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

**CRIMINAL APPLICATION NO.416 OF 2019
IN
CRIMINAL REVISION APPLICATION NO.398 OF 2019
WITH
CRIMINAL APPLICATION NO.417 OF 2019
IN
CRIMINAL REVISION APPLICATION NO.398 OF 2019**

Mohammed Fahim Shaikh ... Applicant
V/s.
The State of Maharashtra and anr ... Respondents

Mr.. Jitendra B. Mishra i/by Rajeev Sawant & Co., for the Applicant.
Mr. Vinod Chate, APP for respondent State.
Mr. A.A. Ansari, for respondent No.2.

CORAM : N. J. JAMADAR, J.

DATE : 29th November, 2019.

PC. :

1. Heard the learned counsel for the applicant, learned APP and the learned counsel for respondent No.2.
2. The applicant has preferred these applications for suspension of sentence and enlarging him on bail.

3. In CC No. 5318/SS/2015, the applicant was convicted by the learned Metropolitan Magistrate, 33rd Court, Ballard Pier, Mumbai, for the offence punishable under Section 138 of the Negotiable Instruments Act, 1881, and sentenced to suffer simple imprisonment for one year, with a direction for payment of compensation of Rs.66,40,000/-, with simple interest at the rate of Rs.9% per anum under Section 357(3) of the Code of Criminal Procedure, by judgment and order dated 17th May, 2018.

4. In the appeal, preferred by the applicant, being Criminal appeal No.361 of 2018, the learned Sessions Judge was persuaded partly to allow the appeal. The learned Sessions Judge maintained the order of conviction and sentence. However, the direction for payment of compensation was modified by reducing it to Rs.45,00,000/-from Rs.66,40,000/- with interest at the rate of 9% per annum.

5. The applicant was on bail during the pendency of the trial and in the appeal before the Appellate Court.

6. The learned counsel for the applicant submits that the applicant has already deposited a sum of Rs.23,60,000/- in pursuance of the order of releasing him on bail in a prosecution for the offence punishable under

Section 420 of the Indian Penal Code. The learned counsel for respondent No.2-complainant counters the submission and asserts that the said amount has no nexus with the subject cheque. The question as to whether the said amount constitutes the only debt or liability towards which the subject cheque was drawn is a matter for adjudication.

7. The applicant has also deposited a sum of Rs.3,50,000/- before the learned Sessions Court, in Criminal Appeal No.361 of 2018.

8. In the aforesaid backdrop, the applicant deserves to be released on bail during the pendency of this Revision Application subject to depositing a reasonable amount towards compensation, as ordered by the learned Sessions Judge. Hence, the following order.

Order

i] Application stands allowed.

ii] The sentence imposed by the learned Metropolitan Magistrate, by judgment and order dated 17th May, 2018, in Case No.5318/SS/2015 and confirmed by the learned Sessions Judge, with modification, in Criminal Appeal No.361 of 2018, stands suspended till disposal of the Revision Application.

iii] The applicant be released on bail on furnishing a P. R. bond in the sum of Rs.15,000/- with a surety in the like amount to the

satisfaction of the learned Magistrate, subject to the condition of deposit of a sum of Rs.10,00,000/- (Rupees Ten lakhs only), in the Court of learned Metropolitan Magistrate, 33rd Court, Ballard Pier, Mumbai, within a period of four weeks from today.

iv] In the event of default in the deposit of the said amount, within the aforesaid period, this order would stand vacated automatically.

v] The applicant shall attend this Court, as and when directed, for the purpose of hearing of Revision Application.

vi] Criminal Application Nos. 416 of 2019 and 417 of 2019 stand disposed of.

viii] All concerned to act on an authenticated copy of this order.

[N. J. JAMADAR, J.]