

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

CRIMINAL WRIT PETITION NO. 48/2023

(Aarif s/o. Yusuf Sayed Vs. The Registrar, District & Sessions Court, Buldhana & ors.)

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Mr. A. S. Mardikar, Sr. Advocate with Mr. V. R. Deshpande, Advocate
for petitioner.

Mr. Firdos Mirza, Advocate for respondent Nos. 1 & 2.

CORAM: VINAY JOSHI AND
VALMIKI SA MENEZES JJ.

DATED : 24/01/2023.

Heard.

2. On oral request, the petitioner is permitted to delete respondent No. 3.

3. Considering peculiar issue involved in the petition, by consent of both side, we have take it for final disposal.

4. The petitioner is practicing Advocate, usually practice in District Court, Buldhana. The petitioner has filed an application seeking anticipatory bail in Crime No. 691/2022 which was registered as Criminal Bail Application No. 292/2022. The matter was assigned to the learned District Judge-1 and Additional Sessions Judge, District and Sessions Court, Buldhana for disposal in accordance with law. The learned Additional Sessions Judge has heard the bail application and reserved it for the orders. According to the petitioner since for considerable time order was not passed, the applicant has filed a pursis

(page 13) to the same Court bringing factual aspect on record. In the said pursis, besides factual aspect, it has been commented that, the learned Judge has not passed the order in the matter for the reasons best known to the learned Judge. Considering said remark, the learned Additional Sessions Judge has applied to the Principal District and Sessions Judge seeking to take cognizance against the applicant-Advocate in terms of Rule 9B of the Bombay High Court, Appellate Side Rules, 1960 ('Rules of 1960'). In pursuance of said communication, the petitioner has received a show cause notice dated 16.12.2022 issued by the learned Principal District and Sessions Judge which is impugned herein.

5. The learned senior counsel appearing for the petitioner would submit that bare reading of relevant portion of pursis, nowhere suggests any kind of misconduct as enumerated under Sub-clause (a) to (f) of Rule 9A of the Rules of 1960. Our attention has been invited to Rules 9D of Rules of 1960 which contemplates that the orders passed under Rule 9B or Sub-rule (1) and (2) of the Rule 9C of the Rules of 1960 shall be final and shall not be questioned in any proceeding in any Court. He would submit that the consequence of order is quite harsh that there is provision of debarring Advocate from appearing before the High Court or any Court.

6. Rule 9C(4) empowers the Principal District Judge conduct an inquiry in pursuance of notice and pass an order within a period of eight weeks of service of such notice.

7. We find that there is inbuilt provision of giving right of hearing to the applicant before passing an order. At present, besides the contents of pursis, nothing is before us to adjudicate as such. The learned Principal District Judge is competent to inquire into the matter and by considering all contentions would pass appropriate orders. Therefore, at this preliminary stage, we are not inclined to entertain the petition. However considering the nature and impact of order, which the learned Principal District Judge is permitted to pass, we deem it appropriate that the learned Principal District Judge shall proceed with the inquiry, pass order in accordance with law and for giving an opportunity to the petitioner, if adverse order is passed by the Principal District Judge, it shall not take effect for the period of two weeks thereafter.

8. Petition stands disposed of in above terms.

(VALMIKI SA MENEZES, J.) (VINAY JOSHI, J.)

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