the Court proceedings. They had no intention to evade the due process of law. They can show their bonafides by attending the Court, but, for that purpose some protection may be granted in their favour. Considering these submissions, to give one chance to the Petitioners to establish their bonafides, I am inclined to pass the following order :

:: O R D E R ::

- i. The NBW issued against the Petitioners vide order dated 22.9.2022 passed by Metropolitan Magistrate, 34th Court, Vikhroli, Mumbai is stayed for a period of four weeks from today. Within that period, at the

earliest, the Petitioners may approach said Court and they are at liberty to prefer an application for setting aside the said order dated 22.9.2022.

- ii. If such an application is made, learned Judge shall decide it in accordance with law after being satisfied about the bonafides of the Petitioners shown by them in attending the Court.
- iii. Learned Judge can impose suitable conditions to secure their presence during trial.
- iv. In case, any adverse order is passed by learned Judge in respect of the present subject matter of the impugned order dated 22.9.2022, the Petitioners are at liberty to approach this Court by a separate proceeding.
- v. With these observations, the Petition is disposed of.

(SARANG V. KOTWAL, J.)

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