

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL WRIT PETITION NO. 5314 OF 2019

Mehul Navalkishore Parekh	...Petitioner
Versus	
Balkrishna Attappa Miyar and Anr.	...Respondents

Mr. Mahesh Menon i/b Mahesh Menon and Company for the Petitioner.

Mr. Yashpal Thakur i/b Mr. Jugal Kanani for the Respondent No.1.

Mr. A.R.Patil, A.P.P for the Respondent No.2-State.

CORAM : REVATI MOHITE DERE, J.
DATE : 15th JULY, 2021
(Through Video Conferencing)

P.C. :

1. Heard learned Counsel for the parties.
2. By this petition, the petitioner has impugned the order dated 9th October, 2019 passed by the learned Sessions Judge below Exh.6 in Criminal Appeal No.435 of 2016.
3. Learned Counsel for the petitioner states that without prejudice, the petitioner has no objection to the release of money as

directed by the Trial Court vide the impugned order dated 9th October, 2019, but insists that before the said amount is released, the Respondent No.1 be directed to give an affidavit-cum-undertaking in the language as couched in the proviso to Section 148(3) of the Negotiable Instruments Act. He submits that in the event, the petitioner is acquitted of the offence, the Respondent No.1 should given an undertaking that he will deposit the amount in the Appellate Court in terms of the proviso to Section 148(3) of the Negotiable Instruments Act within 60 days from the date of the order.

4. Learned Counsel for the Respondent No.1 also on the instructions of the Respondent No.1 has no objection if any such condition is imposed. He says that the Respondent No.1 will give an affidavit-cum-undertaking in the language couched in the proviso of Section 148(3) of the Negotiable Instruments Act. He further submits that in the event, the petitioner is acquitted, the Respondent No.1 will deposit the amount within 60 days from the date of the order.

5. Having perused the order, no infirmity can be found in the said order dated 9th October, 2019 permitting the Respondent No.1 to withdraw an amount of Rs.31,68,000/- deposited by the petitioner, at the time of the suspension of his sentence.

6. Needless to state, that the Respondent No.1 would be permitted to withdraw the said amount only after giving an undertaking in the language couched in the proviso of sub-section (3) of Section 148 of the Negotiable Instruments Act, 1881.
7. The application is accordingly disposed of in the aforesaid terms.
8. All parties to co-operate in the hearing of the appeal which is already expedited. All contentions of all parties are kept open.
9. All concerned to act on the authenticated copy of this order.

REVATI MOHITE DERE, J.