

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

**CRIMINAL REVISION APPLICATION NO.216 OF 2021
WITH
INTERIM APPLICATION NO.1756 OF 2022
AND
CRIMINAL REVISION APPLICATION NO.217 OF 2021
WITH
INTERIM APPLICATION NO.1755 OF 2022**

Mohit Basant Pathak

.. Applicant

Versus

Zabeina pererira and Anr.

.. Respondents

.....

Mr.Karansingh B. Rajput, Advocate for the Applicant.

Mr.Tarun Kumar Sinha, Advocate for Respondent No.1.

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

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CORAM : PRAKASH D. NAIK J.

DATED : JUNE 28, 2022.

P.C. :

These revision applications are preferred challenging the judgment of conviction passed by the learned Metropolitan Magistrate *vide* order dated 25th September, 2017. The appeal preferred against the judgment of conviction has been dismissed.

2 Applicant have preferred Interim Application Nos.1755 of 2022 and 1756 of 2022, seeking suspension of sentence and grant of bail.

3 Learned counsel for the applicant relied upon the documents adduced before the trial Court and below submitted that the transactions are relating to money laundering and therefore the proceedings under Section 138 of Negotiable Instrument Act is not maintainable. He relied upon the decisions in the case of *Smt.Nanda W/o. Dharam Nandanwar Vs. Nandkishor s/o. Tukaram Thaokar*¹, and *Anil s/o. Baburao Kataria Vs. Purshottam s/o. Prabhakar Kawane*² and *Girdhari Parmanand Motiani Vs. Vinayak Bhagwan Khavnekar and Ors.*³

4 It is further submitted that the applicant has deposited the amount of Rs.3,50,000/-, before the Sessions Court towards the compensations awarded by the Court below. On instructions, it is submitted that the applicant is willing to deposit further amount of Rs.14,00,000/-. It is submitted that the amount of Rs.10,00,000/- will be deposited within two days from today and the balance amount of Rs.4,00,000/- within two weeks thereafter.

5 Learned counsel for the respondent-complainant submitted that the submissions made by the counsel for the applicant are devoid of merits. The cheque was issued by the applicant. It was

1 2010 SCC Online Bom 54

2 2010 (2) Mh.L.J. 466

3 2015 SCC OnLine Bom 6213

dishonoured on account of insufficient funds. The issue of money lending raised by the applicant not tenable. It does not vitiate the proceedings under Section 138 of Negotiable Instruments Act.

6 Arguable questions are raised.

7 Hence, I pass the following order:

:: ORDER ::

- (i) Criminal Revision Application No.216 of 2021 and 217 of 2021, are admitted;
- (ii) The sentence of imprisonment imposed *vide* judgment and order dated 25th September, 2017 passed by 7th Judicial Magistrate First Class, Thane in S.C.C. No.6101 of 2015, and confirmed by the Additional Sessions Judge, Thane, by dismissing the Criminal Appeal No.127 of 2017 *vide* order dated 8th September, 2021, is suspended and the applicant is directed to be released on bail on executing P.R. Bond in the sum of Rs.15,000/-, with one or more sureties in the like amount;

- (ii) The sentence of imprisonment imposed *vide* judgment and order dated 25th September, 2017 passed by 7th Judicial Magistrate First Class, Thane in S.C.C. No.6100 of 2015, and confirmed by the Additional Sessions Judge, Thane, by dismissing the Criminal Appeal No.126 of 2017 *vide* order dated 8th September, 2021, is suspended and the applicant is directed to be released on bail on executing P.R. Bond in the sum of Rs.15,000/-, with one or more sureties in the like amount;
- (iii) The applicant shall deposit an amount of Rs.10,00,000/- within a period of four days from today and the amount of Rs.4,00,000/-, within three weeks from today;
- (iv) The execution proceedings stands stayed till the final disposal of the revision application;
- (v) Interim Application Nos.1756 and 1755 of 2022 stand disposed of accordingly.

(PRAKASH D. NAIK, J.)