

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

**CRIMINAL APPLICATION NO.1025 OF 2018
AND
CRIMINAL APPLICATION NO.1156 OF 2018
IN
CRIMINAL BAIL APPLICATION NO.1794 OF 2018**

Manish Harjivandas Shah

.. Applicant

Vs.

State of Maharashtra & Anr.

.. Respondents

.....

Mrs.Neeta Parikh, Advocate for the Applicant.
Mr.A.R. Kapadnis, APP for Respondent - State.
Mr.Anand Jondhale, Advocate for the Intervener.

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CORAM : PRAKASH D. NAIK, J.

DATED : OCTOBER 17, 2018.

P.C. :

Applicant in Criminal Application No.1025 of 2018 in Criminal Bail Application No.1794 of 2016, had preferred the said application for bail in connection with C.R.No.21 of 2016, registered with D.B. Marg Police Station, Mumbai. The co-accused Kanchi Manish Shah in the said case had preferred Bail Application No.2144 of 20016. After filing of charge-sheet, the proceedings were registers as C.C.No.1745/PW/2015, which are pending in the Court of Metropolitan Magistrate 18th Court, Girgaon, Mumbai. The offences were registered under Sections 406 and 420 read with 34 of Indian Penal Code ("IPC", for short).

2 The applicant in the aforesaid bail application were granted bail by this Court vide order dated 22nd December, 2016. While granting bail, this Court had taken into consideration the statement made at the instance of the said applicants by learned counsel representing them in the form of an undertaking that the said applicants shall deposit an amount of Rs.24,00,000/-, through Demand Drafts in favour of Registrar, High Court, Bombay, in the said matter. The Registrar was directed to accept the Demand Draft and further release amount in favour of Investigating Officer.

3 In pursuant to the aforesaid orders, the applicants in the aforesaid Bail Application had deposited an amount of Rs.24,00,000/- by way of Demand Drafts in favour of the Registrar, High Court, Bombay, and to make up the amount, two Demand Drafts were forwarded to the Registrar viz. 073701 for Rs.10,00,000/- and 073702 for Rs.14,00,000/-, dated 14th December, 2016. The record indicate that, in accordance with order dated 22nd December, 2016, since the Registry was directed to accept the Demand Drafts and further release the amount in favour of the Investigating Officer in the present case, the Inspector of Police, D.B. Marg Police Station, vide his letter dated

18th January, 2017, requested to release the amount of Rs.24,00,000/-, in his favour. He also submitted ECS form certified by State Bank of India, Opera House Branch for depositing the said amount. In pursuant to that, papers were forwarded to Nazir Department along with praceipe dated 18th January, 2017, filed by Inspector of Police with request to transfer the amount in his bank account after verification.

4 Criminal Application No.1025 of 2018, is preferred on behalf of the applicant in Bail Application No.1794 of 2016, seeking modification of order dated 22nd December, 2016 and to issue directions to the Registry of this Court to invest the amount of Rs.24,00,000/- deposited by the said applicant-accused, in any Nationalized Bank initially for a period of one year, thereafter, to extend it from time to time. Criminal Application No.1156 of 2018, is preferred by the first informant Kesar Lalji Shah, for seeking withdrawal of the amount of Rs.24,00,000/-, deposited by the accused before this Court in pursuant to the order dated 22nd December, 2016.

6 Learned counsel for the applicant in Criminal Application No.1025 of 2017, has submitted that the applicant -

accused had complied the undertaking by depositing amount of Rs.24,00,000/-. The amount is credited into the account of the investigating officer in accordance with the directions of this Court. It is submitted that the huge amount of Rs.24,00,000/-, is required to be properly invested with the Nationalized Bank. The amount is lying into the account of the police department, which would not earn reasonable interest. It is further submitted that no prejudice, harm or hardship would be caused to the complainant and the prosecution, if the said relief is granted. It is further submitted that the original complainant had already filed summary suit before the City Civil Court, Bombay, and the complaint under Section 138 of the Negotiable Instruments Act. It is, therefore, prayed that the amount be re-transferred to the Registry of this Court directing to invest the same with the Nationalized Bank, by way of Fixed Deposit.

7 During the pendency of the aforesaid application, original complainant has preferred Criminal Application No.1156 of 2018, seeking permission to withdraw the said amount. Learned counsel for the applicant/complainant submitted that the complainant is a senior citizen. She is in financial constraints. She is facing severe health problems. The complainant is in need of

financial support to meet her medical expenses. The complainant has filed a summary suit for recovery of money, which is pending in the Court where the accused had claimed that the amount is secured. It is further submitted that the accused have sold the property. The complainant is the aggrieved party and had suffered financial loss on account of the conduct of the accused. She had invested the amount, and, therefore, entitled for recovery of the said amount. It is submitted that her son Sachin Shah is suffering from heart ailment. He had suffered setback in business. Her daughter in law Bhavna Shah is also facing health problems. It is submitted that the amount is required towards medical expenses for treatment of Bhavna Sachin Shah and Sachin Lalji Shah. It is, therefore, prayed that the said applicant/complainant be allowed to withdraw the amount deposited by the accused before this Court.

8 The amount of Rs.24,00,000/-, is deposited in this Court, vide order dated 22nd December, 2016. The reliefs sought by the applicant in Criminal Application No.1025 of 2018, is to direct investment of the amount with the Nationalized Bank. Since the amount is credited into the account of the police department without being invested by way of fixed deposit with

the Bank. In the event, the amount is invested in Nationalized Bank by way of Fixed Deposit, the interest can be earned on the said amount. The complainant, however, has preferred the application during the pendency of the present application preferred by the applicant/accused on 24th September, 2018. It is pertinent to note that the conditional order granting bail was passed on 27th December, 2016. It is pointed out that the amount can be invested on Fixed Deposit by the Registry of this Court. In the circumstances, the order dated 22nd December, 2016 can be modified directing re-transfer of the amount to the Registry of this Court, which has been credited into the account of the Investigating Officer with the directions to invest the amount in Fixed Deposit with any Nationalized Bank.

9 The complainant has also prayed for withdrawal of the said amount. Apparently, investigation is complete and the charge - sheet has been filed. Complainant will be at liberty to prefer such an application before the trial Court for return of the amount in accordance with law. It would be open to accused to contest such application. However, presently, the relief prayed for directing investment of the said amount with the Nationalized Bank can be granted. In the event, the complainant prefers an

application for withdrawal of the amount, the trial Court shall decide the same independently in accordance with law.

10 Hence, I pass the following order:

:: ORDER ::

- (i) The order dated 22nd December, 2016, passed in Bail Application No.1794 of 2016, is modified and Rs.24,00,000/-, which was deposited by the applicant in Criminal Bail Application No.1794 of 2016, and Bail Application No.2144 of 2016, is directed to be re-transferred to the Registry of this Court within two weeks from the date of receipt of order, with accrued interest, if any, and the Registry shall invest the said amount in Fixed Deposit with any Nationalized Bank initially for a period of six months, which can be extended subsequently;
- (ii) The original complainant will be at liberty to prefer an application before the trial Court seeking return of the said amount of Rs.24,00,000/-, to her and in the event such an

application is preferred, the same be dealt with by the trial Court, in accordance with law after hearing both parties;

- (iii) Criminal Application No.1025 of 2018, and, Criminal application No.1156 of 2018, stand disposed of.

(PRAKASH D. NAIK, J.)