

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

CRIMINAL APPLICATION NO. 156 OF 2022

Sadanand Vithalrao Kale

.. Applicant

Versus

The State of Maharashtra & another

.. Respondents

Mr. Priyash R. Tiwari i/b Mr. A. M. Saraogi, Advocate for the Applicant.

Ms. M. R. Tidke, APP for the Respondent-State.

Mr. Shantanu Kalekar a/w Mr. Yogesh Marbale, Advocates for Respondent No. 2.

CORAM : VINAY JOSHI, J.

DATE : 25th APRIL, 2022.

P.C. :

1. The applicant is seeking regular bail as he has been taken in custody by the learned Magistrate in SCC No.1397 of 2016. The applicant has sought for release, however, the learned Magistrate has refused. The applicant had approached for bail to the Court of Sessions, who in turn though granted bail, however with rider to deposit 50% cheque amount i.e. 50% of Rs.26,13,700/-. The applicant's learned Counsel would submit that the condition imposed by the Sessions Court is quite rigid, due to which the applicant is in jail despite bail order. He has produced some medical papers to show that the applicant is suffering from heart ailment.

2. The learned Counsel appearing for Respondent No. 2 opposed this

application by contending that the applicant was intentionally avoiding to face trial. The private complaint is filed by finance institution and the money involved, is public money.

3. It reveals that private complaint was filed by finance institution for the offence punishable under Section 138 of Negotiable Instruments Act. The applicant remained absent, resulting into issuance of non-bailable warrant. The record indicates that non-bailable warrant was executed. Accordingly the applicant was produced before the learned Magistrate, who in turn by rejecting bail application took him into Magistrate's custody. The learned Magistrate has assigned reasons as to why he was constrained to take such extreme step. Particularly the learned Magistrate has noted that the applicant has intentionally avoided to appear, despite knowing that non-bailable warrant was issued since long. The learned Sessions Judge though exercised its discretion in granting bail, however has directed to deposit 50% of cheque amount as a pre-condition.

4. Already criminal case is pending. On first appearance, accused has been released on bail. Only because he remained absent, non-bailable warrant was issued. However, notably the applicant accused was under obligation to attend the Court and to face the criminal trial. At this juncture, applicant's learned Counsel upon instructions made a statement that the applicant would deposit 25% of the cheque amount.

5. Considering the nature of litigation, the following order:

ORDER

- i) The application stands allowed.
- ii) The Applicant be released on bail on the same terms and conditions as imposed by the Sessions Court vide order dated 11th April, 2022, with condition to deposit 25% of the cheque amount instead of 50% as ordered.
- iii) The amount shall be deposited in the trial Court and it shall be condition precedent for issuance of released warrant.
- iv) Henceforth the Applicant shall attend each and every date of the proceedings, failing which the learned Magistrate is at liberty to take appropriate steps for securing his presence.
- v) The learned Magistrate shall endeavour to expedite the trial.
- vi) At this juncture, the applicant's learned Counsel submitted that instead of surety for Rs. 15,000/-, cash bail be granted, as the applicant is in hospital. The applicant is permitted to give cash surety of the equal amount.
- vii) The application is disposed in above terms.

(VINAY JOSHI, J.)