

VRJ

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

CRIMINAL APPLICATION NO.119 OF 2023

Navpreet Kaur Anand ... Applicant
V/s.
Olive Tex Silk Mills Pvt. Ltd. & Anr. ... Respondents

Mr. Hardik Vyas for the applicant.

Ms. M.R. Tidke, APP for the respondent No.2/State.

CORAM : AMIT BORKAR, J.

DATED : MARCH 31, 2023

P.C.:

1. Challenge in this application is to the order rejecting application of a person who had issued bank guarantee for ensuring presence of the accused in a complaint under section 138 of the Negotiable Instruments Act, 1881. The complaint under section 138 is withdrawn. The **accused No.3** filed an application before the Trial Court for withdrawal of bank guarantee. Said order came to be rejected on the ground that order of this Court dated 3rd February 2016 in Criminal Application No.19 of 2016 mandated the accused to furnish bank guarantee and, therefore, remedy available to the applicant is to approach this Court.

2. The applicant has, therefore, filed present application.

3. This Court on 17th March 2023 issued notice for final

disposal to the respondent No.1. The applicant has filed affidavit of service stating that notice of present application has been served on respondent No.1. Despite service none appears for the applicant.

4. Considering the fact that applicant was not party to the complaint but had furnished bank guarantee to secure presence of accused in a complaint which has already been withdrawn. The applicant has made out a case for return of bank guarantee furnished before the Trial Court.

5. The application is, therefore, allowed in terms of prayer clause (a) and (b).

(AMIT BORKAR, J.)

Note:- This order is modified as per order dated 2nd May 2023. The corrections in paragraph 1 are shown in bold and italicize.