

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

**CRIMINAL REVISION APPLICATION NO.251 OF 2017
with
Criminal Application No.5513/2017 in
CRI.R.A.No.251/2017**

Dr. Motiram Deoram Patil,
Age: 49 years, Occupation: Doctor,
R/o.:26/A, 1st Floor, Nakul Housing Society,
Shirpur, Tq. Shirpur, Dist. Dhule

...APPLICANT
(Ori. Accused)

VERSUS

- 1) Gulabrao Jagannath Patil,
Age: 46 years, Occu.:Service,
R/o. Karvand Naka, Shirpur,
Tq. Shirpur, Dist. Dhule
- 2) State of Maharashtra,
Through Police Inspector,
Shirpur Police Station, Shirpur,
Tq. Shirpur, Dist. Dhule

...RESPONDENTS
(Orig. Complainant)

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Shri. Bhadane Chetan V., Advocate for Appellant;
Shri. D.S. Bagul, Advocate for Respondent No.1;
Shri. R.B.Bagul, A.P.P. for Respondent State.

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CORAM: P.R. BORA, J.

Date of reserving the order:10/11/2017

Date of pronouncing the order:17/11/2017

ORDER:

1. Criminal Revision Application is heard finally with the consent of the learned Counsel for the parties.
2. Whether the Criminal Appeal can be dismissed for non compliance of the interim order passed therein is the issue raised in the present Revision Application. In the order which has been impugned in the present Revision Application such an order has been passed by the learned Additional Sessions Judge, Dhule.
3. Respondent no.1 herein had filed the complaint under Section 138 of the Negotiable Instruments Act against the present applicant vide STC No.515/2013 in the Court of Judicial Magistrate, First Class, Shirpur. Learned Judicial Magistrate, First Class, vide judgment and order passed on 29th of December, 2016, convicted the applicant for the offense punishable under Section 138 of the Negotiable Instruments Act and sentenced him to suffer simple imprisonment for six months and also directed him to pay Rs.3,50,000/- to the complainant by way of compensation within two months of passing of the said order; in default, was directed to suffer

simple imprisonment for next two months.

4. Applicant filed Criminal Appeal No.12/2017, against the judgment and order passed in STC No.515/2013, before the Sessions Court at Dhule. In the said appeal, applicant filed an application at Exh.5 and prayed for suspension of the sentence imposed upon him by the trial Court till decision of the said appeal and to release him on bail. Learned Sessions Judge vide order passed on 25th of January, 2017, below the said application at Exh.5 suspended the execution of the sentence imposed in STC No.515/2013 subject to deposit of an amount of Rs.1,00,000/- (Rs. one lakh) by the applicant in the District Court, Dhule, within one month from the date of the said order and the applicant was also released on bail on his executing P.R. bond in the amount of Rs.15,000/- with one surety in the like amount.

5. The applicant though furnished the bail, did not deposit amount of Rs.1,00,000/- within the stipulated period. The present respondent, therefore, filed an application praying for issuance of non bailable warrant against the applicant. On the said application, show cause notice was issued to the applicant, however, the applicant did not act upon the said

notice. Thereafter, the applicant filed an application in the said Criminal Appeal at Exh.17 for taking the matter on Board and filed another application at Exh.18 seeking permission to deposit an amount of Rs.1,00,000/- and to cancel the non bailable warrant issued against him. Perusal of the impugned order shows that no favourable order was passed on the said application by the Sessions Court. The impugned order further reveals that on 26th of September, 2017, the applicant appeared before the Court. The respondent on that day filed his say on the application at Exh.18 filed by the applicant. However, when the matter was called for hearing, the applicant remained absent. In the circumstances, observing that the appellant - accused has committed breach of the order dated 25th of January, 2017, the learned Sessions Judge dismissed the appeal on the said ground. Aggrieved thereby, the applicant has filed the present revision application.

6. Shri Bhadane, learned Counsel appearing for the applicant submitted that though the applicant could not deposit the amount of Rs.1,00,000/- within the stipulated period in pursuance of the order dated 25th of January, 2017, passed by the learned Sessions Judge, Dhule, subsequently, he had shown his bona fides of depositing the said amount and has

accordingly preferred an application before the Sessions Court to permit him to deposit the said amount. Learned Counsel submitted that, in fact, the learned Sessions Judge must have permitted the appellant to deposit the said amount and should have protected the liberty of the applicant till decision of the Criminal Appeal. Learned Counsel further submitted that in no case the appeal filed by the applicant could have been dismissed by the learned Sessions Judge without hearing the same on merits only on the count of breach committed by the applicant of the order passed by the said Court on 25th of January, 2017. Learned Counsel submitted that the applicant is ready to deposit the amount of Rs.1,00,000/- before the Sessions Court at Dhule. Learned Counsel further prayed that by permitting the applicant to deposit the said amount, the order passed by the learned Sessions Judge on 26th of September, 2017, be quashed and set aside and the applicant be released on bail during the pendency of the said Criminal Appeal.

7. Shri D.S.Bagul, learned Counsel appearing for the respondent, opposed for accepting the request made by the applicant. Learned Counsel submitted that in view of the order passed on 25th of January, 2017, the applicant was under an

obligation to deposit the amount of Rs.1,00,000/- on or before 24th February, 2017 but the applicant did not deposit the said amount within the said period nor sought any extension of time to deposit the amount till 12th of September, 2017. Learned Counsel submitted that in the circumstances, the learned Sessions Judge has rightly dismissed the appeal filed by the applicant and no interference is required in the order so passed.

8. I have carefully considered the submissions advanced by the learned Counsel appearing for the respective parties. I have also perused the impugned order and the other material placed on record.

9. The impugned order is apparently unsustainable. As is revealing from the record and from the impugned order, an interim order was passed on 25th of January, 2017, by the Sessions Court below the application at Exh.5 in the said Criminal Appeal and the Court has thereby suspended the execution of the sentence imposed upon the applicant in in STC No.515/2013 subject to deposit of amount of Rs.1,00,000/- by the applicant in the District Court at Dhule within one month from the date of the said order. The Court had further passed an order directing release of the applicant on furnishing P.R.

bond and surety bond in the amount of Rs.15,000/-. Non fulfillment of the said order at the most could have resulted in vacating the order passed below Exh.5 on 25th of January, 2017, but in no case, the learned Additional Sessions Judge could have dismissed the appeal of the applicant on the said ground without hearing the same on merits.

10. Since the applicant did not deposit the amount of Rs.1,00,000/- within the stipulated period, subject to which the execution of the sentence imposed upon him by the trial Court was suspended, the said interim order stood automatically vacated as a result of which the applicant was liable to be taken in custody so as to serve the sentence imposed upon him by the trial Court. Nevertheless, the applicant was having every right to prosecute his appeal on merits even by remaining behind the the bars. The right of the applicant to agitate the points raised by him in the appeal, in exception to the impugned judgment, was intact, and could not have been taken away by the Court for non fulfillment of the condition imposed while suspending the execution of the sentence imposed upon him by the trial Court. The condition so imposed by the Court was only for suspension of execution of the sentence during pendency of the said appeal, and not for

hearing the appeal. The learned Sessions Judge, thus, must have heard the appeal on merits and could not have dismissed the same for non compliance of the interim order by the appellant before him. The impugned order, therefore, deserves to be set aside.

11. The applicant has also filed an application seeking his release on bail. Since the interim relief granted in his favour was vacated automatically by virtue of the order passed on 26th of September, 2017, in Criminal Appeal No.12/2017, the applicant was bound to surrender before the Court of Judicial Magistrate, First Class, to serve out the sentence imposed upon him by the said Court. Accordingly, the applicant has surrendered before the Court of Judicial Magistrate, First Class, on 1st of November, 2017, and since then he is in jail. Learned Counsel for the applicant submitted that the applicant is ready to deposit the amount of Rs.1,00,000/- before the District Court at Dhule and has, therefore, prayed for his release on bail. In view of the finding recorded by me hereinabove, that the order dated 26th of September, 2017, passed in Criminal Appeal No.12/2017 deserves to be set aside and the said Criminal Appeal requires to be heard on merits, the request made by the applicant for

his release on bail till decision of the said Criminal Appeal also deserves to be considered. As noted hereinabove, the applicant has now undertaken to deposit the amount of Rs.1,00,000/- before the District Court at Dhule forthwith. In fact, the applicant was under an obligation to deposit the said amount of Rs.1,00,000/- on or before 24th of February, 2017. In the circumstances, it would be unjust to revive the order passed by the Sessions Court on 25th January, 2017, by permitting the applicant to merely deposit the said amount of Rs.1,00,000/-. At the same time, it would also be improper to keep the applicant in jail during pendency of the Criminal Appeal filed by him. It appears to me that if the applicant is directed to deposit an amount of Rs.50,000/- in addition to the amount of Rs.1,00,000/- for his release on bail, it would meet the ends of justice. Hence, the following order:

ORDER

1. The Revision Application (No.251/2017) is allowed.
2. The order passed below Exh.1 in Criminal Appeal No.12/2017 by the Additional Sessions Judge, Dhule, on 26th September, 2017, is quashed and set aside. Consequently, the

said appeal stands restored to its original file.

3. The learned Additional Sessions Judge shall hear and decide the aforesaid appeal on merits in accordance with law.

4. The applicant is directed to deposit a sum of Rs.1,50,000/- (Rs. one lakh, fifty thousand) in the District Court at Dhule within ten days from the date of this order.

5. If the applicant deposits the aforesaid amount of Rs.1,50,000/- in the given period, he be released on bail on his executing fresh P.R. bond in the amount of Rs.15,000/- with one surety in the like amount.

Criminal Application No.5513/2017, thus, stands allowed in the aforesaid terms.

(P.R.BORA)
JUDGE

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