

Anand

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL APPLICATION NO.963 OF 2016

Kutumb Developers Pvt. Ltd. & anr..Applicants

Vs.

The State of Maharashtra & anr. .Respondents

Mr.M.A.Patil i/b. Mr.V.R.Garad, Advocate, for
the Applicants

Mr.S.R.Agarkar, APP, for the Respondent No.1 –
State

CORAM : REVATI MOHITE DERE, J.

DATE : 31.08.2016

P.C.

. Heard learned counsel for the
Applicants and the learned APP for the
Respondent No.1 – State.

2. By this Application, the Applicants
have impugned the order dated 06.08.2016, passed
by the learned Additional Sessions Judge, Pune,
by which the substantive sentence of the
Applicant No.2, imposed by the trial Court was
stayed pending the disposal of the Appeal,

subject to the condition that the Applicant No.2 deposits a sum of Rs.25,00,000/- in the Sessions Court. The said amount was directed to be deposited within ten days. If the said amount was not deposited within ten days, the order of stay was to stand vacated automatically. If the amount was deposited in the Court, the accused was to be released on PB and surety before the trial Court. Certain other conditions were also imposed by the learned Additional Sessions Judge by this order.

3. Learned counsel for the Applicants states that the Applicant NO.2 was directed to deposit the said amount of Rs.25,00,000/- within ten days, which was next to impossible. Learned counsel for the Applicants has tendered an Affidavit-cum-undertaking and an Additional Affidavit of the Applicant No.2 – Sunil Narayan Gotad, Director of Kutumb Developers Pvt. Ltd. The said Affidavit-cum-undertaking and the

Additional Affidavit are taken on record and marked as "X" for identification collectively. In the Affidavit-cum-undertaking, the Applicant No.2 has undertaken to deposit a sum of Rs.23,00,000/- as per the Schedule mentioned therein i.e. **Rs.2,50,000/-** in cash on **30.09.2016;** **Rs.2,50,000/-** in cash on **30.10.2016;** **Rs.5,00,000/-** in cash on **15.11.2016** and **Rs.13,00,000/-** in cash on **30.11.2016**. He has stated that he will deposit the said amounts in the Registry of the JMFC Court, Pune. In the Additional Affidavit tendered today, the Applicant No.2 has stated that he will deposit **Rs.2,00,000/-** in cash on **05.12.2016** in the Registry of the JMFC Court, Pune.

4. Perused the Affidavit-cum-undertaking as well as the Additional Affidavit. Considering that the amount is huge and considering the Affidavits filed by the Applicant No.2, the Applicants can be granted time to deposit the

amount of Rs.25,00,000/- in tranches. The Applicant No.2 is present in Court and undertakes to this Court that he will deposit the aforesaid amounts as stated in the Affidavit-cum-undertaking and the Additional Affidavit. Although the Applicant No.2 has stated that he will deposit the aforesaid amounts in the Registry of the JMFC Court, Pune, it is made clear, that the aforesaid amounts will be deposited by the Applicant No.2 in the Registry of the Sessions Court, Pune, where the Appeal of the Applicants is pending and not in the Registry of the JMFC Court, Pune.

5. Accordingly, the impugned order dated 06.08.2016 is modified to the extent, that the substantive sentence of the Applicant No.2, imposed by the trial Court is stayed, pending the disposal of the Appeal before the Sessions Court, subject to the condition that the Applicant No.2 deposits an amount of

Rs.25,00,000/- in the following five instalments; (i) **Rs.2,50,000/-** in cash on **30.09.2016**; (ii) **Rs.2,50,000/-** in cash on **30.10.2016**; (iii) **Rs.5,00,000/-** in cash on **15.11.2016**; (iv) **Rs.13,00,000/-** in cash on **30.11.2016** and (v) **Rs.2,00,000/-** in cash on **05.12.2016** in the Registry of the Sessions Court, Pune. The learned Sessions Judge, Pune before whom the Appeal is pending, to list the Appeal under the caption "For Directions" one day after the payment is scheduled, to ensure compliance thereof. It is made clear, that even if there is a single default in making the aforesaid payments, the order of stay shall stand vacated automatically. If the said amounts are deposited as mentioned in the Schedule, the Nazir of the Sessions Court shall invest the said amounts in a Nationalized Bank. In the meantime, the Applicant No.2 is released on personal bond and surety before the trial Court. It is made clear, that even if there is a single

default, the bail of the Applicant No.2 shall stand cancelled forthwith and he be taken into custody. It is made clear, that insofar as Para 4 of the Affidavit-cum-undertaking is concerned, that the Applicant No.2 has given Rs.2,00,000/- to the Complainant, the same is not considered by me and the learned Sessions Judge shall consider the same on its own merits.

6. Accordingly, the Application is disposed of on the aforesaid terms. A copy of the Affidavit-cum-undertaking and the Additional Affidavit to be placed on record before the learned Sessions Judge, Pune before whom the Appeal is pending.

Parties to act on the authenticated copy of this order.

(REVATI MOHITE DERE, J.)