



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL APPEAL NO. 1138 OF 2023

SUNIL GANGARAM SHINDE (WADAR)

VERSUS

THE STATE OF MAHARASHTRA

...

Mr. A.R. Syed, Advocate h/f Sushil P. Pandit, Advocate for Appellant

Mr. A.R. Kale, APP for Respondent No.1/State

Mr. Dnyaneshwar B. Kale, Advocate for Respondent No.2

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CORAM : NITIN B. SURYAWANSHI, J.

DATE : 29th FEBRUARY, 2024

PER COURT :

1. By this appeal filed under Section 14A of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, appellant takes exception to the order dated 08/09/2023, passed by learned Additional Sessions Judge, Shahada, below Exhibit-10 in Special Case No.11/2018, thereby rejecting application filed by appellant to cancel non-bailable warrant issued against him.

2. Appellant is accused in C.R. No.21/2018, registered with Sarangkhedda Police Station, Nandurbar, for offences punishable under Sections 365, 324, 506 of the Indian Penal Code and Sections 3(1)(r) and 3(1)(s) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act. On completion of investigation in said crime, charge-sheet is filed and the case is numbered as Special Case No.11/2018. Appellant was released on regular bail in the year 2018. Thereafter, appellant claims that he regularly attended the

dates of trial, however, during COVID period he could not attend, hence, non-bailable warrant was issued against him on 11/02/2021. At the instance of appellant said warrant was canceled on 21/12/2021. Thereafter, again on 23/02/2023, non-bailable warrant was issued against appellant. Appellant, therefore, filed application Exhibit-10 seeking cancellation of non-bailable warrant, citing the ground of ailment of his old and infirm mother. Learned Sessions Judge has rejected the said application. Hence, present appeal.

3. Heard learned APP for respondent No.1/State, learned advocate for appellant and learned advocate for respondent No.2. Perused the record.

4. Learned APP and learned advocate for respondent No.2/informant have opposed the appeal stating that repeatedly appellant is remaining absent and therefore, trial is prolonged. Hence, the appeal is devoid of merit and the same is liable to be dismissed.

5. Perusal of application Exhibit-10 shows that non-bailable warrant is issued against appellant on 23/02/2023. Appellant has stated that he belongs to poor family and has responsibility to maintain his old and infirm mother of 75 years. She is frequently required to be taken to Doctor. Appellant is a labour, who is required to go out of station for earning his livelihood and as he does not

have cell phone because of poor financial condition, he could not contact his lawyer. Appellant has undertaken that henceforth he will regularly attend the trial.

6. Trial Court while rejecting the application has observed that the case is of 2018 and due to absence of appellant trial is held up. As accused remained absent since 2019, it would not be appropriate to cancel the warrant.

7. Trial Court has erred in observing that appellant is remaining absent since 2019, when in fact after cancellation of warrant in 2021, he has attended trial on some dates. *Roznama* further indicates that his lawyer was present on some dates.

8. In that view of the matter, appeal is allowed. Impugned order dated 08/09/2023, passed by learned Additional Sessions Judge, Shahada, below Exhibit-10 in Special Case No.11/2018, is quashed and set aside. Non-bailable warrant issued against appellant is quashed and set aside, on condition that appellant shall deposit fine of Rs.1,000/- in the trial Court. Appellant shall scrupulously attend the dates of trial. Trial is expedited.

(NITIN B. SURYAWANSHI, J.)