

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO.2079 OF 2015

Bhupinder Singh Sawhney & Anr. ..Applicants
-Versus-
M/s. Olive Tex Silk Mills Pvt. Ltd. & Anr. ..Respondents

Mr. A.P.Mundargi, Senior Advocate with Hardik Vyas for applicants
Mrs. Sangeeta Shinde, APP for State.
Mr.P.M.Rustamkhan for respondent No.1.

CORAM : A.S.GADKARI, J.

DATE : 27th November 2015.

P.C.

1] This is an application for bail filed by the applicants in C.C.No.2348/SS/2011 filed under sections 138 read with section 141 of the Negotiable Instruments Act (N.I.Act for short) by the respondent No.1 in the Court of Metropolitan Magistrate, 44th Court, Andheri. Heard learned Counsel for respective parties and perused the records.

2] The applicant No.1 is the original accused No.3 and applicant No.2 is the original accused No.4 in C.C.No.2348/SS/2011 lodged/instituted by respondent No.1 under section 138 read with 141 of N.I. Act.

3] The record discloses that the respondent No.1 instituted the aforesaid complaint before the learned Magistrate in the year 2011. The trial court was pleased to issue process against the applicants. The applicants, thereafter, preferred Bail Application before the trial court on 4th May 2012 and they were released on bail of Rs.10,000/- each as the offences under sections 138 read with 141 of the N.I.Act are bailable offence. At the time of their release, the applicants had executed bail bonds and had undertaken to remain present before the trial court on the necessary dates. That plea of applicants was recorded on 6th May 2013. On 6th May 2013 itself, the applicants preferred application for exemption. That on 25th June 2013, the complainant filed its affidavit of evidence along with relevant documents on record. ON 25th March 2014, the application filed by the applicants for exemption was rejected by the trial court as the applicants had not given an undertaking that they would not challenge their identity and that their Advocate would remain present in court at the time of recording evidence. The records further discloses that on 18th June 2014, neither the applicants nor their Advocate were present and, therefore, an application for non

bailable warrant was filed by the respondent No.1 / original complainant. The said non bailable warrant was not executed till 18th November 2014. The respondent No.1 subsequently, learnt that the applicants herein were lodged in Tihar jail under the Judicial custody in some other case, pursuant to the order passed by the High Court of Delhi in Contempt Case No.262 of 2012. Therefore, the respondent No.1 moved an application for production of the applicants from Tihar Jail on production warrant. On 18th November 2014, the trial court allowed the application of respondent No.1 for production of applicants from Tihar jail on production warrant. The applicants were not produced and, therefore, a fresh application was moved by the respondent No.1 before the trial court for issuance of fresh production warrant. The trial court had, thereafter, issued a show cause notice to the Superintendent Tihar Jail on 22nd June 2015. In pursuance of the said show cause notice issued by the trial court, the applicants were produced before the learned Magistrate on 7th August 2015. The applicants, thereafter, moved criminal bail application No.2375 of 2015 before the trial court, seeking their release on bail. The trial court by its order dated 1st October 2015 has rejected the said application on the ground that the applicants

continuously remained absent in the said case since the year 2013 and, they had to be brought before the court after putting in lot of efforts. It has been further held by the trial court that the applicants are residents of Gurgaon, Haryana and as the hearing of the case has now been started and the same would be concluded in near future, if the applicants are released on bail, perhaps they may not be available for trial and, therefore, the application came to be rejected.

4] Mr.Mundargi, learned Senior Counsel appearing for the applicants fairly conceded to the fact that there were some mistakes on the part of the applicants but those mistakes were due to unavoidable circumstances and, therefore, the applicants were precluded from attending the court proceedings before the trial court. He further submitted that the applicants are in judicial custody of the trial court since 7th August 2015 and it is now more than three months that they are behind bars under a case instituted under section 138 read with 141 of N.I. Act.

5] The respondent No.1 had through its advocate has filed a detailed reply in the matter. The respondent No.1 pointed out that the applicants are facing various prosecutions before different courts

and there is every possibility that if the applicants are released on bail, they may again dodge trial and will not be available for the same.

6] After taking into consideration the fact that the applicants are in a judicial custody for more than three months in a case instituted under section 138 read with 141 of N.I. Act, at pre-trial stage, I am inclined to allow the present application by imposing stringent conditions on the applicants.

7] Hence, the following order:-

(I) The applicants shall be released on bail on their furnishing P.R.Bond of Rs.5 lakhs each with one or two solvent sureties in the like amount; The trial court before accepting sureties will verify the genuineness and authenticity of the same;

(ii) After their release from Jail, the applicants shall attend the proceedings in C.C.Case No.2348/SS/2011 pending on the file of Metropolitan Magistrate, 44th Court, Andheri in person on each and every date without giving any excuse;

(iii) If the applicants are in judicial custody of any other court, the applicants shall bring this order to the notice of the said concerned

court and will make themselves available for the trial;

(iv) The applicants shall deposit their respective passports with the trial court in this case as soon as the same are released by the Judicial Magistrate, First Class Faridabad and by the Registry of Delhi High court in Cont.Case No.525 of 2012 by the Delhi High Court.

(v) The application is allowed in the aforesaid terms;

(vi) Taking into consideration the facts mentioned hereinabove, the trial court is hereby directed to make an endeavour to dispose of the trial pertaining to CC No.2348/SS/2011 within a period of six months from the date of receipt of present order;

(A.S.GADKARI, J)