

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

CRIMINAL WRIT PETITION NO.607 OF 2022

Petitioner :

Prashant s/o Jaideo Wasankar,
Aged about 42 years, Occ: Nil,
R/o. 58, Prasad Nagar, Near Jaytala, Nagpur.
(Presently lodged in Central Prison, Nagpur)

– Versus –

Respondents :

1. **Shri Sharad s/o Madhav Tamdoo (Dead)**
Through his Legal Heirs,
 - i. **Shri Abhijeet s/o Sharad Tamdoo,**
Aged Major, Occ: Not Known.
 - ii. **Smt. Mohini w/o Sumit Kumar Nee,**
Aged Major, Occ: Non Known.
2. **Smt. Seema w/o Sharad Tamdoo,**
Aged about 74 years, Occ: Housewife.

Both 1 and 2, R/o 301, Malhar, Yashodam
Enclave, Prashant Nagar, Nagpur – 440015.
3. **Manohar s/o Mahadeorao Medhekar,**
Aged about 69 years, Occ: Retired,
R/o 35B, Tapovan Complex, Somalwada, Nagpur.
4. **State of Maharashtra,**
Through Superintendent of Jail,
Central Prison, Nagpur.

Mr. D.V. Chauhan, Advocate for the Petitioner
Mrs. S.K. Paunekar, Advocate for Respondent Nos.1 & 2.
Mr. H.D. Dubey, A.P.P. for Respondent No.4.

CORAM : VINAY JOSHI, J.
DATE : 19th SEPTEMBER, 2022.

ORAL JUDGMENT :-

Rule. Rule made returnable forthwith. Heard finally by consent of the learned Counsel appearing for the parties.

02] The petitioner, a service provider, has challenged the rejection of bail applications in Execution Application Nos.23/2017, 24/2017 along with applications for cancellation of production warrant issued by the District Consumer Disputes Redressal Commission, Nagpur (hereinafter shall be referred to as 'District Commission' for short).

03] Respondent No.3 is not served in the petition, however, the relief claimed in the petition has no relevance with respondent No.3. For the reason that, though respondent No.3 has filed the execution application, no orders have been passed therein. The challenge is restricted to the orders passed in execution applications filed by respondent Nos.2 and 3 only.

04] The respondent No.1 (Mr. Sharad Tamdoo) has filed Consumer Complaint No.487/2015 against the petitioner (Service Provider) for

deficiencies of services. Likewise, another Consumer Complaint No.488/2015 has been filed by respondent No.2 (Mrs. Seema Tamdoo) against the petitioner similarly for the deficiencies of services. Both consumer complaints were allowed on 29/02/2016 by which the District Commission has directed the petitioner to pay quantified sum along with interest within the stipulated period. Both the consumer complaints were against a company of which the petitioner is a Managing Director.

05] Since the petitioner failed to comply the orders passed by the District Commission, the respective complainants, i.e. the consumers, have invoked penalty clause in terms of Section 27 of the Consumer Protection Act, 1986 (hereinafter shall be referred to as 'Act' for short) by filing two execution applications bearing Nos.EA/23/2017 and EA/24/2017 before the District Commission. In those execution applications, the impugned orders have been passed, which are under challenge. To be specific in execution applications, the petitioner applied for bail, which was rejected as well as applied for cancellation of production warrant, which was also rejected.

06] It is necessary to refer few facts as to why the production warrant was issued by the District Commission and later on declined to cancel. The

petitioner was arrested in Crime Nos. 373/2015 and 156/2014 for the offences punishable under Sections 406, 409, 420, 506, 120B of the Indian Penal Code ('Code' for short), Section 3 of the Maharashtra Protection of Interest of Depositors (In Financial Establishments) Act, 1999 ('MPID Act' for short), Sections 24(1) and 27 of the Securities and Exchange Board of India Act, 1992 and Sections 45(1)(a) and 45(s) of the Reserve Bank of India Act, 1949. In said crimes, the petitioner came to be arrested on 27/07/2014 and since then he is in jail. As the petitioner was in jail in the aforesaid two crimes, the District Commission has issued production warrant in terms of Section 267 of the Code. It reveals that in pursuance of the production warrant, the petitioner was produced before the District Commission and the same course was adopted by the Commission by issuing production warrant to secure presence of the petitioner in execution applications. Obviously, since the petitioner was in jail, the Commission had issued the production warrant for securing his presence.

07] It is the petitioner's contention that in both aforesaid crimes, he was released on bail by this Court in Criminal Application (BA) Nos.281 and 282 of 2022 vide its order dated 03/08/2022. According to the petitioner, he has complied conditions of bail as has been imposed by this Court. It is submitted

that the production warrant was issued by the District Commission only because the petitioner was in jail in another crime. According to him, since he has been released on bail in said crimes, the production warrant could not survive, which needs to be cancelled/recalled.

08] The petitioner's learned Counsel would submit that the petitioner has applied in both execution applications for his release on bail, however, without deliberation, the District Commission has rejected both applications, which is unjust and illegal. It is submitted that the order of rejection is bereft of reasons meaning thereby the order is against the principles of natural justice. According to the petitioner, by virtue of bail orders passed by this Court and as there is no order of District Commission to detain him in jail, petitioner's detention is illegal.

09] The learned Counsel appearing for the contesting respondent Nos.1 and 2 (Consumers), while resisting the petition, contended that the orders passed in consumer complaints in the year 2017 have not been complied by the petitioner. Those orders have attained finality and, therefore, the petitioner ought to have complied at least substantially while seeking release on bail. While justifying rejection of bail, it is submitted that the petitioner

has principally asked for dismissal of the execution applications, which was appropriately dealt by the District Commission and thus rejection of entire application is proper.

10] The petitioner's handwritten bail application, which he wrote through jail, indicates that he has raised several grounds and principally urged for dismissal of execution applications on account of double jeopardy. It appears that the petitioner has referred the prosecution, which he was facing under the aforesaid crimes and on that count stated that for the same reason, the proceedings before the District Commission are not tenable and thus sought for dismissal. In the said application, besides other challenges, he also specifically asked under Clause 2 of the prayer clause for his release on bail. Thus, it cannot be said that he did not ask for bail in the execution applications.

11] Perusal of the impugned common order, dated 29/08/2022 indicates that the District Commission has restricted itself to the extent of petitioner's urge for dismissal of the execution applications. For the reasons stated therein, the District Commission has rejected the plea of double jeopardy and turned down the request for dismissal of execution by rejecting

entire application. Undoubtedly, the District Commission has not considered the prayer for bail at all. Rather it gives impression that the District Commission has not perceived a prayer for bail. In fact, though technically the application, which includes prayer of bail, was rejected, however, in legal sense, there is no order of rejection. As per the petitioner's contention though he was released in two MPID cases by this Court, he is behind bars only because the District Commission has issued production warrant as well as his prayer of bail was not considered at all.

12] Though the District Commission erred in disposing of the application without considering the prayer of bail, however, action of issuing production warrant cannot be faulted, because admittedly the petitioner was very much in jail. The purpose of issuing production warrant in terms of Section 267 of the Code is to require the attendance/presence of the prisoner only and nothing more than that. The production warrant is a consequence of the petitioner/accused being in jail. The situation emerges that the petitioner was released on bail by this Court in two MPID cases registered at Nagpur and as per his statement, he has complied the bail conditions. It is informed that the concerned Special Court has also issued release warrant to the jail authorities, but for the reason of production warrant, he was detained in jail.

It is informed that the petitioner was involved in three other crimes of similar nature, but he was released on bail therein.

13] The District Commission is required to deal the petitioner's entitlement for bail on its merits. Though the other side submitted to impose some conditions on the petitioner, however, the District Commission, while considering the bail application, can look into the said aspect in accordance with law. The learned Counsel appearing for the contesting respondents expressed fear that there is every likelihood of the petitioner absconding. All these aspects would be dealt by the District Commission while testing the petitioner's entitlement for release on bail in the execution applications.

14] In view of the above, the common order of the District Commission, dated 23/08/2022 to the extent of declining (non-considering) the petitioner's urge for bail is set aside. The petitioner shall apply afresh for bail before the District Commission within two weeks from his release and the Commission shall decide it independently in accordance with law.

15] In the meantime, the petitioner shall be released on provisional bail on his furnishing Personal Bond in the sum of Rs.15,000/- (Rupees Fifteen

Thousand Only) in each execution application before the jail authorities, who shall transmit it to the consumer forum.

16] This release is restricted to the execution applications bearing Nos.EA/23/2017 and EA/24/2017 only. It is clarified that this Court has directed to release the petitioner in connection with two execution applications only and not relating to any other crime or order.

17] The orders of the District Commission dated 23/08/2022 in both the execution applications of refusal to cancel the production warrant are set aside and production warrant stands recalled, if the petitioner is not in custody in any other case.

18] The petition is partly allowed in above terms. Rule accordingly.

(VINAY JOSHI, J.)

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