

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.1362 OF 2018

PURUSHOTTAM SADASHIV GHARAT)...PETITIONER

V/s.

THE STATE OF MAHARASHTRA)...RESPONDENT

Mr.Kuldeep Patil, Advocate for the Petitioner.

Mr.S.V.Gavand, APP for the Respondent – State.

CORAM : A. M. BADAR, J.

DATE : 11th FEBRUARY 2020

ORAL JUDGMENT :

1 Heard. Rule. Rule made returnable forthwith. Heard
finally by consent of parties.

2 By this petition, the petitioner, who happens to be brother of Pritam Gharat, is praying for quashing and setting aside the order dated 19th December 2017 passed on an application below Exhibit 115 in Sessions Case No.39 of 2013 with a further

prayer for relaxing the condition of furnishing bank guarantee of Rs.13 lakh vide order dated 15th November 2013 passed below Exhibit 35 in the said Sessions Case.

3 Facts in brief, are thus :

- (a) Accused persons including deceased accused no.1 Chandrakant Waghmare had allured four persons including Pritam Gharat with a black magic for multiplying their money by causing rainfall of money. Pritam Gharat and others then collected huge amount of money by pledging gold, obtaining loans and liquidating their savings etc. Farm house of First Informant Dattatray Nago Patil was then taken by another deceased Ramdas Patil on the pretext of holding a meeting. Then Pritam Gharat, Nitin Joshi, Balram Tople along with Ramdas Patil met accused persons in that farm house on 11th November 2012. There, accused persons, killed all these persons by firearms. Money brought by them came to be looted.

(b) During the course of investigation, at the instance of deceased accused Chandrakant Waghmare, an amount of Rs.12,54,040/- came to be seized from several persons. Present petitioner Purushottam Gharat, being legal heir of deceased victim Pritam Gharat, applied for custody of that money by filing necessary application below Exhibit 45 in the said Sessions Case No.39 of 2013. Considering the pleadings made in that application, after calling say of accused persons, said application came to be allowed. In paragraph 6 of the said order dated 15th November 2013, the learned trial court considered sources from which deceased Pritam Gharat had collected money for falling in the trap laid by accused persons. While releasing the amount in favour of the petitioner, the learned trial court had directed the petitioner to furnish bank guarantee of Rs.13 lakh apart from imposing other conditions.

(c) Subsequently, the petitioner herein, moved another application at Exhibit 115 and prayed for relaxing the

condition of bank guarantee. That application came to be rejected by the impugned order dated 19th December 2017 by the learned trial court with an observation that the petitioner cannot be allowed to keep the amount of Rs.12,54,000/- with him without furnishing the bank guarantee to the court and the bank guarantee is for safeguarding the rights of affected persons.

4 Heard the learned counsel for the petitioner. He argued that for furnishing the bank guarantee, the petitioner is required to deposit equal sum in the bank apart from regularly paying handsome amount to the concerned bank towards charges for bank guarantee. He further argued that once the court has held that the petitioner is entitled for interim custody of the amount seized during investigation of the crime, the learned trial court ought not to have imposed onerous condition of furnishing bank guarantee for release of the amount. The learned counsel further argued that interest of third parties can be secured by directing the petitioner to furnish sureties for this amount.

5 The learned APP opposed the petition by contending that after hearing and on considering say of accused persons, first order imposing the condition regarding bank guarantee was passed and now the petitioner cannot pray for relaxing the said condition.

6 I have considered the submissions so advanced and also perused the record made available before me. It is seen that the petitioner is required to pay an amount of Rs.14,950/- towards charges for bank guarantee recurringly. That apart, the petitioner is also required to deposit the entire amount of bank guarantee with the concerned bank issuing the bank guarantee. While deciding the application at Exhibit 45, the learned Additional Sessions Judge has considered the sources from which deceased Pritam Gharat had collected the huge amount, which was, ultimately, looted during the course of commission of crime in question. Hence, the discretion in imposing the condition of bank guarantee for releasing the amount in favour of the petitioner cannot be said to be exercised judiciously. The said

condition needs to be relaxed with a direction to the petitioner to furnish solvent surety in the like amount. Therefore, the order :

ORDER

- i) The petition is partly allowed.

- ii) Condition of furnishing bank guarantee of Rs.13 lakh imposed vide order dated 15th November 2013 passed below Exhibit 45 in Sessions Case No.39 of 2013 is relaxed by quashing the impugned order dated 19th December 2017 to that extent.

- iii) The application at Exhibit 115 is partly allowed by substituting the condition of furnishing bank guarantee of Rs.13 lakh by directing the petitioner to furnish one or two solvent sureties in the like amount i.e. for Rs.13 lakh, within a period of four weeks from the date of this order, before the learned trial court, for availing the benefit of order passed below Exhibit 45 dated 15th November 2013 in subject Sessions Case No.39 of 2013.

- iv) Needless to mention that all other conditions are kept intact.
- v) Rule is made absolute in above terms.

(A. M. BADAR, J.)

Arti V.
Khatate

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