

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.992 OF 2014

1. Subhash Atmaram Sharma
Age:- 52 years, Occ:. Business
Resurgere Mines & Minerals India Ltd.
15, Morvi House, 28/30 Goa Street,
Ballard Estate, Mumbai-38

2. Mayur Jitendra Shah,
Age: 48 yrs., Occ: business
Resurgere Mines & Minerals India Ltd.
15, Morvi House, 28/30 Goa Street,
Ballard Estate, Mumbai-38

...Applicants

Versus

1. State of Maharashtra

2. M/s. Barclays Bank PLC
601/603, Ceejay House, Shivsagar
Estate, Dr. Annie Beasant Road,
Worli, Mumbai-18.

...Respondents

Mr. M.P. Dalvi for Applicants
Mr. D.R. More, APP for Respondent No.1-State.
Mr. Ashwin Havelikar i/b Mr. Hiren Mehta for Respondent No.2.

CORAM:-M.L. TAHALIYANI, J.

DATED : 20th MARCH, 2015.

Oral Judgment:

Admit. By consent of the parties taken up forthwith for
final hearing.

2. Heard learned counsel for the respective parties. Perused the impugned order.

3. The Applicants are facing trial for the offence under section 138 of the Negotiable Instruments Act. They have appeared in response to the summons issued by the Court. Now they have been asked to furnish a bail in the sum of Rs.5,00,000/- each with surety of Rs.2,00,000/- each. The learned Advocate for the Applicants has submitted that the Applicants are permanent residents of Mumbai and there is no apprehension that they would not appear before the Court. It is brought to my notice that the Applicants had appeared before the Court immediately after getting summons. As such, there was no reason for the Magistrate to ask the Applicants to furnish bail. It is further pointed out that the Applicants had never been arrested and therefore, there was no occasion for the Magistrate to ask for personal bond and surety bond.

4. I have considered the arguments submitted on behalf of the Applicants. I have also taken note of the practice generally adopted by the Courts of Magistrates in Mumbai with regard to execution of personal bonds and surety bonds. It is seen that in

almost all cases under section 138 of Negotiable Instruments Act, the Trial Magistrates direct the accused to furnish personal bonds and surety bonds to the satisfaction of the Trial Magistrates. What is further noted is that in some cases the amount of personal bonds and surety bonds is too oppressive to sustain. It appears that the Trial Magistrate decides the amount of bonds on the basis of amount of the cheque allegedly dishonoured. A large number of litigants are required to move this Court for modification of orders of the Magistrates as they are not able to furnish surety of the amount stated in the order of the Magistrates.

5. In the first place learned Trial Magistrates shall note that the cases under section 138 of Negotiable Instruments Act are tried as summary cases and attendance of the accused is secured by issuance of process of summons. In such cases the learned Magistrate shall also take note of the legal position that execution of personal bond and surety bond is not a condition precedent for commencement of trial. No doubt, the trial Magistrate has authority to ask for personal bond and surety bond to ensure attendance of the accused on the dates of hearing. However, such discretion is to be exercised judiciously. In my opinion unless there is apprehension that the accused would evade

the trial or would not attend the dates of hearing, the purpose could be served by asking the accused to execute personal bond only of a reasonable amount. Surety bonds shall not be required to be executed only because the complainant wants such bonds to be executed. Learned Magistrates shall not ignore the fact that large number of cases under section 138 of Negotiable Instruments Act are pending in various Courts of the Magistrates in Mumbai. It is just not possible for any Magistrate to hear all the cases shown in the cause list of a particular date. Grant of exemption from personal appearance to the accused in deserving cases can be one of the modes to reduce the unnecessary expenditure incurred by the accused for travelling to the Court.

6. There may be cases where the execution of bond may not be at all necessary if the accused are attending the dates of hearing regularly, in person or through their advocates. Next category could be of cases where the purpose could be served by asking the accused to execute personal bonds only and third category could be of the cases where the accused has a tendency to remain absent intentionally or without any reasonable cause. The cases following under the third category, in my view, are the cases in which the learned Magistrates

may ask for personal bonds as well as surety bonds. In brief, learned Magistrates shall exercise their discretion judiciously and before asking the accused to execute bonds shall take into consideration various relevant aspects including the fact as to whether the accused had a permanent place of residence and business. Learned Magistrate shall note that time of the Court and ministerial staff saved by reducing the work of execution of surety bonds can be devoted for substantial work like hearing of main cases.

7. As far as the present case is concerned, the order of the learned Magistrate asking the Applicants to furnish personal bond of Rs.5,00,000/- each and surety bond of Rs.2,00,000/- each in my opinion is oppressive and needs to be set aside. I, therefore, set aside the order passed by the Magistrate instead pass the following order :

a) The Applicants shall furnish personal bond of Rs.5,00,000/- (Rupees Five Lakhs only) each with the condition that they will appear before the Magistrate on all the dates of hearing unless exempted by the Trial Magistrate from personal appearance.

b) Learned Magistrate shall take note of the observations made by this Court and shall make

endeavour to see that money and time of the accused is not wasted unnecessarily.

c) Registrar General of this Court is directed to forward copy of this judgment to the Chief Metropolitan Magistrate, who shall forward copies thereof to all the Additional Chief Metropolitan Magistrates and Metropolitan Magistrates in Greater Mumbai.

8. The application stands disposed of accordingly.

(JUDGE)