

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

CRIMINAL WRIT PETITION NO. 1713 OF 2019

Achchhelal B. Yadav

..Petitioner

Versus

Bhimrao Fakira Ahire & Anr.

..Respondents

Mr. Ram Mani Upadhyay for Petitioner.

Mr. Ashutosh O. Shukla for Respondent No.1.

Smt. M. R. Tidke, APP for State/Respondent No.2.

CORAM : SARANG V. KOTWAL, J.

DATE : 5 JULY 2023

PC :

1. The Petitioner has challenged the order dated 04/02/2019 passed below Exhibits-3 and 4 in Criminal Appeal No.30 of 2019 pending before the Additional Sessions Judge, Dindoshi, Mumbai, to a limited extent of challenging the clause Nos.2 and 4 of the said order.

2. Heard Shri. Ram Upadhyay, learned counsel for the Petitioner, Shri. Ashutosh Shukla, learned counsel for the Respondent No.1 and Smt. Tidke, learned APP for the State/Respondent No.2.

3. The clause Nos.2 and 4 of the impugned order reads thus:

- “2. The sentence passed in C.C.No.737/SS/2012 by the Metropolitan Magistrate, 43rd Court, Borivali, Mumbai on 05.01.2019 is suspended till the decision of the appeal and till that time, the applicant be released on executing a Personal Bond of Rs.15,000/- (Fifteen Thousand Rupees only) with a surety in the like amount.
4. The applicant shall deposit 50% of the fine amount within a period of two months, before the learned Magistrate.”

4. Learned counsel for the Petitioner submitted that the Petitioner was permitted to furnish cash bail during the entire trial. Since 2019 also he is on cash bail, therefore, there will be no harm caused if the same situation is continued. He further submitted that, to show his bonafides he has deposited Rs.30000/- which would be 20% amount of the fine imposed on him U/s.141 of the Negotiable Instruments Act (hereinafter referred to as ‘N.I.Act’). Therefore, his bonafides also may be taken into consideration.

5. Learned counsel for the Respondent No.1 opposed this petition. He submitted that the Appeal is pending for a long period

and, therefore, some directions be issued for early disposal of the Appeal.

6. I have considered these submissions. This petition is pending before this Court since the year 2019. The Petitioner has already deposited 20% amount of the fine amount. Learned Additional Sessions Judge has not given any reasons as to why the Petitioner was directed to deposit 50% amount of the fine amount. At least, some reasons were required, but absolutely no reasons are given. The Appeal is inordinately pending for a long time, even this petition is pending for a long time. The Petitioner has established his bonafides by depositing 20% of the fine amount. Therefore, I am satisfied that, at this stage, it is not necessary for the Petitioner to deposit 50% of the fine amount. It is also made clear that the Respondent No.1 is at liberty to withdraw the said amount which is deposited before the Trial Court. As far as permitting the Petitioner to remain on bail on the amount of Rs.15,000/- (which is already deposited) is concerned, the Appeal before the Court of Sessions is pending since 2019 and the Petitioner has diligently pursued the present petition before this

Court, therefore, no harm will be caused if the Petitioner is permitted to continue on the same condition of bail of depositing Rs.15000/- (which is already deposited) instead of asking him to furnish the surety.

7. Hence, the following order:

O R D E R

- i) The Clause No.2 of the impugned order dated 04/02/2019 passed by the Additional Sessions Judge, Dindoshi, Mumbai, passed below Exhibit-3 and 4 in the Criminal Appeal No.30 of 2019 is modified and the condition of furnishing surety is deleted. Instead, the Applicant can continue to remain on bail on deposit of Rs.15000/- (which he has already deposited).
- ii) Rest of the condition in the said clause remains the same.
- iii) As far as, Clause No.4 of the said order is concerned, the Applicant need not deposit 50% of the fine amount as he has already deposited 20% of the fine amount.
- iv) The Respondent No.1 is at liberty to withdraw

said amount from the Trial Court.

v) The Criminal Appeal No.30 of 2019 pending before the Additional Sessions Judge, Dindoshi, Mumbai shall be decided within a period of four months from today.

vi) With this direction, the Petition is disposed of.

(SARANG V. KOTWAL, J.)