

Shailaja

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO. 372 OF 2019

Aaryan Carriers and Movers Pvt. Ltd.]
Through its Director-Ameya Rajaram Keni] Applicant

Versus

The State of Maharashtra] Respondent

.....
Mr. Sachin S. Punde, for the Applicant.

Mr. A.R. Patil, A.P.P for the Respondent- State.

.....

CORAM : REVATI MOHITE DERE, J.

DATE : 19TH NOVEMBER, 2019.

P.C. :

Heard learned Counsel for the parties.

2. By this application, the applicant has sought modification of clause (2) of the order dated 8th July, 2019 passed below Exhibit 2 in Sessions Case No.22 of 2019, by the learned Additional District Judge, Mangaon, District Raigad.

3. Learned Counsel for the applicant submits that the condition imposed by the learned Additional Sessions Judge, directing the applicant to furnish bank guarantee of Rs.20,00,000/- in addition to executing a bond of the like amount be quashed and set aside, as the said condition is harsh, unreasonable and onerous. He submits that the said vehicle of which release is sought has already been hypothecated by the applicant in favour of Kotak Mahindra Bank Limited and that the applicant is regularly paying the E.M.I's. Learned Counsel for the applicant has tendered an affidavit of the applicant. The said affidavit is taken on record and marked 'X' for identification. Learned Counsel for the applicant states that the applicant is, however, ready to comply with clause (3) of the order dated 8th July, 2019 and abide by the condition set out therein.

4. Learned A.P.P does not dispute the fact that the said vehicle of which release was sought has been hypothecated by the applicant in favour of Kotak Mahindra Bank Limited.

5. Perused the papers. The Mahad M.I.D.C Police Station, District-Raigad has registered the alleged offences punishable under sections 302, 307, 120 (b) r/w section 34 of the Indian Penal Code, as against one, Shivpati Subhoglal Patel on 31st December, 2018. After

investigation, the Police filed charge-sheet in the said C.R., being C.R. No.26 of 2018, on 30th March, 2019 in the Court of the learned Magistrate. Thereafter, the case was committed to the Court of Sessions for trial. Pending the trial, the applicant herein preferred an application (Exhibit 2) in the said case for return of the Muddemal property i.e truck, attached by the Police in the said C.R i.e C.R. No.26 of 2019. The property of which return was sought was a truck i.e Ashok Leyland make Trailer Truck bearing No. MH46/BB-5482 along with horse trolley and trolley having two container Nos. CAXU235082-4US2210, JAYU103150-3IN2210. It was contended by the learned Counsel for the applicant that the said vehicle was not involved in the commission of the said offence and that the applicant was suffering heavy losses due to the seizure of the said truck. The learned Additional District Judge, after hearing the parties, allowed the said application on the following terms and conditions;

“ 1.....

2. The applicant is directed to furnish Bank Guarantee of about Rs.20,00,000/- (Rupees Twenty Lakh only) in addition to it execute bond of the like amount. Thereafter the vehicle involved in C.R. No.26/2018 of Mahad MIDC Police Station bearing No.MH46/BB-5482 be given in to the custody of the applicant”.

3. The applicant is directed not to sell, alienate, transfer or deal with the vehicle or make any change in any whatsoever manner till disposal of the trial.”

6. The applicant is aggrieved by clause (2) of the aforesaid conditions, inasmuch as, it directs the applicant to furnish bank guarantee of Rs.20,00,000/-. The affidavit filed by the applicant shows that the said truck is hypothecated by the applicant in favour of Kotak Mahindra Bank Limited and that the applicant is regularly paying E.M.I's to the said Bank. The same is also not disputed by the learned A.P.P. The applicant has undertaken to this Court to continue to pay the E.M.I's as agreed between the applicant and Kotak Mahindra Bank Limited. The learned Additional Sessions Judge vide clause (2) of the impugned order has directed the applicant to furnish bank guarantee of Rs.20,00,000/- in addition to executing the bond of the like amount and thereafter has directed that the custody of the vehicle be handed over to the applicant.

7. Learned A.P.P has tendered a report of the Assistant Police Sub Inspector stating therein, that they have no objection if the said condition is waived and the vehicle is handed over to the applicant.

8. In the facts, the condition in clause (2) of the order dated 8th July, 2019, inasmuch as it directs the applicant to give bank guarantee of Rs.20,00,000/- is harsh, unreasonable and onerous and as such is quashed and set aside. The applicant, however, to execute a bond of Rs.20,00,000/-

in the trial Court before the release of the said vehicle. Rest of the conditions and in particular clause (3) of the order dated 8th July, 2019 to be complied with by the applicant.

9. The application is disposed of in the aforesaid terms.

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

[REVATI MOHITE DERE, J.]