

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

CRIMINAL APPLICATION NO.704 OF 2018

Nasir Yusuf Khan & Ors.

.. Applicants

Vs.

State of Maharashtra & Ors.

.. Respondents

.....
Mr.Prashant G. Pandey a/w. Aigar Memon, Advocate for the
Applicants.

Mr.A.R. Patil, APP for the Respondent – State.

.....

CORAM : PRAKASH D. NAIK, J.

DATED : JUNE 29, 2018.

P.C. :

The applicants have preferred application before the Court of the Additional Chief Metropolitan Magistrate 2nd Court, Mazgaon, Sewree, Mumbai for return of amount to applicant no.1. The complaint was lodged by the employee of applicant no.1 Shri Rajeshvarrao Shastri (applicant no.2) that while he was carrying bag belonging to applicant no.1, the accused intercepted and took away bag containing cash of Rs.87,57,000/-. The offence was registered under Section 392 of IPC vide C.R.No.36 of 2018. During the course of investigation cash amount of Rs.86,98,000/- was recovered from the accused. As stated above the application

was preferred before the Court for return of cash. The applicant nos.2 to 11 have no objection if the money recovered by police is given to applicant no.1. No objection certificates of said applicants are annexed to this application. It is submitted that applicant nos.2 to 11 were implead as party since they had no objection for return of the said amount. It is further submitted that the no objection was given by investigating officer, public prosecutor and advocate for accused for returning money to applicant no.1 accused i.e. Respondent nos.2 and 4 had also given their no objection for return of cash in the favour of applicant no.1. The learned counsel for the applicant submits that the notice of this application has been given to the respondent nos. 2 to 4 and he has filed affidavit of service. By order dated 4th May, 2018, the trial Court was pleased to pass the following order:

“(1) The application for return of cash is allowed as under:

a) The police station concerned is directed to release the seized cash amount of Rs.87,57,000/- (Rupees Eighty Seven Lakhs Fifty Seven Thousand only) recovered in crime No.36/2018, to the applicant Nasir Yusuf Khan on getting executed from him Bank Guarantee or Solvency of Rs.90,00,000/- (Rupees Ninty Lakhs only)

mentioning conditions therein that he shall not spent said amount, without obtaining permission from the Court and shall produce the same as and when required by the Court till final adjudication of the crime on his due verification and identification.

b) The police station Pydhonie concerned is directed to draw panchanama and to take photographs of the seized amount to the applicant in presence of the complainant and accused on verification and to furnish duly executed Bank Guarantee or Solvency and Panchanama drawn, to this Court along with photo taken by them.

c) The police station Pydhonie concerned is directed to furnish duly executed Bank Guarantee/Solvency by the applicant and panchanama drawn by them to this court.

d) P.S. concerned shall see that photograph of such seized cash and is attested or countersigned by the applicant, complainant and accused and at the time of delivery of the muddemal cash to the applicant as ordered along with the bond and bank guarantee or solvency executed by the applicant, without fail.”

2 On perusal of the said order, it appears that applicant no.1 was directed to execute Bank Guarantee or solvency of

Rs..90,00,000/-, mentioning conditions therein that he shall not spent the said amount without obtaining permission from the Court and shall produce the same as and when required by the Court till final adjudication of the crime on his due verification and identification. Pydhoni Police Station was directed to draw panchanama and to take photographs of the seized amount and also photographs while delivering the cash amount to the applicant in the presence of the complainant and accused on verification and to furnish duly executed Bank Guarantee or Solvency and panchanama drawn to the Court alongwith photographs. The concerned police station was directed to furnish duly executed Bank Guarantee/Solvency by the applicant and panchanama drawn by them to the Court.

4 Being aggrieved by the stringent conditions imposed by the Court while allowing the said application, the applicants preferred another application being Exhibit-"1", before the same Court for modification of the order. The said application was rejected on 6th June,2018. It was observed that the application was allowed by imposing conditions which were necessary and entertaining the said application would amount to stepping into shoes of appellate authority.

5 It is submitted by the learned counsel for the applicants that the trial Court had allowed the application for return of cash to the applicants, however, the conditions of execution of Bank Guarantee and/or Solvent surety is arbitrary and contrary to law. It is submitted that all the the concerned persons had tendered no objection for return of the cash amount in favour of applicant no.1. It is also submitted that applicant is not able to furnish Bank Guarantee or Solvency certificate and personal release bond is sufficient to release property. He relied upon decision of Supreme Court in the case of Supreme Court in the case of ***Sunderbhai Ambalal Desai Vs. State of Gujarat***¹.

6 It is submitted that the other conditions imposed by Court takes care of the identity of the currency note which will be required at the time of trial. It is, therefore, prayed that the order passed by the trial Court be modified and it may be directed that the cash amount be released to applicant no.1 on getting executed by him Personal Bond/Supratnama for Rs.86,98,000/-. It is also prayed that the order be further modified directing the police station to draw panchanama and to

1 LAWS (SC) -2002-10-118

take photographs of the seized amounts and photographs while delivering the cash amount to applicant no.1 in the presence of the complainant on verification.

7 Learned APP submitted that once the amount is delivered to applicant no.1 there is no guarantee that he would produce the same as when required by the Court. He further submitted that non production of the amount would be prejudicial to the case of applicant no.1 himself, as it would be difficult to establish the identity of the currency notes during the trial.

8 On perusal of the documents on record, it is apparent that respondent nos.2 and 11 have no objection for releasing the cash in favour of applicant no.1. Applicant no.2 to 11 had made joint request with applicant no.1 for releasing the amount in favour of applicant no.1. On reading the orders passed by the trial Court, it is clear that conditions in Clause (b) of the said order takes care of the identity of the currency notes. In this circumstances, the condition to execute Bank Guarantee or Solvent Surety is not warranted. It is not disputed that applicant no.1 was entitled for the cash which was seized during the course of investigation. The accused and the other concerned persons

had given their no objection for releasing the cash in favour of applicant no.1 which application has been allowed by the trial Court. In the circumstances, the order can be modified as follows:

:: ORDER ::

- (i) The cash amount of Rs.86,98,000/- recovered in C.R.No.36 of 2018 be released to applicant no.1 on executing P.R. Bond / Supratnama for Rs.86,98,000/-. Mentioning condition that he shall produce the same as and when required by Court till final adjudication of case on due verification and identification;
- (ii) Pydhonie Police Station is directed to draw panchanama and take photographs of the seized amount and also take photographs while delivering the cash amount to the applicant no.1 in the presence of complainant and accused on verification and to furnish duly executed P.R. Bond/Supratnama and panchanama drawn, alongwith photographs taken by them to the trial Court;

- (iii) Pydhonie Police Station is directed to furnish duly executed P.R. Bond/Supratnama by applicant no.1 and panchanama drawn to trial Court;
- (iv) Concerned police station shall see that photographs of seized cash is attested and countersigned by applicant no.1, complainant and accused at the time of delivery of seized cash to applicant no.1 as ordered along with P.R. Bond/Supratnama executed by applicant no.1;
- (v) Criminal Application stands disposed of;
- (vi) Parties to act on an authenticated copy of this order.

(PRAKASH D. NAIK, J.)