

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

CRIMINAL BAIL APPLICATION NO. 2767 OF 2018

1. Pralahad Eknath Thokal
2. William B. Fernandes ... Applicants
Vs.
The State of Maharashtra ... Respondent

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Mr. Mayur D. Sapkale for the applicant.
Mr. M.G. Patil, APP for the Respondent-State.

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CORAM : PRAKASH D. NAIK, J.
DATE : 14th JANUARY, 2019.

P.C.

1. This is an application for bail in connection with CR No. 115 of 2018 registered with Azad Maidan Police Station for the offence punishable under Sections 408, 465, 467, 468, 471, 120(B) of Indian Penal Code.

2. Applicants had preferred an application for bail before the Sessions Court which was allowed by order dated 13th July, 2018. The applicants were directed to deposit an amount of Rs.11,16,862/- and Rs.16,67,130/- within a period of 45 days as one of the condition ground on bail. The applicants were earlier granted provisional cash bail. It was also made clear to the applicants that in the case of making default within stipulated

period, the bail order will stand cancelled automatically without reference to the Court and the Investigating Officer will be at liberty to arrest the applicant.

2. Applicants had availed cash facility by depositing cash bail in the sum of Rs.30,000/- and they were released on bail. Subsequently, the application was preferred before the Sessions Court for extension of period of 45 days to deposit the amount. Said application was rejected vide order dated 27th August, 2018. The bail bond were cancelled and the applicants were taken in custody on 11th September, 2018 and since then applicants are in custody.

3. Learned counsel for the applicants submitted that the condition imposed by the Sessions Court while granting bail is onerous and such condition ought not to have been imposed. Applicants had acted in the instance of main accused and they had not received the amount of Rs.11,16,862/- and Rs.16,67,130/-. It is submitted that applicants had withdrawn the amount from time to time and the same was given to the accused No.1. It is submitted that advocate representing them was not instructed to make statement that the applicants are willing to deposit the entire amount credited into their account. Applicants had

preferred an application before the Sessions Court vide Criminal Application 1754 of 2018 in which it was prayed that the applicants be granted extension of time to deposit the amount and they are ready to deposit the actual amount retained by them. However, the Sessions Court has rejected the said application and the bail granted to them was cancelled. Learned counsel for the applicant relied upon the decision in the case of *Sandeep Jain Vs. National Capital Territory of Delhi*¹, in support of his submissions that the Court cannot impose onerous condition while granting bail. Applicant has relied upon the bank statement to show that amount credited into their account was withdrawn from time to time and amount is given to co-accused. It is therefore prayed that the applicants be granted bail.

4. Learned APP submitted that the condition to deposit the amount was imposed by the Sessions Court on the basis of submissions advanced by the advocate representing the applicants. It is further submitted that there is no proof or evidence to substantiate the statement of the applicant that the amount was withdrawn and handed over to the accused No.1 except the amount referred into the order passed by the Sessions Court.

1. (2000) 2 SCC 66

Learned APP relied upon the decision in the case of **Ilesh Nemishchandra Shah Vs. State of Maharashtra & Ors delivered in Criminal Application No. 598 of 2011.**

5. I have perused the order dated 13th July, 2018 passed by the Sessions Court while granting bail the Court has taken into consideration the statement made by the advocate representing the applicants that they are ready to deposit the amount which is actually received by them and they were enlarged on bail. In the order dated 13th July, 2018, the Sessions Court made reference to amount credited into account of applicants and their wives and re-transferred to account of accused No.1 by tabular chart. The amount credited into account of applicant No.1 and his wife is Rs. 27,31,250/-. Rs.16,14,568/- was transferred to accused No.1 Amit Mayekar and his relatives. Thus, the applicant No.1 has received an amount of Rs.11,16,862/-. As far as applicant No.2 is concerned, the amount of Rs.34,36,250/- was credited into his account and his wife and out of the said amount of Rs.18,09,120/- has been transferred in to the account of Amit Mayekar and his relatives and thus applicant No.2 has received an amount of Rs.16,67,130/-. Thus, on the basis of the said factual aspects and in view of the statement made across the bar, the applicants were

directed to deposit the amount stipulated in the order dated 13th July, 2018. It is pertinent to note that the applicants had availed of the cash bail facility granted by the trial court. Applicants were granted 45 days time to deposit the amount. Applicants had preferred an application for extension of time to deposit the purported amount obtained by them before the Sessions Court before the expiry of 45 days time. Said application was rejected by the Sessions Court on 24th August, 2018.

6. Submission of the counsel for the applicants that they have retained only meagre amount is based on inferences. There is no substantial proof of parting amount other than referred to in order passed by the Sessions Court in the account of accused No.1. Decision relied upon by the counsel for the applicant would not be applicable in this case.

7. Considering the fact that the deposits were made in pursuant to the submission made during the course of hearing of the bail application. No case for grant of bail is made out on the basis of submission made by applicants. However, the applicants would be at liberty to prefer an application for bail before the Sessions Court on merits of the case since the bail was granted vide order dated 13th July, 2018 primarily on the basis of deposits to be made by the

applicants. In the circumstances, applicants would be at liberty to prefer a fresh application for bail before the Sessions Court on merits of the case. Pursuant to order cancelling bail, applicants are arrested and they are in custody. I pass the following order.

ORDER

- i. Criminal Bail Application No. 2767 of 2018 is rejected.
- ii Applicants are at liberty to prefer fresh application for bail on merits before the Sessions Court. In the event such application is preferred, the Sessions Court shall deal with the same in accordance with law;
- iii. Application stands disposed off

(PRAKASH D. NAIK, J.)