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

WRIT PETITION NO.4225 OF 2023

Mohammed Amir Abdul Mateen Farooqui
@ Mohd. Amir Farukhi

...Petitioner

vs.

The State of Maharashtra & Ors.

...Respondents

Ms. Sartaj Shaikh for the Petitioner.

Mr. Shreekant V. Gavand APP for the Respondent-State.

Mr. Vilas Shinde, PSI, Nehrunagar police station present.

CORAM : SHYAM C. CHANDAK, J.

DATED : 2nd JANUARY 2024

P.C. :

1. Heard learned Advocate Ms.Sartaj Shaikh for the Petitioner and learned APP Mr.Gavand for the Respondent-State.

2. Rule. Rule made returnable forthwith. Learned APP Mr.Gavand waives service on behalf of the Respondent-State. The matter is taken up for final hearing by consent of the parties.

3. The present Petition is filed under Article 227 of the Constitution of India read with Section 482 of the Code of Criminal Procedure ("Cr.PC.", for short) seeking to quash the Order dated 27/11/2021, passed below Exhibit-1 in Case No.PS/792/2016 by

learned Additional Chief Metropolitan Magistrate, 34th Court, at Vikhroli, Mumbai, whereby, on account of absence of the Petitioner, the learned Magistrate directed that bail bonds of the Petitioner forfeited to the Government, issue non-bailable warrant against the Petitioner, recovery warrant against him and to issue show cause notice to the surety of the Petitioner as to why his surety bond should not be forfeited to the Government. Further, it is directed that cash security deposited by the Petitioner, if any, be forfeited to the Government and be credited to the Government.

4. Learned Advocate for the Petitioner submitted that the Petitioner was regularly attending the said case before the learned Magistrate from time to time until before the lockdown due to Covid-19 situation. Thereafter, the Petitioner could not attend in the said case due to Covid-19. The Petitioner was present in the said case on 13th September 2019 and 18th January 2020, before the lockdown.. However, without taking note of this fact, the learned Magistrate passed the impugned order. It is settled position of law that, in such cases, looking to the conduct of the accused, first summons or bail bailable warrant may be issued against the accused and if the accused did not attend inspite of receipt of the summons or execution of the bailable warrant, then the learned Magistrate may direct to issue non

bailable warrant against the accused, forfeiture of his bail bonds etc.

Lastly, learned Advocate submitted that, considering the Petitioner was on bail, one opportunity may be given to the Petitioner to attend the said case by continuing his bail. Hence, the impugned order may be quashed.

5. Learned APP has fairly submitted that the Petitioner could not attend the said case due to Covid-19 situation. Therefore, the Petitioner may be given an opportunity to attend the said case by continuing his bail. However, looking at the time consumed by the Petitioner in filing this Petition, heavy cost may be imposed.

6. The *roznama* annexed to the Application shows that on two dates before start of Covid-19 lockdown, the Petitioner attended in the said case before the trial Court. Thereafter the Petitioner could not attend the said case due to Covid-19 situation. In this background instead of passing the impugned order, the learned Magistrate could have issued summons or bailable warrant to secure attendance of the Petitioner. If the summons or bailable warrant were ineffective, the learned Magistrate could have passed the impugned order.

7. Be that as it may, now, the Petitioner undertakes to remain present in the case regularly. The Petitioner's work place is at half an hour distance from the trial Court. Therefore, there is every

possibility that the Petitioner would attend in the said case regularly.

The offences alleged against the Petitioner are bailable. In view thereof, the impugned order may be quashed and set aside.

8. However, it must be noted that, the Petitioner took two years time to file this Petition. This unnecessarily prolonged the case before the trial Court. Hence, and as this Court is inclined to quash and set aside the impugned Order, the learned Advocate for the Petitioner, on instructions, states that the Petitioner is ready to pay cost of Rs.15,000/- towards the delay on his part in filing this Petition. The said statement is accepted.

9. In view of the discussion, the Petition deserves to be allowed, accordingly. Hence, order :

- (i) Writ Petition is allowed.
- (ii) The impugned Order dated 27/11/2021, passed below Exhibit-1 in Case No.PS/792/2016 by learned Additional Chief Metropolitan Magistrate, 34th Court, at Vikhroli, Mumbai, is quashed and set aside, subject to payment of cost of Rs.15,000/- by the Petitioner.
- (iii) The cost of Rs.15,000/- be deposited with the Central Police Welfare Fund, Mumbai within two weeks from the date of uploading this order.
- (iv) The Petitioner and his Advocate shall attend in the

said case before the trial Court regularly.

(v) The learned Additional Chief Metropolitan Magistrate, 34th Court, Vikhroli, Mumbai to expedite hearing in the case and endeavour to dispose off the said case within six months from the date of receipt of this order.

(vi) Rule is made absolute in the aforesaid terms.

(vii) Parties shall act on the authenticated copy of this order.

10. List the matter for recording compliance on 30th January 2024.

[SHYAM C. CHANDAK, J.]