

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

CRIMINAL APPLICATION NO. 1647 OF 2023

Deepak Sitaram Modhe

..Applicant.

Versus

State of Maharashtra

..Respondent

Mr. Aashish Satpute for Applicant.

Ms. Sangita D. Shinde, APP for State/Respondent.

CORAM : SARANG V. KOTWAL, J.

DATE : 22 DECEMBER 2023

PC :

1. Heard Shri. Aashish Satpute, learned counsel for the Applicant and Ms. Sangita Shinde, learned APP for the State/Respondent.

2. The Applicant has challenged the order dated 29.11.2023 passed by the J.M.F.C., Court No.7, Pune, issuing proclamation U/s.82 of the Cr.P.C. The applicant is the original accused in C.R.No.294 of 2023 dated 04.09.2023 registered at Khadak police station, Pune city, under sections 307, 376(2)(n), 377, 392, 506(2), 504 and 323 of the I.P.C., under section 3 and 25 of the Arms Act and U/s.37 r/w. 135 of the Maharashtra Police

Act. A short point raised before me by the applicant is that, the proclamation issued against the applicant directs him to appear before the Court in a short period from issuance of the order; whereas, Section 82 of the Cr.P.C. requires that there has to be period of at least 30 days after which only such offender can be directed to remain present. In support of his case, learned counsel for the applicant relied on the three orders passed by three single Judge benches of this Court. They are passed in ***Criminal Writ Petition No.4551 of 2021*** in the case of *Vinay Ramnarayan Singh @ Bablu V/s. The State of Maharashtra*, ***Criminal Application No.560 of 2021*** in the case of *Rammi Paramjeetsingh Rajput Versus The State of Maharashtra & Ors.* and ***Criminal Writ Petition No.2549 of 2023*** in the case of *Viraj Dnyaneshwar Vibhute Versus The State of Maharashtra*.

3. Learned APP could not counter these arguments as the three orders referred to herein above squarely covered the issue. She submitted that, in case the order is set aside, the investigating agency be given fresh liberty to pursue this remedy.

4. I have considered these submissions. The impugned order mentions that the learned Magistrate had issued arrest warrant against the applicant on 24.11.2023, but he was not found. The learned Magistrate was satisfied that the applicant was absconding or that he was hiding himself to avoid execution of warrant. Therefore, the learned Magistrate directed the applicant to appear before him on 04.12.2023 at 11.00a.m. This order was passed on 29.11.2023.

5. Section 82(1) of the Cr.P.C. mentions that, specific time cannot be less than 30 days from the date of publishing such proclamation. The said Section 82 of the Cr.P.C. reads thus:-

Section 82 - Proclamation for person absconding

(1) If Any Court has reason to believe (whether after taking evidence or not) that any person against whom a warrant has been issued by it has absconded or is concealing himself so that such warrant cannot be executed, such Court may publish a written proclamation requiring him to appear at a specific place and at a specified time not less than thirty days from the date of publishing such proclamation.

(2) The proclamation shall be published as follows:-

(i) (a) it shall be publicly read in some conspicuous place of the town or village in which such person ordinarily resides;

(b) it shall be affixed to some conspicuous part of the house or home-stead in which such person ordinarily resides or to some conspicuous place of such town or village;

(c) a copy thereof shall be affixed to some conspicuous part of the Court-house;

(ii) the Court may also, if it thinks fit, direct a copy of the proclamation to be published in a daily newspaper circulating in the place in which such person ordinarily resides.

(3) A statement in writing by the Court issuing the proclamation to the effect that the proclamation was duly published on a specified day, in the manner specified in clause (i) of sub-section (2), shall be conclusive evidence that the requirements of this section have been complied with, and that the proclamation was published on such day.

(4) Where a proclamation published under sub-section (1) is in respect of a person accused of an offence punishable under section 302, 304, 364, 367, 382, 392, 393, 394, 395, 396, 397, 398, 399, 400, 402, 436, 449, 459 or 460 of the Indian Penal Code (45 of 1860) and such person fails to appear at the specified place and time required by the proclamation, the Court may, after making such inquiry as it thinks fit, pronounce him a proclaimed offender and make a declaration to that effect.

(5) The provisions of sub-sections (2) and (3) shall apply to a declaration made by the Court under sub-section (4) as they apply to the proclamation published under sub-section (1).

6. All the above three orders have taken this provision into consideration and in all these orders it is mentioned that the period cannot be less than 30 days. In the present case, the order is passed on 29.11.2023 and the applicant was directed to appear on 04.12.2023. Therefore, I am inclined to take a similar view which is taken in all the aforesaid orders. At the same time, the investigating agency needs to be given sufficient opportunity to make all the efforts to take steps in accordance with law to secure presence of the applicant.

7. Hence, the following order:

O R D E R

- i) The order dated 29.11.2023 passed by the J.M.F.C., Court No.7, Pune, issuing proclamation against the applicant is set aside.
- ii) It is clarified that the said Court can initiate fresh process for issuing proclamation in accordance with requirement of Section 82 of the Cr.P.C.
- iii) The investigating agency is at liberty to take appropriate steps to secure presence of the

applicant in accordance with law.

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

(SARANG V. KOTWAL, J.)