

Anand

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

CRIMINAL APPLICATION NO. 87 OF 2018

Jayesh Trambaklal Doshi .Applicant

Vs.

Central Bureau of Investigation & anr. .Respondents

Smt. Racheeta Dhuru a/w Mr. G. Prajapati i/b. Mr. D. H. Shukla,
Advocate, for the Applicant

Mrs. Shubhada Khot, Advocate, for the Respondent No. 1 – CBI

Mr. H. J. Dedhia, APP, for the Respondent No. 2 – State

Mr. Jayesh Doshi, Applicant-in-person present

CORAM : REVATI MOHITE DERE, J.

DATE : 01.02.2018

P.C.

. Heard learned counsel for the parties.

2. By this Application, the Applicant has impugned the Order dated 19.01.2018 passed by the learned Additional Chief Metropolitan Magistrate, Esplanade, Mumbai, by which the Applicant's bail came to be cancelled automatically and non-bailable warrant was issued as against him.

3. Learned counsel for the Applicant submits that the Applicant was released from jail on 10.12.2017 and hence, pursuant to

the Order dated 28.09.2017, the Applicant was required to deposit a sum of Rs. 4,00,000/- after his release and every successive equal monthly instalment within 30 days of the last deposit. She submits that the Applicant had filed an Application seeking condonation of delay of ten days in depositing the amount on 19.01.2018, however, the learned Magistrate failed to take the said Application on board and instead passed the impugned order. Learned counsel for the Applicant has tendered an Affidavit of the Applicant. The said Affidavit is taken on record. As per Clause (4) of the said Affidavit, the Applicant has undertaken to pay all the monthly equal instalments as directed by the trial Court vide Order dated 28.09.2017. He has further undertaken that there shall be no default on his part for depositing the same in the trial Court. Learned counsel for the Applicant further submits that the Applicant has also applied for modification of the bail order dated 07.09.2017 passed by the trial Court i. e. directing deposit of 5% of the alleged fraud amount and as such states that the Applicant will deposit the said instalment till the said Application is decided by the Sessions Court. The Applicant is present in person and states that he will comply with the order of deposit till such time, his Application for modification of bail order is decided by the Sessions Court.

4. Learned counsel for the Respondent No. 1 - CBI states that appropriate orders be passed.

5. Perused the papers. The Applicant was enlarged on bail by the trial Court vide Order dated 07.09.2017 on the following conditions.

“ ORDER

1. Accused Jayesh Trimbaklal Doshi be released on P. B. and S. B. of Rs. 50,000/- (Rs. Fifty Thousand only) or cash bail in like amount as the case may be, subject to condition that he should deposit 5% of alleged fraud amount in the court and take note that such security amount is subject to forfeiture in the event of causing intentional delay for trial.

2. He should furnish address proof along supported by his affidavit, where he is going to reside after his release. Equally, he should notify to the court, about change of address, if any in the future.

3. He should furnish names and addresses, mobile numbers of his two close friends and two blood relatives or close relatives.

4. He should not leave India, without prior permission of this court.

5. He shall deposit his passport, if any with the Investigating Officer.

6. After furnishing address proof of the accused, where he is going to reside after his release, CBI has to verify it and report about its correctness and genuineness.”

6. Thereafter, the Applicant filed an Application seeking modification of the bail Order dated 07.09.2017 and the learned Addl. Chief Metropolitan Magistrate, 3rd Court, Esplanade, Mumbai vide Order dated 28.09.2017, passed below Exh. 9 in C. C. No. 518 / PW / 2017 was pleased to permit the Applicant to deposit 5% alleged fraud amount in equal monthly instalments of Rs. 4,00,000/-; the first equal monthly instalment was to be deposited at the time of his release and every successive equal monthly instalment was to be deposited within 30 days of the last equal monthly instalment. Failure to deposit entailed cancellation of bail, automatically. Admittedly, the first instalment was paid by the Applicant on 27.11.2017 before he was released on bail. Admittedly, the Applicant was released on bail on 10.12.2017 and as such, the instalment became due & payable on 10th of every month i. e. 10th January, 10th February and so on. It appears that the Applicant could not deposit the second instalment on 10th January due to the some difficulty i. e. as his wife had met with an accident and hence, the Applicant filed two Applications on 19.01.2018; one for condonation of delay of ten days and the second, for permission for depositing Rs. 4,00,000/-. It appears that the said Applications were not taken on record and the impugned Order dated 19.01.2018 was passed.

7. Considering the Affidavit tendered today by the Applicant, whereby, the Applicant has undertaken to pay monthly equal instalments as directed by the trial Court vide Order dated 28.09.2017, till his Application for modification of the bail order is decided by the Sessions Court, the Application is allowed. The impugned Order dated 19.01.2018 passed by the learned Additional Chief Metropolitan Magistrate, Esplanade, Mumbai is quashed & set aside. The Applicant to continue depositing the said amount, subject to the decision of the Sessions Court, where an Application seeking modification is filed. Learned counsel for the Applicant on instructions of the Applicant, who is present in Court states that the Applicant has already deposited his passport in connection with C. R. No. I-6 / 2009 registered with the Kirti Mandir Police Station, Porbandar, State - Gujarat. Statement accepted.

8. It is made clear, that this Court has not considered, whether the order directing the Applicant to deposit 5%, is correct or not and hence, the learned Sessions Judge to decide the modification Application on its own merits, uninfluenced by this order.

9. Accordingly, the Application is allowed and is disposed of in the aforesaid terms.

All concerned to act on the authenticated copy of this order.

(REVATI MOHITE DERE, J.)