

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

**BAIL APPLICATION NO.922 OF 2021**

Zahid Hussain Khan .. Applicant  
Vs.  
The State Of Maharashtra & Anr. .. Respondents

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Mr. Shashikant Chaudhari a/w Mrs. S. S. Chaudhari Mr. Puneet Shukla, Mr. Manoj Kumar Singh, Mr. Pradeep Chaurasiya i/by. MKS legal Associates for Applicant.

Mr. A.R. Kapadnis A.P.P. for the State-Respondent.

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**CORAM : PRAKASH D. NAIK, J.  
DATE : 23<sup>rd</sup> FEBRUARY, 2021**

**PC.**

1 Not on board. Taken on board.

2. Learned advocate for the applicant submits that the notice has been forwarded to respondent No.2 by E-mail and Whats-App stating that matter is kept for hearing before the Court today. It is submitted that Respondent No.2 was tried to be served with notice personally today before the trial Court. However the same was refused by respondent No.2 The applicant tendered affidavit of service, which is taken on record.

3. This is an application for bail filed by the applicant for the offence punishable under Section 138 of Negotiable Instrument Act. The proceedings are pending before the Court of Learned Metropolitan Magistrate 28<sup>th</sup> Court Esplanade, Mumbai. On 05<sup>th</sup> February 2021 the Magistrate noted that the

Arjun  
M.  
Kadam

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by Arjun M.  
Kadam  
Date:  
2021.02.24  
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applicant was absent and his advocate was also absent and exemption was not sought. Court issued NBW against the applicant. On the same day subsequently, the advocate for applicant appeared before the Court and preferred an application for exemption. The application was rejected. Applicant also moved an application through his advocate for stay of the warrant till the next date. The said application was also rejected. The case was adjourned to 9<sup>th</sup> February, 2021.

4. On 9<sup>th</sup> February, 2021 the applicant appeared before the trial Court and preferred an application for cancellation of non-bailable warrant issued against him. The matter was taken on board. The complainant's advocate objected for cancellation of warrant. The learned Magistrate noted that on the previous occasion warrant was cancelled and the matter was referred to mediation. The report was received that matter is settled. The accused was permitted to deposit the amount in installments. Total amount payable is Rs.25,75,000/-. The accused had paid only 6,00,000/-. The applicant neither settled the matter by making full payment nor he remained present before Court. Hence, the application was rejected and applicant was taken in MCR till 23<sup>rd</sup> February 2021. The applicant then preferred bail application before the same Court. On the same ground, as stated above, application for bail was rejected on 09<sup>th</sup> February 2021. The applicant then preferred an

application for bail before the Court of Session. Application was adjourned from time to time from 11<sup>th</sup> February 2021 and subsequently by order dated 22<sup>nd</sup> February 2021 the bail application was rejected. Learned Metropolitan Magistrate was directed to dispose of the proceeding expeditiously within one month. Bail application was disposed of.

5. Applicant has therefore preferred this application. It is pertinent to note that the applicant is facing trial under Section 138 of Negotiable Instruments Act. The Applicant's advocate and the applicant were not present on 05<sup>th</sup> February 2021. Hence non-bailable warrant was issued against the applicant. The application for exemption was preferred subsequently by the advocate for the applicant. The said application was rejected. Even the application for stay of warrant was rejected. When the application for cancellation of non-bailable warrant was preferred by the applicant, it was rejected and applicant was taken in custody. The applicant is in custody from 09<sup>th</sup> February, 2021.

6. Learned counsel for the applicant submitted that the applicant is in custody for substantial period of time for offence under Section 138 of Negotiable Instrument Act which is bailable in nature. The applicant need not be kept in custody for indefinite period. Although trial is expedited by the Sessions Court, it may not conclude immediately. It is relevant to note that

applicant is in custody. He was taken in custody when he appeared before trial Court. Further detention is not warranted, particularly since he is taken in custody for offence under Section 138 of N.I. Act.

7. Considering the factual matrix of the case, applicant can be released on bail.

**ORDER**

- (i) Bail Application No.922 of 2021 is allowed.
- (ii) The applicant is directed to be released on bail in connection with C.C. No.3133/SS/2013 pending before the 28<sup>th</sup> Metropolitan Magistrate Court, Esplanade Mumbai on executing P.R. bond in the sum of Rs.15,000/- with one or more sureties in the like amount;
- (iii) In the alternative the applicant is permitted to furnish cash bail in the sum of Rs.15,000/-.
- (iv) Application is disposed off.
- (v) Parties to act an authenticated copy of this order.

**(PRAKASH D. NAIK, J.)**