

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO.257 OF 2014
WITH
CRIMINAL APPLICATION NO.258 OF 2014
IN
CRIMINAL REVISION APPLICATION NO.314 OF 2014

Madhavrao Ghorpade)...Applicant.

V/s.
L & T Finance Ltd. & Anr.)...Respondents.

Mr. Vivek Patil i/by Vivek Patil & Associates, Advocate for the Applicant in APPR 290/2014 and for the Respondents in APPR 257/2014.

Mr. Mahesh Joshi, Advocate for Respondent in APPR 290/2014 and for the applicant in REVN 314/2014 and APPR 257/2014.

Ms. V.S.Mhaispurkar, APP for the Respondent - State.

CORAM : A. M. BADAR, J.

DATE : 18th April, 2017.

P.C. :

These are applications for suspension of sentence and releasing the applicant/revision petitioner/original accused on bail during the pendency of the revision petition filed by him before this Court which is already admitted for final hearing.

2 Heard the learned advocate appearing for the applicant-original accused. He argued that during the pendency of these applications he has deposited entire amount of fine imposed on him by the learned trial Court and hearing of the revision petition will take its own time. As such, considering the short sentence of imprisonment, he be released on bail during the pendency of the revision petition.

3 As against this, the learned advocate appearing for the respondent no.1/original complainant vehemently opposed these applications by contending that by the judgment and order dated 24.7.2014 passed in Criminal Appeal No.515 of 2012, the appeal filed by the present applicant challenging his conviction and sentence came to be dismissed. Thereafter, the applicant-original accused presented revision petition with these applications on 10.9.2014 before this Court and the revision petition and those applications came to be registered on 23.9.2014. It is further argued that thereafter the revision petition and applications were never circulated before this Court and ultimately, conviction warrant came to be issued against the present applicant. Rather

than circulating these applications before this Court, the applicant has indulged in an illegal exercise of approaching the trial Court and securing bail which is totally unheard in law. It is further argued that the learned trial Court has no jurisdiction to release the applicant on bail after confirmation of conviction and sentence by the learned appellate Court. The learned advocate further argued that the respondent no.1-original complainant has already challenged the said order of releasing the applicant on bail by the learned trial Court before appropriate forum and if these two applications are allowed then that challenge would render infructuous.

4 I have carefully considered the rival submissions and also perused the material made available on record including the order passed by the learned trial Court and the learned appellate Court confirming the said order.

5 The applicant-original accused came to be convicted of the offence punishable under Section 138 of the Negotiable Instruments Act, 1881 vide judgment and order dated 30.11.2011 by the learned Metropolitan Magistrate, Mumbai and he is

directed to pay compensation amounting to Rs.2.35 Lakhs apart from undergoing simple imprisonment of two months. In default of payment of compensation, he is ordered to undergo simple imprisonment for a period of six months. The appeal challenging this judgment and order is dismissed by the learned Additional Sessions Judge on 24.7.2014. The revision petition challenging the appellate order is already admitted for final hearing on 11.9.2015.

6 Short sentence of imprisonment is imposed on the applicant-original accused by the learned trial magistrate which is confirmed by the appellate Court. Hearing of the revision petition will taken its own time and rejecting these applications would certainly render the revision petition infructuous. To crown this all, it is reported that the applicant-original accused has deposited entire amount of compensation, i.e. Rs.2.35 Lakhs.

7 Release of the applicant-original accused on bail by the trial Court after dismissal of his appeal and confirmation of his conviction and sentence by the appellate Court is wholly an independent issue and allowing these applications would not

render that challenge infructuous. In this view of the matter, the following order:

- (1) Both applications are allowed.
- (2) Substantive sentence of imprisonment imposed on the applicant-original accused is suspended and he is directed to be released on bail on executing PR Bond in the sum of Rs.15,000/- and on furnishing surety in the like amount.
- (3) Surety if given in terms of the earlier order to continue. However, the applicant-original accused to execute fresh PR Bonds.

(A. M. BADAR, J.)