

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

**CRIMINAL APPLICATION NO.3105 OF 2023
IN
CRIMINAL REVISION APPLICATION NO. 241 OF 2023**

Shankar Rawan Sawant

... Applicant

Versus

The State of Maharashtra & Anr.

... Respondents

...

Advocate for Applicant : Mr. M. D. Shinde

Advocate for Respondent No.1/State: Mr. S. P. Deshmukh

...

CORAM : S. G. CHAPALGAONKAR, J.

DATE : 23.08.2023

PER COURT :

1. Issue notice to the respondent. Learned APP waives notice on behalf of respondent no.1/State.
2. The applicant is accused in S.C.C. No.159/2017. He is convicted by judgment and order dated 17/01/2020 for the offences punishable under Section 138 of the Negotiable Instrument Act and sentenced to suffer simple imprisonment for six months and directed to pay compensation of Rs.4,80,000/-, in default to suffer simple imprisonment for one month. Aggrieved thereby, he approached the Sessions Court by filing the Appeal. However, the said Appeal came to be dismissed. Hence, the present Revision Application.

3. Mr. Shinde, learned Advocate appearing for the applicant would submit that the defence regarding misuse of stolen cheque has not been properly appreciated. He would submit that the complainant has failed to establish legally enforceable debt against the applicant. He would further submit that the order of appellate court would depict that it is passed without hearing the learned Advocate for the applicant. Therefore, he submits that the matter can be remanded back to the sessions court for reconsideration of the appeal.
4. Mr. Deshmukh, learned APP points out that the appellate court has specifically directed the applicant to surrender before the trial court on or before 31/07/2023 and undergo sentence as per the order of trial court in S.C.C. No.159/2017. He would therefore submit that prayer of the applicant for suspension of sentence may not be considered in absence of compliance of the sessions courts order.
5. Having considered the submissions and after going through the reasoning adopted by the trial court as well as the appellate court, apparently, the defence of the applicant requires reconsideration. The perusal of the order passed by the sessions court would show that the order is passed without hearing the learned Advocate appearing for the appellant. In that view of the matter, the case is made out to grant for ad-interim suspension of sentence. Hence, the following order:

ORDER

- (i) The Criminal Application is allowed.
- (ii) Pending hearing and final disposal of revision application, substantive sentence imposed under the order passed by the Judicial Magistrate, First Class, Washi, in SCC No.159/2017 dated 17/01/2020 is suspended. The applicant / accused be released on bail subject to furnishing of P.B. and S.B. of Rs.25,000/- with further condition that the applicant initially deposits Rs.50,000/- within a period of two weeks from the date of this order and deposits further amount Rs.1,50,000/- within a period of six weeks thereafter with the trial court.
- (iii) Bail be furnished before the trial court.
- (iv) Criminal Application is disposed of.

[S. G. CHAPALGAONKAR]
JUDGE

Sameer