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

CRIMINAL APPLICATION NO.1296 OF 2017

Gurmeet Singh Sawhney	... Applicant
Versus	
M/s.Olive Tex Silk Mills Pvt Ltd. and Anr.	...Respondents

Mr.Hardik Vyas, for the Applicant.

Mr.K.P.Rustomkhan, for the Respondent No.1.

Mr.S.R.Shinde, A.P.P for the Respondent No.2-State.

Mr.Sanjeev Goyal, for the Intervenor-Yogesh Trading Company.

CORAM : REVATI MOHITE DERE, J.

DATE : 7th FEBRUARY, 2018

P.C. :

1. Heard learned counsel for the parties.

2. By this application, the applicant has impugned the order dated 12th May, 2017, passed by the learned Metropolitan Magistrate, 44th Court at Andheri, Mumbai, below Exhibit – 103 in C.C.No.4402348/SS/2011, by which the learned Magistrate was pleased to

reject the applicant's application (Exhibit -103) for withdrawal of the Bank Guarantee.

3. Perused the papers. The applicant alongwith the other co-accused were facing prosecution in connection with an offence punishable under Section 138 of the Negotiable Instruments Act. The said case being C.C.No. 4402348/SS/2011, was pending before the learned Metropolitan Magistrate, 44th Court at Andheri, Mumbai. It appears that due to non-attendance of the applicant, the learned Metropolitan Magistrate, 44th Court at Andheri, Mumbai, issued non-bailable warrant as against the applicant. As the bail application of the applicant was rejected by the learned Magistrate and also by the learned Sessions Court, the applicant filed an application in this Court, being Bail Application No.2079 of 2015. This Court (Coram:A.S.Gadkari, J.) vide order dated 27th November, 2015, was pleased to enlarge the applicant on bail on the condition that the applicant should furnish P.R Bond in the sum of Rs.5 lakhs with one or two solvent sureties in the like amount. Thereafter, the applicant moved another application and sought relaxation/modification of the bail condition. This Court (Coram:A.S.Gadkari, J.) vide order dated 17th December, 2015, was

pleased to reduce the P.R.Bond from Rs.5 lakhs to Rs.3 lakhs with one or two separate solvent sureties in the like amount. Again the applicant preferred another application and sought conversion of the P.R.Bond of Rs.3 lakhs to bank guarantee of Rs.3 lakhs. The same was allowed by this Court (Coram:A.S.Gadkari, J.) vide order dated 3rd February, 2016. Accordingly, the applicant furnished 2 separate bank guarantees for an amount of Rs.2,50,000/- and Rs.50,000/- respectively, before the Magistrate Court.

4. On 12th May, 2017, the respondent no. 1 filed an application for withdrawal of the complaint (Exhibit – 100). In the said application, it was stated that although affidavit of evidence as well as list of documents alongwith all original documents were filed, there was no progress in the matter, as two of the accused were absconding and hence respondent no.1 (original complainant) did not wish to proceed with the prosecution and sought permission to withdraw the complaint. The said application (exhibit -100) for withdrawal of the complaint was allowed by the learned Magistrate vide order dated 12th May, 2017. In view of the withdrawal of the complaint, the complaint was disposed of.

5. On the very same day, on 12th May, 2017, the applicant herein filed an application and sought withdrawal of the bank guarantee, as the complaint was withdrawn by the respondent no.1 (original complainant). It appears that an application was filed by the intervener in the trial Court, being Exhibit – 105. In the said application, the intervener had prayed that the passports of the accused – Bhupendra Singh Sawhney and Gurmeet Singh Sawhney shall not be released, in view of the order of the Delhi High Court dated 1st March, 2016. The Trial Court was pleased to reject all the applications preferred by all the accused, including the applicant herein.

6. It is not in dispute, that as far as the applicant is concerned, his passport is lying with the Faridabad District Court in the case of State v/s Col. Sanjay and Others, which is pending before the learned JMIC, 1st Class, Faridabad, and not in the Andheri Court, Mumbai. As far as prayer for withdrawal of the bank guarantee is concerned, none of the parties have any objection for the release of the said bank guarantee, in favour of the applicant.

7. In view of the aforesaid, the application is allowed only to the

extent, that the impugned order dated 12th May, 2017, passed by the learned Metropolitan Magistrate, 44th Court at Andheri, Mumbai, below Exhibit – 103, refusing permission to the applicant to withdraw the bank guarantee, is quashed and set aside.

8. The Applicant is permitted to withdraw the bank guarantee filed by him in the trial Court. As far as the applicant's passport is concerned, admittedly the same is with the Faridabad District Court and not in the Court of the learned Metropolitan Magistrate, 44th Court at Andheri, Mumbai. Hence, if any application for return of the passport is filed by the applicant, before the Faridabad District Court, the applicant shall make Yogesh Trading Company, as party-respondent in the said application, in view of the order of the Delhi High Court dated 1st March, 2016.

9. Application is accordingly disposed of on aforesaid terms.

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

REVATI MOHITE DERE, J.