

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

28 CRIMINAL WRIT PETITION NO.470 OF 2022

SWAPNIL AVINASH DESHMUKH
VERSUS
THE STATE OF MAHARASHTRA AND ANOTHER

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Advocate for Petitioner : Mr. D.A. Naik h/f Bhosale S V
APP for Respondent : Mr. P G Borade

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CORAM : SHRIKANT D. KULKARNI, J.
Dated: September 12, 2022

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PER COURT :-

1. Mr. Naik h/f Mr. Bhosale, learned counsel for the petitioner submits that as per the Court's order dated 5.8.2022, private notice has been served upon the respondent no.2. He has filed service affidavit to that effect and complied with the order. On behalf of the petitioner, service affidavit seems to have been filed dated 6.9.2022 alongwith the track report exhibit 'X'. Respondent no.2 though duly served by private mode of service for final disposal of the petition, none appeared for respondent no.2. Hence, petition to proceed further.

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2. Heard finally with the consent of learned counsel for the parties.

3. Mr Naik, learned counsel for the petitioner invited my attention to the impugned order passed below exhibit 5 in criminal appeal no.27 of 2021 dated 4.10.2021. He submitted that the petitioner/appellant was directed to deposit 50% of the cheque amount with the appellate Court within a period of four weeks from the date of the order. Failure to comply the said order may result in dismissal of the appeal automatically. He submitted that, the petitioner/appellant accused has deposited 30% of the amount of cheque in question with the trial court as per the order passed by this Court dated 27.4.2022 and complied with the same. The petitioner/accused is ready to work out the appeal. It may not be appropriate to dismiss the appeal only because the appellant could not deposit 50% of the amount of the cheque in dispute. He submitted that, such a condition cannot be imposed which may take away right of appellant. He, therefore, urged to modify

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the order passed by the learned Additional Sessions Judge, Bhusawal in criminal appeal no.27 of 2021.

4. Mr. Borade, learned APP for the State fairly conceded the position that statutory right of appellant/accused cannot be taken away only because he could not comply with the stringent conditions. Appeal needs to be decided on its own merits.

5. I have considered the submissions of the learned counsel for the petitioner and the learned APP for the state. I have gone through the impugned order passed below exhibit 5 in Criminal Appeal No.27 of 2021 dated 4.10.2021 as well as the earlier order passed by this Court (Coram : R.G.Avachat, J.) dated 27.4.2022.

6. The petitioner has placed on record a receipt issued by the concerned court regarding compliance of the order passed by this Court dated 27.4.2022. He seems to have deposited Rs.1,27,500/- with the concerned Court towards 30% of the amount of the cheque in dispute and complied with the order.

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7. Now coming to the stringent condition imposed by the learned Additional Sessions Judge, Bhusawal while passing the order dated 4.10.2021. On perusing the impugned order paragraph no.3, it would reveal that the learned Additional Sessions Judge was pleased to suspend the execution of substantive sentence on condition that the appellant/petitioner shall deposit 50% of the cheque amount within four weeks. It is further made clear by the Additional Sessions Judge, Bhusawal that failure to comply the above said order will render dismissal of appeal automatically. The observations made by the learned Additional Sessions Judge, Bhusawal are apparently bad in law. It is statutory right of the accused to prosecute the appeal. Right of appeal cannot be snatched away which is valuable right given by the Statute. The appeal needs to be disposed off on its own merits.

8. So far as the condition of depositing of 50% of the cheque amount is concerned, that has been modified by this Court vide order dated 27.4.2022 to 30% of the

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cheque amount, which has been complied with by the petitioner. As such, there is no hurdle to proceed with the appeal. Appeal can be disposed off on its own merits. The condition imposed by the Additional Sessions Judge, Bhusawal in criminal appeal no.27 of 2021 needs to be modified to that extent.

O R D E R

- i. Petition stands allowed.
- ii. The condition imposed by the learned Additional Sessions Judge, Bhusawal in the impugned order passed below Exhibit 5 in Criminal Appeal No.27 of 2021 regarding deposit of 50% of the cheque amount stands modified to the extent of **30%** of the cheque amount, which has been already deposited by the petitioner/accused with the concerned Court.
- iii. The learned Additional Sessions Judge, Bhusawal/appellate court shall decide the

Criminal Appeal No.27 of 2021 on its own merits according to law.

- iv. Criminal writ petition is accordingly disposed off.

(SHRIKANT D. KULKARNI, J.)

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