

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO. 1076 OF 2016**

Nasim Banu Sayyed Ali Shaikh	...Applicant
Versus	
The State of Maharashtra & Anr.	...Respondents

Mr. Rahul V. Shinde h/f Mr. Vijay Garad for the Applicant

Mr. S. R. Agarkar, A.P.P for the Respondent No.1-State

CORAM : REVATI MOHITE DERE, J.
THURSDAY, 6th OCTOBER, 2016

P.C. :

1. Heard learned Counsel for the applicant.

2. By this application, the applicant has impugned the order dated 23rd June, 2016, by which, a conviction warrant was issued by the learned Metropolitan Magistrate 73rd Court, Vikhroli, Mumbai, in CC No. 4247/SS/2011 as against the applicant.

3. Learned Counsel for the applicant states that, considering the facts, the impugned order on the face of it, is perverse and shows non-application of mind, inasmuch as, the learned Judge has, while issuing

conviction warrant, observed that the applicant had not preferred any appeal before the Sessions Court, which was factually incorrect.

4. Perused the papers. It appears that the applicant was convicted vide judgment and order dated 7th June, 2013 passed in CC No. 4247/SS/2011 by the learned Metropolitan Magistrate, 73rd Court, Vikhroli, Mumbai, for the alleged offences punishable under Section 138 of the Negotiable Instruments Act. The applicant being aggrieved by the said judgment and order of conviction and sentence, filed an appeal before the Sessions Court along with a Miscellaneous Application being Misc. Application No. 1466 of 2014 praying therein for suspension of the sentence pending the appeal. It appears that the applicant had also filed another application being Application No. 1293 of 2014 seeking his enlargement on bail in the said appeal. The learned Sessions Judge was pleased to allow the bail application of the applicant on furnishing PR and surety bond of Rs. 10,000/-. Cash bail was permitted for two months to enable the applicant to furnish surety bond. It also appears that pursuant to the order dated 8th May, 2014 passed by the Appellate Court, the applicant deposited the cost of Rs. 20,000/- on 10th June, 2014 as was directed while

suspending the substantive sentence of the applicant. It appears that thereafter, the applicant had also furnished surety of one Rashida Begum Haiderali Shaikh before the in-charge Court on 10th June, 2014. On 23rd June, 2013, the learned Metropolitan Magistrate, 73rd Court, Vikhroli, Mumbai, issued conviction warrant against the applicant on the ground that the applicant had not preferred any appeal before the Sessions Court. The said observations are incorrect. Considering the aforesaid, the impugned order is quashed and set-aside.

5. Learned Counsel for the applicant, at this stage, states that the surety furnished by the applicant is not found in the records of the trial Court and hence, he may be permitted to give fresh surety. The trial Court to trace the said record of the surety or permit the applicant to give fresh surety.

6. Application is allowed in the aforesaid terms.

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

REVATI MOHITE DERE, J.