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

CRIMINAL APPLICATION No.1046 OF 2018

Sandesh Ramchandra Nage

...Applicant

Vs.

The State of Maharashtra

...Respondent

Ms. Pooja Dhumal h/f. Mr. Mukesh Pabari, for Applicant/
Accused

Mr. H.S. Venegaonkar, for Respondent -CBI

CORAM : SMT. BHARATI DANGRE, J.

DATE : SEPTEMBER 25, 2019

P.C.:

1. The Applicant (Original Accused No.6) in the Special Case No.114/2004, came to be convicted by the Special Judge, Greater Bombay (C.R.No.51) on 25th November, 2016 for the offence punishable under Section 420 r/w. 120 B of Indian Penal Code and was sentenced to suffer R.I. for three years and to pay fine of Rs.10,000/-, in default, to suffer R.I. for three months. In terms of the order passed on 25th November, 2016, the bail bonds and the P.R. Bonds of all the convicted accused which includes the present Applicant, were canceled and the accused were directed to be

taken into custody.

2. Being aggrieved by the said judgment, the present Applicant has instituted an appeal in this Court vide No. Criminal Appeal 753 of 2016. On a criminal application taken out in the said appeal, the Learned Single Judge of this Court by an order dated 8th December, 2016 was pleased to release the Applicant on cash bail in the sum of Rs.50,000/- for a period of four weeks and, thereafter, directed to furnish P.R. Bond in the sum of Rs.50,000/- with one or two sureties in the like amount, within a period of four weeks of his release on cash bail.

3. The Applicant moved an application before the Special Judge for withdrawal of cash bail amount of Rs.1,50,000/- lying in the Registry of the said Court, which was deposited by him as a condition for grant of bail. The said application came to be objected by the CBI and resulted into an order dated on 13th July, 2018 by the Special Judge for CBI, Greater Bombay. The rejection of the said application is on the ground that an appeal has already been preferred by the Applicant and the same is pending in the Bombay High Court and there was mere suspension of the

conviction.

4. I heard the learned counsel for the Applicant and the learned counsel for CBI – Mr. Venegaonkar. It is an admitted fact that the Applicant, who was Accused No.6 was released on bail subject to execution of the bail bond of Rs.1,00,000/- and on submission of one or more surety of the like amount. On his conviction, the bail bond submitted by him is canceled and he is taken into custody. In an appeal filed by him, while suspending the sentence, the Applicant is directed to furnish a fresh P.R. Bond in the sum of Rs.50,000/-. It is pertinent to note that the provision for furnishing the Bail Bond and the surety contained in the Code of Criminal Procedure is to secure the presence of an accused during the trial and while granting bail, the stipulation of submission of bond and the surety is to ensure that the person shall attend at the time and place mentioned in the bond and to continue so to attend as directed by the Court. The Code also contains the provision in the form of Section 444 for discharge of sureties. Whereas Section 446 prescribes the procedure when the bond is forfeited. It is to be noted that the bond furnished by the Applicant, has been canceled by the Special Judge while convicting him and there is no forfeiture of bond.

In these circumstances, merely on the ground that an appeal, preferred by the Applicant, is pending pending in this Court, cannot be a ground for rejecting the application of the Applicant for refund of the said amount of Rs.1,00,000/-.

As far as the amount of Rs.50,000/- is concerned, i.e. furnishing a bond in a form of P.R. Bond in the pending appeal and that bond is executed to ensure his presence for the hearing of the proceedings of the appeal before this Court. Since no amount of the bond executed by the Applicant at the time of the trial has been forfeited, and the bail bond is being canceled, I do not see any legal impediment in refunding the said amount.

As far as the said amount of Rs.1,50,000/- is concerned, the Applicant is not entitled for the said release since it is a form of a bond submitted in an appeal subject to which he is released on bail.

5. In such circumstances, the order passed by the Special Court needs a modification to the extent of remitting refund of the amount of Rs.1,00,000/- to the Applicant, whereas refusing the refund amount of Rs.50,000/- in terms of the said order.

6. It is hereby directed that the Applicant is entitled for refund of the amount of bail bond of Rs.1,00,000/- and the necessary steps would be taken by the Learned Special Judge within a period of four weeks.

7. Criminal Application is partly allowed in the aforesaid terms.

[SMT.BHARATI DANGRE, J.]

V.A. Tikam