

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL WRIT PETITION NO. 853 OF 2017

Laxmibai w/o Chandrasen Tike
Age : 40 Yrs., Occ. : Household
& Agril., R/o : M.I.D.C. Road,
Beed, Tq. & Dist. Beed.

**..... PETITIONER/
[ORI.ACCUSED NO. 1]**

VERSUS

1. The State of Maharashtra
Through Police-Incharge
Officer, Peth Beed Police
Station, Beed,
Dist. Beed.

2. Sonabai Kisan Bamne
Age : 70 Yrs., Occ.
Household, R/o :
Ayodhya Nagar,
M.I.D.C. Road, Beed,
Dist. Beed.

..... RESPONDENTS

.....

Mr. M.V.Salunke, Advocate for Petitioner.
Mr. K.S.Patil, A.P.P. for R – 1 - State.

.....

CORAM : V.L.ACHLIYA, J.
DATE OF JUDGMENT : 25/09/2017

.....

ORAL JUDGMENT :

1. Rule. Rule made returnable forthwith. By consent of both sides heard finally.

2. By the present petition, the petitioner has challenged the order dated 19/05/2017 passed by the learned Additional Sessions Judge-4, Beed in Criminal Appeal No. 50/2017.

3. Heard learned counsel for the petitioner and A.P.P. for respondent No. 1 – State. Respondent No. 2 though served, failed to appear.

4. In view of the limited challenge raised in the petition, it is not necessary to discuss the facts in detail. In short, it is the contention of the petitioner that the order dated 12/05/2017 passed by learned Judicial Magistrate First Class, Court No. 4, Beed in R.C.C. No. 903/2011 directing the bank Manager to transfer the amount of Rs. 7,30,789/- together with interest in the

account of respondent No. 2 is not sustainable in law. He submits that the deceased husband of respondent No. 2, at whose instance criminal case was instituted, had filed civil Suit against the petitioner seeking recovery of the said amount. The civil Suit was dismissed. No Appeal has been preferred against the said Judgment. It is contended that in spite of such facts brought to the notice of the learned Magistrate, said order has been passed. While filing Appeal against the impugned Judgment and order seeking suspension of sentence, the petitioner has urged before the appellate Court to stay the operation of clause (8) of the Judgment of trial Court. However, the learned Additional Sessions Judge has directed to implement clause (8) of the order. In short, it is the contention of the petitioner that pending disposal, status-quo in respect of amount be maintained and amount be continued to be kept in fixed deposit.

5. Learned A.P.P. fairly submitted that looking to the contentions raised, the appellate Court ought to have preserved status-quo as regards the amount lying deposited so as to avoid multiplicity of proceedings.

6. On due consideration of the submissions advanced, I am of the view that petitioner has not made proper application seeking stay to the operation of clause (8) of the operative part of the order passed by the trial Court. The application reflects that it was primarily made seeking suspension of sentence and release on bail during the pendency of Appeal. In the application filed, no specific prayer has been made to stay the effect and operation of said clause of the order passed by trial Court. It appears that during the course of hearing, submissions were made with reference to clause (8) of the order. The appellate Court has observed that no interference is warranted in respect of said clause. The observations were recorded as if Court is called upon to finally decide the matter. In the operative order, no order has been passed as to entertaining or rejecting the prayers of petitioner. I am, therefore, of the view that the petition can be conveniently disposed of by granting liberty to the petitioner to make fresh application seeking stay to the effect and operation of clause (8) of the order passed by the trial Court with direction to decide the same by giving opportunity to the respondents. Hence, the following order is passed.

ORDER

[i] The petitioner is granted liberty to make appropriate application in Criminal Appeal No. 50/2017 pending before the learned Additional Sessions Judge-4, Beed seeking stay to the effect and operation of clause (8) of the Judgment and order dated 12/05/2017 passed in R.C.C. No. 903/2011 by Judicial Magistrate First Class, Beed.

[ii] The appellate Court is directed that if such application is made, same be decided on its own merit after due notice to the prosecution and the wife of original complainant without influenced by the observations recorded in the impugned order dated 19/05/2017.

[iii] The petitioner is directed to file application within four weeks from the date of order. Interim order operating to continue till disposal of the application before the appellate Court.

[iv] The appellate Court is directed that if such application is made, the same shall be decided within twelve weeks from the date of making of application.

7. The Writ Petition is disposed of in above terms.
8. Rule made absolute in above terms.

[V.L.ACHLIYA, J.]

KNP/Cr.W.P. 853.2017 - [J]