

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

CRIMINAL WRIT PETITION NO.3346 OF 2016

Shri Manoj Kedarnath Pal

... Petitioner

Vs.

The State of Maharashtra & anr.

... Respondent

Mr.S.S. Karmarkar for the Petitioner

Ms.Veera Shinde, APP, for the Respondent – State

Mr.Prathamesh Vichare, PSI, Crime Branch (Unit 8) – present

**CORAM: Mrs.MRIDULA BHATKAR, J.
DATED: JANUARY 25, 2019**

P.C.:

1. This petition is directed against the order dated 27.8.2015 in CC/116/2015 passed by the learned Metropolitan Magistrate, 67th Court, Borivali, Mumbai of investing the amount of Rs.20,18,491/- in Bank of India, Parel Branch for a period of 5 years. The said order was challenged in Revision application No.121 of 2015 and the learned Additional Sessions Judge, Borivali, Mumbai by order dated 24.8.2016, dismissed the same.
2. The petitioner is the original complainant, who filed the complaint before the learned Magistrate, who after directing the

enquiry, issued process under sections 420, 406, 506 r/w section 34 of the Indian Penal Code. Now, the prosecution is thus pending against respondent No.2, who is the principal accused as also against the other accused.

3. As per the case of the prosecution, the petitioner/complainant has paid an amount of Rs.24,96,996/- to the respondent / accused for purchase of a house which was allotted to Respondent No.2 in a lottery by MHADA. Respondent No.2 had entered into an MoU and after accepting the money, he cancelled his allotment keeping the petitioner/complainant in dark. He did not return the said amount to the petitioner. Hence, the complaint was lodged. The amount was seized by the police from the account of Respondent No.2. Thereafter, the complainant moved an application under section 441 of the Criminal Procedure Code for return of property pending trial. However, the learned Magistrate, instead of returning the said property to the complainant, directed that the said amount be invested in a fixed deposit with the Bank of India, Parel branch.

4. The learned Counsel for the petitioner/complainant submits that the said amount is to be returned to him for which he is ready

to give an undertaking. He further submits that as on today, respondent No.2 accused is not traceable by the police and not attending the trial Court, though the Sessions Court at the time of dismissal of the revision, has directed the trial to be expedited.

5. Learned Prosecutor confirms the facts as submitted by the learned Counsel for the petitioner. She confirms that respondent No.2 is absconding and a proclamation has been issued against him.

6. In view of the submissions by the learned Counsel for the petitioner as also the Prosecutor and the set of facts, the following order is passed:

- i) Petition is allowed.
- ii) The order passed by the learned Metropolitan Magistrate dated 27.8.2015 in CC No.1116/2015 and also the order dated 24.8.2016 passed by the learned Additional Sessions Judge in Revision application No.121 of 2015 are quashed and set aside.

iii) The amount of Rs.20,18,491/- invested in Bank of India, Parel branch is to be returned to the petitioner alongwith interest accrued therein, if any, subject to a specific undertaking to be furnished by the petitioner/complainant that he shall bring the amount in the trial Court, if any other order is passed by the trial Court at the conclusion of the trial.

7. Writ Petition is disposed off accordingly.

(MRIDULA BHATKAR, J.)