

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

CRIMINAL WRIT PETITION NO. 1149 OF 2022

Q S Fitness Studio Through Karta Ashok
Gupta And Anr. ...Petitioners
Versus
State Of Maharashtra And Anr. ...Respondents

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Mr. Uzair Kazi a/w Mr. Yogendra M. Kancha with Ms. Dhanashree
Hoblikal i/by YMK Legal, Advocate for the Petitioners.
Mr. Arfan Sait, APP for the Respondent No.1 – State.

CORAM : PRAKASH D. NAIK, J.
DATE : 13th APRIL, 2022.

PER COURT:

1. The petitioner has been convicted for offence punishable under Section 138 of Negotiable Instrument Act, vide judgment and order dated 17th December, 2021 and directed to pay Rs. 92,00,000/- to the complainant by way of compensation under Section 357(3) of the Code of Criminal Procedure within three months.

2. Learned counsel for the applicant submitted that the cheque amount involved in the proceedings is Rs. 46,00,000/-. The judgment of conviction was challenged before the Sessions Court by preferring Criminal Appeal No.22 of 2022. The applicant had also preferred an application for suspension of substantive sentence

and grant of bail. The said application was disposed of vide order dated 15th February, 2022 with direction that the substantive sentence of imprisonment is suspended till the decision in the appeal and the appellant shall deposit 50% of the cheque amount within a period of 60 days.

3. Learned Advocate for the applicant submitted that the direction to deposit 50% of the cheque amount was without assigning any reasons. The financial condition of the applicant is not suitable to deposit the amount directed by the Appellate Court.

4. It is noted that the Appellate Court has been directed the appellant to deposit 50% of the cheque amount within stipulated period by using its discretion. It is not possible to reduce the said amount. Learned counsel for the applicant then submitted on instruction that on account of financial constraints, it is difficult to comply the said order within stipulated time. The applicant would deposit the amount as directed by the Appellate Court vide order dated 15th February, 2022 within a period of eight weeks. The statement is accepted.

5. Learned counsel for the applicant also submitted that the notice of hearing of this writ petition has been given to the respondent Nos.1 & 2. Physical notice as well as by e-mail has

been served and accepted by respondent No.1. Notice through whats-app was given to respondent no.2 and attempt was made to serve him by physical service, but respondent No.2 refused to accept it. Learned counsel for the applicant has tendered the affidavit in that regard which is taken on record.

6. Considering the aforesaid submission, time to deposit the 50% of the cheque amount within stipulated in order dated 15th February, 2022 passed by the Sessions Court is extended by period of eight weeks from 16th April, 2022.

7. Writ Petition No.1149 of 2022 stands disposed off.

(PRAKASH D. NAIK, J.)