

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

**CRIMINAL APPLICATION NO. 269 OF 2017
IN
CRIMINAL REVISION APPLICATION NO. 279 OF 2017**

1 M/s. Shashi Wines.

2 Mrs. Kusum Bharat Surti. ... Applicants.

Versus

Mr. Vijay Kumar B. Agarwal & anr. ... Respondents.

Mr. Girish Kulkarni a/w. Mr. M.G. Shukla i/b. Mr. Navneetha Krishnan T., advocate for Applicant.

Mr. H.H. Nagi, advocate for original complainant.

Ms. Neeta Jain, APP for State.

**CORAM : SMT.SADHANA S. JADHAV,J
DATE : MAY 3, 2017**

P.C.:

1 Heard the learned Counsel for the applicants and the learned
APP for State.

2 The applicant herein has been convicted by the Metropolitan Magistrate, 6th Court, Mazgaon, Mumbai for offence punishable under section 138 of the Negotiable Instruments Act and sentenced to suffer S.I. for one year and pay fine of Rs. 20.50 Lacs and interest thereon at the rate of 9% per annum from the date of filing of the complaint till complete realisation of the total amount to the complainant and in default, to undergo further period of 3 months, in C.C. No. 1188/SS/2013. Being aggrieved by the said Judgment and Order, the applicant had filed Criminal Appeal No. 720 of 2016 before the Court of Sessions at Mumbai. The learned Sessions Judge by Judgment and Order dated 25/4/2017 has dismissed the appeal by confirming the conviction. However, the sentence awarded by the trial Court was modified. The accused were sentenced to pay fine of Rs. 27,55,000/-. The applicant herein was not present at the time of delivering the Judgment. Conviction warrant was issued and executed on 1st May, 2017. That she is in custody. The learned Counsel for the applicant submits that the applicant was on bail during the pendency of the trial

as well as during the pendency of the appeal and has not committed breach of any conditions imposed upon her and therefore, she deserves to be enlarged on bail during pendency of the revision application. It is also submitted that at the time of admission of the appeal, the applicant has paid Rs. 5 Lakhs towards fine amount.

3 The learned Counsel for the applicant upon instructions submits that the applicant would deposit an amount of Rs. 5 Lakhs before the Metropolitan Magistrate, 6th Court, Mazgaon, Mumbai within four weeks from today.

4 The learned Counsel for the complainant vehemently submits that after conviction warrant was issued, the applicant was not available at the given address and that only by cooperation of the complainant, conviction warrant could be executed at Valsad.

5 The learned Counsel for the applicant upon instructions prays for provisional cash bail for a period of 6 weeks within which the applicant shall furnish local solvent sureties. The prayer deserves to be granted.

6 In view of this, the applicant deserves to be granted bail. Hence following order is passed :

ORDER

- (i) The application is allowed.
- (ii) The substantive sentence imposed on the applicant by the Metropolitan Magistrate, 6th Court, Mazgaon, Mumbai in C.C. No. 1188/SS/2016 vide order dated 12/8/2016 and confirmed by Additional Sessions Judge, Gr. Mumbai in Criminal Appeal No. 720 of 2016 vide order dated 25/4/2016 is hereby suspended.
- (iii) The applicant be enlarged on bail on furnishing P.R. Bond in the sum of Rs. 50,000/- and one or more local solvent sureties in the like amount.

(iv) The applicant is granted provisional cash bail for a period of 6 weeks within which the applicant shall furnish local solvent sureties.

(v) The applicant shall mark her presence before the concerned Metropolitan Magistrate once in 6 months on the date specified by the concerned Court. Upon failure to attend two consecutive dates by the applicant, the learned Magistrate shall issue non-bailable warrant and take the applicant into custody.

7 The Application is disposed of on the above terms.

The parties to act on the authenticated copy of this order.

(SMT. SADHANA S. JADHAV,J)