

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO. 1540 OF 2019

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Nainesh Harshadbhai Makwana and anrPetitioners

Versus

The State of Maharashtra and anr.Respondents

Mr. Kuldeep S. Patil for the Petitioners.

Ms. Bhagyashri Rajendra Mangale for the Respondent No.2.

Ms. D. N. Dabholkar, APP for the Respondent – State.

CORAM : G. A. SANAP, J.

DATE : 20th DECEMBER, 2023.

P.C. :

1. In this Writ Petition, the challenge is to order dated 8 March 2019 whereby the Application made by the petitioners for return of Rs.8 Lakhs was allowed subject to certain conditions. The petitioners are the accused in Regular Criminal Case No.249 of 2016 pending on the file of the Judicial Magistrate, First Class, Thane. They are facing prosecution for commission of the offence punishable under Section 420 read with Section 34 of the Indian Penal Code, 1860. The Application made by the petitioners for bail

was allowed vide order dated 25 July 2016 by the Additional Sessions Judge-2, Thane, subject to certain conditions. As per condition No.4, the petitioners were directed to deposit Rs.4 Lakhs each in the police station or in the Court. The petitioners deposited Rs.4 Lakhs each in the Court.

2. Respondent No.2 who is the informant made an Application for return of the amount of Rs.8 Lakhs being proceeds of the crime under Section 451 of the Criminal Procedure Code, 1973. Learned APP representing the State gave 'no objection' for return of the amount of Rs.8 Lakhs to respondent no.2. Learned Judge accordingly passed the order and allowed the Application.

3. Learned advocate for the petitioners submitted that the amount of Rs.8 Lakhs deposited by the accused was in terms of condition imposed at the time of their release on bail. Learned advocate submitted that the amount was not seized by the Investigating officer during the course of investigation. Learned advocate submitted that therefore the amount of Rs.8 Lakhs could not be said to be the proceeds of the crime recovered during the course of investigation. Learned advocate submitted that the Application filed under Section 451 of the Criminal Procedure Code, 1973, was not tenable.

5. Learned advocate appearing for respondent no.2 submitted that accused nos.1 and 2 had cheated the informant. It is submitted that she is in need of money to buy a house. Learned advocate further submitted that the order passed in her favour by the learned trial Judge may not be set aside and she may be allowed to use the said amount.

6. During the course of the argument, the learned advocate for the petitioners and the learned advocate for respondent no.2 pointed out that though the charges are framed in the year 2016, the recording of evidence has not yet commenced as the stay was granted by this Court in this Writ Petition. It needs to be mentioned that stay was not granted to prosecution of trial but it was granted for implementation of order impugned in this Writ Petition. It is seen that the amount was deposited in terms of the order passed by the learned the Additional Sessions Judge-2, Thane, being one of the condition for releasing the accused on bail. The questions raised in this Petition are touching the issue of applicability of Section 451 of the Criminal Procedure Code, 1973, and which would require to be addressed by the learned trial Judge on the basis of the evidence in the case. It is not clear from the record of the Petition, as to whether, the amount of Rs.8 Lakhs deposited in the Court was

seized in the crime by the investigating officer. In my opinion, adjudication of the factual issue at this stage on merits is likely to cause prejudice either to the accused or to respondent no.2. Therefore, keeping this issue open, the appropriate course would be to direct the trial Judge to dispose of the case expeditiously. Perusal of the order passed by the learned Magistrate would indicate that as per this order respondent no.2 would not be able to use this amount for any purpose, as such, in my view the order deserves to be set aside. Hence, the following order;

ORDER

- i. Criminal Writ Petition is hereby allowed.
- ii. The impugned order dated 8 March 2019 passed by the learned JMFC, Thane on application at Exh.38 in RCC No.549 of 2016 is hereby set aside.
- iii. Learned trial Judge is directed to dispose of the Criminal case expeditiously and in any case within a period of four months from the date of receipt of this order.
- iv. Learned Judge of trial Court shall decide the issue raised with regard to return of the amount of Rs.8 Lakhs either to the accused or to respondent no.2

(informant) in accordance with law.

7. Criminal Writ Petitions stands disposed of.

8. It is made clear that observations made herein above be construed as expression of opinion only for the purpose of deciding the subject matter of this Petition.

[G. A. SANAP, J.]