

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

Criminal Writ Petition No. 375 of 2015

Prakash Suryabhan Shinde,

Age : - ,

Occupation : Agriculture,

R/o. Dhondalgaon,

Taluka : Vaijapur,

District : Aurangabad.

.. Petitioner.

versus

The State of Maharashtra.

.. Respondent.

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Mr. Abhaysinh K. Bhosale, Advocate, for the petitioner.

*Mr. U.S. Mote, Additional Public Prosecutor, for the
respondent - State.*

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CORAM : SMT. SADHANA S. JADHAV, J.

DATE : 20TH MARCH 2015

PER COURT :

1. Heard Adv. Mr. A.K. Bhosale appearing for the petitioner, and the learned APP Mr. U.S. Mote appearing for the respondent - State.
2. Rule. Rule made returnable forthwith. By consent, hearing finally.

3. The petitioner herein was convicted under Section 138 of the Negotiable Instruments Act, 1881, by the learned Judicial Magistrate (First Class), Aurangabad, in Summary Criminal Case No. 5963/2002. Being aggrieved by the said judgment and order, the petitioner filed Criminal Appeal No. 212/2008. At the time of admission of the appeal, the petitioner has deposited amount of Rs. 25,000/-.

4. The petitioner did not cause his appearance before the appellate court on several occasions and, therefore, the appellate court was constrained to issue, initially bailable warrant. It is pertinent to note, that the Roznama would indicate that the petitioner has not appeared before the court now his Advocate has appeared before the court. On 4th February 2012, the appellate court had issued non-bailable warrant against the appellant. On 18th February 2012, there was an application seeking cancellation of warrant. A Pursish was filed by the Advocate for the appellant. Since 17th July 2012, the petitioner again remained absent at the time of hearing. On 22nd January 2014, non-bailable warrant was issued against the petitioner. Same could not be executed.

5. It appears from the record, that the petitioner was arrested in execution of the non-bailable warrant. It is submitted that the petitioner has been arrested. On 12th March 2015, the petitioner filed an application before the appellate court and submitted that the petitioner was suffering from Spondylitis and would give an undertaking to attend hearing of the appeal on every date. The application filed by the petitioner lacks material particulars. On 10th March 2015, the petitioner was produced before the

court and was taken in Magisterial Custody. The petitioner is praying for bail.

6. The appellate court had rejected the said application seeking bail on medical ground and has directed the petitioner to deposit the cheque amount of Rs. 5,00,000/-. The learned Counsel for the petitioner submits that in the eventuality, that the entire cheque amount is paid, the purpose of filing the appeal would be frustrated. The learned Counsel for the petitioner has not placed on record the judgment and order passed by the learned Judicial Magistrate (F.C.), convicting the petitioner for the offence punishable under Section 138 of the Negotiable Instruments Act, 1881. The learned Counsel for the petitioner submits that due to ill-health, the petitioner could not arrange for necessary funds. The learned Counsel for the petitioner further submits that the learned Judicial Magistrate (F.C.) has imposed fine of Rs. 50,000/-. For the purpose of securing bail, the petitioner is willing and desirous to deposit the find amount i.e. an amount of Rs. 50,000/- to be paid in the Court of Additional Sessions Judge, Aurangabad, within two weeks from the date of this order. In the eventuality, that amount of Rs. 50,000/- is not paid, the order granting bail shall stand recalled.

7. In the result, the petition is allowed.

The petitioner be enlarged on bail, on furnishing P.R. Bond in the sum of Rs. 25,000/- [Rupees twenty five thousand] and one or two solvent sureties of the like amount. Bail be furnished in the appellate court. The petitioner shall deposit an amount of Rs. 50,000/- [Rupees fifty thousand]

(4)

Cri. W.P. No. 375 of 2015

in the Sessions Court at Aurangabad, where the appeal is pending, within two weeks from today.

8. Rule made absolute in the above terms.

(SMT. SADHANA S. JADHAV)
JUDGE

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