

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

CRIMINAL WRIT PETITION NO. 5853 OF 2019

Suman Lalit Vakharia & Ors.	...Petitioners
Versus	
The State of Maharashtra & Ors.	...Respondents

Ms. Yogita Deshmukh Chitnis for the Petitioners

Mr. A. R. Patil, A.P.P for the Respondent No.1–State

None for the Respondent Nos. 2 & 3

CORAM : REVATI MOHITE DERE, J.
TUESDAY, 15th MARCH 2022

P.C. :

1 Heard learned counsel for the parties.

2 Rule. Rule is made returnable forthwith, with the consent of
the parties and is taken up for final disposal at the stage of admission.
Learned A.P.P waives service on behalf of respondent No.1- State.

3 By this petition, the petitioners have impugned the order dated 16th September 2019 passed by the learned Additional Sessions Judge, Palghar, below Exhibit 1 in Criminal Miscellaneous Application No. 47/2019, by which, the learned Judge rejected the petitioners' application seeking release of the sum of Rs. 33,00,000/- alongwith accrued interest thereon, deposited by Lalit Vakharia (applicant No. 1's husband and applicant No. 2 and 3's father).

4 Vide order dated 4th December 2019, after hearing learned counsel for the petitioners, notice was issued to the respondents making it returnable on 14th January 2020. The notice was to indicate that an endeavour shall be made to dispose of the petition finally at the state of admission, even if none appears for the respondent Nos. 2 and 3.

5 The order dated 15th January 2021 records that the petitioners have served the respondent Nos. 2 and 3 by private notice and have filed an affidavit of service to that effect. Despite service, none appeared for the respondent Nos. 2 and 3. The learned A.P.P on the said date, sought time to take instructions in the matter and accordingly, the matter was adjourned.

Thereafter, time to serve Court notice was extended. The office noting dated 9th December 2021 shows that the petitioners have filed an affidavit of service with postal acknowledgment showing service on respondent Nos. 2 and 3. It shows that notice issued to respondent No. 3 is served personally. As far as respondent No. 2 is concerned, it is stated that notice issued to respondent No. 2 is returned unserved with report “dead”. Hence, this Court (Coram : Sandeep K. Shinde, J.) vide order dated 10th December 2021, directed that the petition be listed for admission on 14th January 2022.

6 The petitioner No. 1 is the wife and petitioner Nos. 2 and 3 are the children of Late Lalit Vakharia, an accused in C.R. No. I-28/2012 registered with the Dahanu Police Station and subsequently transferred to Economic Offences Wing for the alleged offences punishable under Sections 420, 464, 465, 468, 469, 471, 167 and 34 of the Indian Penal Code. Admittedly, the petitioners are not the accused in the said case. It appears that Late Lalit Vakharia was released on bail by the Additional Sessions Judge, Palghar on 1st August 2012. A perusal of the said order granting bail to Lalit Vakharia shows that the said accused was released on bail on execution of PR bond of Rs. 30,000/- with one or two sureties and with a

direction to report to the Economic Offences Wing and cooperate with the investigating agency. There was no condition attached to the said bail order of any deposit. It appears that petitioner No. 1 had made a statement that she would deposit the amount i.e. Rs. 33,00,000/- allegedly embezzled by her husband Lalit Vakharia in the Court. It therefore appears that on her own volition, the amount was deposited by the petitioner No.1. It appears that thereafter Lalit Vakharia filed an application seeking return of the sum of Rs.33,00,000/-, which was deposited in the Sessions Court on 27th July 2012. Learned Judge issued notice to the complainant. Thereafter, the learned Sessions Judge after hearing parties, observed in para 7 that the deposit of Rs.33,00,000/- was not a condition of bail or a pre-condition to grant bail; that the amount is lying idle in the Court; that the complainant is not claiming the said amount; and neither is the said amount a part of the investigation or required for identification at the time of the trial and as such, to strike a balance, partially released the deposited amount i.e. out of Rs. 33,00,000/-, a sum of Rs. 20,00,000/- was returned to the then applicant- Lalit Vakharia on his executing Supratnama bond. As far as the balance amount of Rs. 13,00,000/-, the same was directed to be kept in the Court account till the disposal of case i.e. R.C.C No. 46/2013 pending on the file

of the learned Judicial Magistrate First Class, Dahanu. It appears that thereafter Lalit Vakharia expired on 1st July 2019. Pursuant thereto, the petitioners filed an application and sought return of the balance amount of Rs. 13,00,000/- along with accrued interest thereon. The said application was rejected by the learned Judge. Hence, this petition.

7 Learned A.P.P does not dispute the fact that the petitioners are neither accused in the said case nor that the money was seized during the course of investigation. He also does not dispute the fact that the monies have been deposited by the petitioner No.1 (wife of Lalit Vakharia) on her own volition and was not a pre-condition of bail. Part of the money so deposited i.e. Rs.20,00,000/- alongwith accrued interest was permitted to be withdrawn by the learned Sessions Judge vide order dated 3rd April 2017. It is also not in dispute that there is a civil suit pending between the parties. As noted above, despite notice, none appears for the respondent Nos. 2 and 3.

8 Considering the aforesaid, the impugned order dated 16th September 2019 passed by the learned Additional Sessions Judge, Palghar,

below Exhibit 1 in Criminal Miscellaneous Application No. 47/2019, is quashed and set-aside.

9 The learned Additional Sessions Judge, Palghar to release the amount of Rs. 13,00,000/- alongwith accrued interest thereon in favour of the petitioner No.1, on behalf of herself and on behalf of petitioner Nos. 2 and 3, on all the petitioners executing a Supratnama bond, to the satisfaction of the trial Court.

10 Rule is made absolute in the aforesaid terms. Petition is disposed of accordingly.

11 All concerned to act on the authenticated copy of this order.

REVATI MOHITE DERE, J.