

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL WRIT PETITION NO. 2154 OF 2016**

Suresh Ramu Rathod	...Petitioner
Versus	
Balasaheb Pukharaj Porwal & Anr.	...Respondents

Mr. Anand S. Patil for the Petitioner

Mr. Ramdas Shelke for the Respondent No. 1

Mr. V. V. Gangurde, A.P.P for the Respondent No.2-State

CORAM : REVATI MOHITE DERE, J.
TUESDAY, 25th OCTOBER, 2016

P.C. :

1. Heard learned Counsel for the petitioner.

2. By this petition, the petitioner has impugned the order dated 25th April, 2016 passed by the learned Additional Sessions Judge, Islampur, Sangli in Criminal Appeal No. 7 of 2016, directing the petitioner to deposit Rs. 5 lakhs towards fine amount and to give surety of the remaining amount i.e. Rs. 60 lakhs, within 15 days.

3. Learned Counsel for the petitioner submits that the order of deposit of Rs. 5 lakhs is extremely exorbitant and harsh and that the petitioner is not in a position to deposit the same because of his financial condition. Learned Counsel relied on the judgment of the Apex Court in the case of *Dilip S. Dahanukar vs. Kotak Mahindra Co. Ltd.*¹. He submitted that the applicant is ready to proceed with the appeal on a day-to-day basis. According to the learned Counsel, even the order directing the applicant to give surety of the remaining amount i.e. Rs. 60 lakhs, was unjustified and uncalled for.

4. Learned Counsel for the respondent No.1-complainant stated that no interference is warranted in the impugned order directing deposit of an amount of Rs. 5 lakhs. He submitted that infact, the order of deposit is only Rs. 5 lakhs and that the learned Judge ought to have ordered a higher deposit. As far as order regarding surety is concerned, he states that appropriate orders may be passed regarding the same.

5. Perused the papers. The petitioner has been convicted under

¹ 2007 (3) Bom. C. R. 28

Section 138 of the Negotiable Instruments Act vide judgment and order dated 5th March, 2016 passed by the learned Judicial Magistrate First Class, Islampur, Sangli. The petitioner has been sentenced to suffer simple imprisonment for six months and to pay a fine of Rs. 65 lakhs, in default, to suffer simple imprisonment for two months. Against the said judgment and order dated 5th March, 2016, the petitioner has filed Criminal Appeal No. 7 of 2016 in the Sessions Court, Islampur. The learned Sessions Judge was pleased to pass the following order below Exhibit 5 filed in the aforesaid criminal appeal :

“O R D E R

*The Appellant challenged conviction U/s. 138 of
NI Act.*

*The Appellant to deposit Rs. 5,00,000/- towards
fine amount & he is give surety of remaining amount within
15 days.*

.....”

6. The learned Judge had directed the petitioner to deposit only Rs. 5 lakhs. The said order of deposit is neither harsh nor unreasonable and as such, no interference is warranted. As far as the other direction passed by the learned Sessions Judge directing the petitioner to give surety of the

remaining amount i.e. Rs. 60 lakhs is concerned, the order to that extent stands quashed and set-aside and is modified as under :

- (1) The petitioner shall now give one surety of Rs. 25,000/-, pending the appeal;
- (2) Time to deposit the amount of Rs. 5 lakhs, is extended by four weeks;
- (3) The surety also to be furnished within four weeks.

7. Writ petition is accordingly disposed of.

8. All concerned to act on the authenticated copy of this order.

REVATI MOHITE DERE, J.