

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

CRIMINAL APPLICATION NO.952 OF 2023

Muazzam Maqsood Bhaiji
and another

..... Applicants

Versus

The State of Maharashtra

.... Respondent

Mr. Aabad H. Ponda, Senior Advocate a/w. Raghavan Sarathy, Ms. Prachi K. Ruchita Chavan i/b. Thodur Law Associates for the Applicants.

Mr. A.R. Patil, APP for the Respondent-State.

Mr. Rohan V. Bhosle, Advocate i/b. Sandeep Karnik, for the first informant.

CORAM : SARANG V. KOTWAL, J.

DATE : 31st JULY, 2023

P.C. :

1. The Applicants have challenged the order dated 14.7.2023 whereby the proclamation is issued by the Judicial Magistrate, First Class, 4th Court, Panvel. The said order arises out of C.R. No.60/2021 registered at Kharghar police station dated 9.2.2021 under Sections 420, 406, 465, 467, 468, 471, 474 read with 34 and under Section 120-B of IPC.

2. At the outset learned Senior Counsel for the Applicants, learned counsel appearing for the first informant and learned APP inform the Court that the Applicants' anticipatory bail application has been rejected by this Court and said order is confirmed by the Hon'ble Supreme Court.

3. In this background, the prosecuting agency approached the Court of learned Magistrate pointing out that the Applicants are absconding and warrant could not be served on them. Therefore, learned Magistrate issued the order under Section 82 of Cr.P.C. for proclamation of the Applicants. Learned Magistrate passed this order on 14.7.2023 and published the proclamation requiring the Applicants to appear before him on 31.7.2023.

4. The only submission advanced by learned Senior Counsel is that Section 82 of Cr.P.C. contemplates that the notice should be given for a period which was not less than 30 days from the date of publishing such proclamation for appearing at a specified place. In this case, the proclamation was issued on 14.7.2023 and the Applicants were directed to

remain present before that Court on 31.7.2023. This period was less than 30 days as prescribed under Section 82 of Cr.P.C. Learned Senior Counsel for the Applicants relied on two orders of two different Single Judge Benches of this Court in the following cases:

- (i) **Vinay Ramnarayan Singh Vs. State of Maharashtra** as reported in **2021 SCC OnLine Bom 4577**; and
- (ii) **Rammi Paramjeetsingh Rajput Vs. State of Maharashtra** as reported in **2021 SCC OnLine Bom 2059**.

Both these orders have taken a view that if the period for appearance is less than the prescribed under Section 82 of Cr.P.C. then the order of issuing proclamation cannot be sustained.

5. Learned counsel for the first informant as well as learned APP did not controvert this position of law and this factual position.

6. In this view of the matter, the impugned order will have to be set aside. At the same time, it needs to be

clarified that the investigating agency can again approach the Court of learned Magistrate and pray for issuance of fresh proclamation after following due procedure and the learned Magistrate shall decide it in accordance with law.

7. Hence, the following order:

:: O R D E R ::

- i. The order dated 14.7.2023 passed by Judicial Magistrate, First Class, 4th Court, Panvel in connection with C.R. No.60/2021 registered at Kharghar police station issuing proclamation under Section 82 of Cr.P.C. against the Applicants is set aside.
- ii. The investigating agency is at liberty to make a fresh application for issuance of the proclamation under Section 82 of Cr.P.C. before the learned Judicial Magistrate, First Class, 4th Court, Panvel for issuing fresh proclamation after following the due process of law. If such an application is made, it

shall be decided in accordance with law.

- iii. Learned counsel for the first informant is permitted to file his Vakilpatra within a period of two weeks from today.
- iv. This order shall not affect any other additional remedies, which the investigating agency, chooses to exercise in accordance with law.
- v. The Application is disposed of accordingly.

(SARANG V. KOTWAL, J.)

PRADIPKUMAR
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DESHMANE

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