

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

**CRIMINAL APPLICATION NO. 468 OF 2017
IN
CRIMINAL REVISION APPLICATION NO. 481 OF 2017**

Mr.Jayesh S/o.Pratap Doshi

...Applicant

Versus

The State of Maharashtra & Anr.

...Respondents

Mr.A.M.Saraogi for the Applicant.

Mr.S.S.Hulke, APP for Respondent No.1/State.

Mr.Vivek Sharma for Respondent No.2.

CORAM : MRS. MRIDULA BHATKAR, J.

DATE : 15 OCTOBER 2018

P.C.:

1. The applicant/accused was convicted for the offences punishable under Sections 420, 465, 467, 471, 120(B) and 201 read with 34 of the Indian Penal Code by the judgment and order dated 31st October 2013 passed by the learned Metropolitan Magistrate, 16th Court, Ballard Pier, Mumbai in C.C.No. 279/PW/06 wherein the maximum sentence imposed upon the applicant is of two years and payment of fine. Against the said judgment and order, the applicant preferred separate Criminal Appeal No. 134 of 2014. By the judgment and order dated 10th July 2017, the learned Addl. Sessions Judge, Sessions Court, Gr. Mumbai dismissed the appeal and confirmed his conviction. In clause

No.4 of the operative part of the said judgment and order, the learned Addl. Sessions Judge had given direction to the present applicant and other two accused to pay compensation of Rs. 10 lakhs within a period of three months from the date of the said order and in default to suffer one year RI.

2. Whether the amount of compensation was to be paid jointly or severally or it is to be paid by each one of the three accused was not clear after passing that order. The said issue was raised in application filed by co-accused Dharmesh Jivanlal Solanki and this Court by order dated 21st December 2017 directed co-accused to deposit an amount of Rs. 10,00,000/- and it shall be condition precedent for releasing the applicant on bail. The present applicant has also challenged the order of the Sessions Court in application and filed this bail application.

3. Mr.Saraogi, learned counsel for the applicant has pointed out the ambiguity in the order dated 10th July 2017 passed by the learned Addl. Sessions Judge, which was in fact clarified by the Judge in his order dated 4th April, 2018. The certified copy of the said order is produced here. The learned Addl. Sessions Judge had clarified the order dated 10th July 2017 and the said clause No.4 by making correction. The word 'each' was mentioned in operative part inadvertently after amount of Rs. 10,00,000/- and it has to be read to pay jointly and severally as it was preceded by the amount of compensation and disposed of

Misc. Application No. 322 of 2018 filed by the present applicant/accused.

4. On perusal of the certified copy of the said order, it is found that the name of Nimish Ramdas Shah is shown as respondent No.2. However, the appearance of respondent No.2 and also the appearance of counsel of respondent No.2 are not shown. It is not clear whether the service of notice was made on respondent No.2 or not. If at all respondent No.2 is the original complainant and he was shown as a party respondent to the said application, it was the duty of the Sessions Court to give notice to respondent No.2 and hear. However, it is left to the original complainant.

5. The learned counsel for respondent No.2 submits that he was not aware of the order dated 4th April, 2018.

6. It is open to the original complainant to challenge the said order or to seek further directions. However, as on today, as it is clarified by the concerned Judge, then clause No.4 of the judgment and order dated 10th July, 2017 is to be read accordingly. In view of the above, the present applicant/accused is liable to pay 1/3rd amount of total compensation, which approximately comes to Rs. 3,34,000/-.

7. The learned counsel for the applicant submits that the applicant is in jail and he is out of substantive sentence of two years. The applicant has already undergone for one year and three months. Under such circumstances, bail be granted.

8. The learned APP submits to the orders of the Court.

9. The learned counsel for the original complainant submits that it is Supreme Court expedited matter and, therefore, Revision Application Nos. 447 of 2017, 414 of 2017 and 565 of 2017 be tagged together with present Revision Application.

10. The request for initial cash bail of Rs. 25,000/- made by Mr.Saraogi, learned counsel for the applicant is accepted. Cash bail is accepted only for a period of two weeks with one or two solvent sureties. It is made clear that on condition of payment of amount of compensation of Rs.3,34,000/-, the bail is granted, as it is the condition precedent for bail.

11. In view of this, the Application is allowed on the following terms and conditions:

- (i) The applicant/accused shall be released on bail upon furnishing cash bail bond in the sum of Rs.25,000/- initially and

thereafter bail bond of Rs. 25,000/- with one or two solvent sureties to be furnished within a period of two weeks.

(ii) It is made clear that the applicant/accused shall deposit an amount of compensation of Rs. 3,34,000/- as has been directed by the Appellate Court shall be condition precedent for releasing the applicant on bail.

(iii) The applicant/accused shall not jump the bail.

iv) The applicant/accused shall remain available at the time of hearing of the Revision Application.

12. Criminal Application is disposed of on the above terms.

(MRIDULA BHATKAR, J.)