

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

CRIMINAL WRIT PETITION NO.1002 OF 2002

Shri Vilas Shridhar Bhabhal ... Petitioner

Vs.

The State of Maharashtra & anr. ... Respondents

Mr.Viral K. Rathod for the Petitioner

Mr.Vinod Chate, APP, for the Respondent – State

CORAM: Mrs.MRIDULA BHATKAR, J.

DATED: JANUARY 10, 2019

ORAL JUDGMENT:

1. This Writ Petition is directed against the order of conviction dated 23.7.2001 passed by the learned Chief Metropolitan Magistrate, 3rd Court, Esplanade, Mumbai in the case No.60/CW/N/93 thereby convicting the accused for 6 months Simple Imprisonment for non-payment of surety amount of Rs.75,000/- and the order passed by the learned Sessions Judge dated 26.6.2002, while dismissing the appeal No.229 of 2001 filed by the petitioner challenging the earlier order. The petitioner/accused stood as a surety for Rs.75,000/- on 12.11.1991 for one accused Mohammad Altaf Mohammad Razzaq Carwala,

who was released on cash bail of Rs.75,000/-. Some dummy person filed application for withdrawal of the cash amount of bail of Rs.75,000/- and the present petitioner/accused appeared before the Court as surety in lieu of bail amount of Rs.75,000/- before the learned Metropolitan Magistrate as the petitioner/accused offered himself surety for the accused Mohammad Altaf Mohammad Razzaq Carwala, the dummy person who represented as Mohammad Altaf Mohammad Razzaq Carwala, was allowed to withdraw the cash bail amount of Rs.75,000/-. Subsequently, Mohammad Altaf Mohammad Razzaq Carwala himself appeared before the Court and informed that he never filed any application for withdrawal of the amount of Rs.75,000/- and he has not received any amount. Thus, it was found that somebody had impersonated him as Mohammad Altaf Mohammad Razzaq Carwala and has taken away of the cash bail amount, by playing fraud on the Court. Therefore, notice was issued to the petitioner/accused who had offered himself as surety for Mohammad Altaf Mohammad Razzaq Carwala i.e., the one who personified as Mohammad Altaf Mohammad Razzaq Carwala and has identified him as Mohammad Altaf Mohammad Razzaq Carwala. On service of notice, petitioner appeared before the

Court and expressed his inability to pay Rs.75,000/- as he was working as a watchman and having a meagre income. On house search, nothing was found which can be valued upto Rs.75,000/- except some utensils and apparels. Hence, the petitioner was prosecuted before the Court under section 446 of the Criminal Procedure Code and after enquiry conducted for forfeiture of bond, the petitioner was convicted and given maximum punishment of 6 months under section 446(2) of Criminal Procedure Code. Being aggrieved, he filed an appeal. However, it was dismissed and hence, this Writ Petition.

2. The learned Counsel for the petitioner has submitted that the petitioner is illiterate and was not aware of the legal procedure. The person for whom he stood surety was identified by the advocate. He has submitted that out of Rs.75,000/-, the petitioner has deposited Rs.40,000/- in the Registry of this Court and after conviction before the learned Metropolitan Magistrate, he was taken into custody, he could not file appeal and bail in time and, therefore, he remained in custody nearly for 3 months. Thus, out of 6 months, he has already undergone sentence for 3 months. Hence, he prays for leniency.

3. Learned Prosecutor has opposed the petition, however, submitted to the orders of the Court on the point of sentence.

4. Perused the impugned judgments of both the Courts below, which are well reasoned and correct. No interference is required in the order of conviction. However, the offence is committed in the year 1993. The petitioner was convicted first in the year 2001 by the learned Metropolitan Magistrate and in June, 2002, by the learned additional Sessions Judge, Bombay. Now, he is 65 years old. He has undergone 3 months imprisonment out of 6 months of sentence awarded by the learned Magistrate.

5. In view of these facts and the nature of the offence and the time consumed for hearing this revision, which are the mitigating circumstances, the following order is passed:

- i) The conviction under section 446 of Criminal Procedure Code is confirmed, however, the period of sentence is reduced to the period already undergone by him i.e., three months.

ii) The sentence of 6 months is accordingly modified to the period of sentence undergone by the petitioner.

6. Writ Petition is disposed of accordingly.

(MRIDULA BHATKAR, J.)