

ORDER BELOW APPLICATION (EXH.31)

(Date : 06/02/2025)

The accused No. 1 Vicky has asked to separate his trial, since accused No. 2 Shailesh is absconding and there is no prospect of his attending the trial. Because of absence of co-accused Shailesh, he is suffering.

02. Heard learned counsel for accused No. 1. Heard learned A.P.P. Perused the record. It is a matter of record that after securing bail, the accused No. 2 Shailesh started remaining absent. Since June-2023 the N.B.W. is persistently running against him. But, he could not be traced out. The N.B.W. issued from time to time remained un-executed. Even the surety also deposited the surety amount of Rs. 50,000/- as she was unable to secure the presence of absconded accused No. 2 Shailesh. The sum and substance is that there is no immediate prospect of accused No. 2 Shailesh to appear and face the trial.

03. The record necessitates issuance of proclamation against absconded accused No. 2 Shailesh. But, the question is, whether the provisions of BNSS would apply to the present case or not ? Section 531(1)(b) of BNSS provides that even the old proclamations (issued under Cr.P.C.) shall be deemed to be published or issued under BNSS. If so, the question is, then why the procedure laid down under Section 356 of BNSS should not apply to the proclaimed offender ? The very intention and purpose

to replace Cr.P.C. and introduced BNSS was to expedite the criminal proceedings. Since last many years, the present proceeding is awaiting the presence of absconded accused. There could not be any progress in the proceeding because of absconding of accused. When the provision under Section 356 of BNSS is taking care of the proclaimed offender of giving opportunity to contest the prosecution on his appearance in future by way of cross-examining the witnesses, examined by the prosecution, the said provision may be invoked. In pending proceedings wherein the accused are absconded and there is no prospects of their presence in a sooner period and there is likelihood of lingering of proceedings for years together because of absconding of accused, irrespective of the provision contained in Section 531(1)(a) of BNSS, which provides that as on 01/07/2024, the trial was pending under Cr.P.C., the same shall continue under Cr.P.C. The proceedings of absconded accused may be dealt with the aid of Section 531(1)(b) of BNSS and invoking Section 356, the same may be proceeded further under BNSS. This restricted help of Section 356 of BNSS may be taken to dispose off the pending criminal proceedings awaiting the decision from years together. Therefore, Section 356 of BNSS is invoked. Now, issue a proclamation under Section 84 r/w Section 356 of BNSS against absconded accused No. 2 Shailesh. Also issue a standing N.B.W. against him.

04. So far as accused No. 1 Vickey is concerned, he

cannot be made to suffer. It is proper to frame a charge against him and to proceed with the trial by separating his trial from absconded accused No. 2 Shailesh. The evidence be recorded against absconded accused No. 2 under Section 299 of Cr.P.C. But, before that, let the mandatory proclamation be issued. Office to issue the proclamation today itself. On next date the accused No. 1 Vicky shall remain present for framing of charge.

Date : 06/02/2025

(H.S. Satbhai)
Special Judge-1,
Kelapur, Dist. Yavatmal.