

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.1195 OF 2013

Ajit C. Shah & Anr.	...	Applicants
Vs.		
M/s. Bralco Metal Industries P. Ltd & Ors.	...	Respondents

Mr. Hitendra Desai, Adv. for the applicants.
Mr. Y.M. Nakhawa, APP for the State.
Mr. Kunal Dalal, Adv. for the respondent No.1.

CORAM : SMT ANUJA PRABHUDESSAI, J.
DATE : 7th January, 2016.

P.C. :

1. By this application under Section 482 of Cr.P.C., the applicants herein has challenged the order dated 27th September, 2013 passed by the Addl. Sessions Court Greater Bombay in Criminal Revision No.134 of 2012 and has further sought to reduce the bond amount of Rs.50,000/-.

2. Heard Mr. Desai, the learned counsel for the applicant and Mr. Dalal, the learned counsel for the respondent No.1. I have perused the records and considered the submissions advanced by the learned counsels of the respective parties. The records prima facie

reveal that the respondent herein had filed a complaint against the aforesaid applicants under Section 138 of N.I. Act. The learned Magistrate had issued process under Section 138 of N.I. Act. Upon being served with summons, the applicants had put in their appearance and had applied for bail. By order dated 3rd March, 2012 the learned Metropolitan Magistrate, 13th Court, Dadar granted bail and ordered to release the applicants / accused on furnishing bail bond of Rs.50,000/- each with cash or solvent surety in the like amount. The applicants herein had approached the Sessions Court in criminal revision application No.134 of 2012 with a prayer for reducing the bond amount. The said revision application came to be dismissed by order dated 27th September, 2013. Aggrieved by the said order the applicants have invoked the inherent powers of this Court under Section 482 of Cr.P.C.

3. It has to be borne in mind that the conditions which are imposed while grant of bail under Section 437(3) and 438 (2) of the Cr.P.C. are primarily with a view to ensure availability of the accused during investigation, enquiry or trial. The basic and predominant object is to secure his presence as and when required and to ensure non interference with the investigation or trial. Section 440 of Cr.P.C.

provides that every bond executed shall be fixed with due regards to circumstances of the case and shall not be excessive. Sub section (2) of Section 440 empowers the High Court or Court of Sessions to direct that the bail required by a police officer or Magistrate be reduced.

4. In the instant case, the perusal of the impugned orders reveal that the applicant has been directed to furnish bond of Rs.50,000/- which is equivalent to the cheque amount. The learned Magistrate as well as the Sessions Judge have not assigned any reasons to impose such stringent conditions, more so when there is absolutely no material to suggest that the applicant was likely to abscond or thwart and hamper the trial. Both the Courts below have not exercised the discretion judiciously and have failed to consider that such mechanical approach results in denial of bail and deprivation of personal liberty.

5. Under the circumstances, the impugned order dated 27th September, 2013 is set aside. The bail amount is reduced to Rs.5,000/-. The applicant shall furnish personal bonds of Rs.5,000/- with one surety to the like amount. The application stands disposed of accordingly.

(ANUJA PRABHUDESSAI, J.)