

Ghuge

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

WRIT PETITION NO.4542 OF 2022

Nasreen Iqbal Balasaheb ... Petitioner
V/s.
The State of Maharashtra and Anr ... Respondents

Mr. S.H. Pasi for the petitioner.

Mr. A.R. Patil, APP for the State.

Mr. Govinda C Karodwal, Nayanagar Police Station.

CORAM : AMIT BORKAR, J.

DATED : MARCH 30, 2023

P.C.:

1. The petition is directed against the order dated 15th September, 2022 passed by Additional Sessions Judge, Thane in Criminal Appeal No.155 of 2022 as challenging order dated 13th June, 2022 passed by Judicial Magistrate First Class, Court No.6 Thane in RCC No.1841 of 2021 below Exhibit-53.

2. The petitioner is original complainant who lodged the complaint with Nayanagar Police Station, contending that she wanted to invest her fund in property and therefore contacted the accused. Accused showed her a flat having price of Rs.1,00,00,000/-. Towards the transaction of the said flat she transferred amount of Rs.50,00,000/- to HDFC Bank account through her ICICI Bank account. However, accused absconded and therefore she filed complaint under Section 420 of the Indian Penal Code, 1860.

3. Learned Additional Sessions Judge while releasing accused on bail on 14th March, 2022 in Criminal Bail Application No.654 of 2022 observed that accused admitted that the present petitioner transferred amount of Rs.50,00,000/- to his account. He submitted that before the Court as per the direction of the Court he has deposited an amount of Rs.27,00,000/- before the Trial Court.

4. The applicant, therefore, filed an application before the Judicial Magistrate First Class, Thane seeking withdrawal of amount deposited by the accused. Both the Courts below rejected the application.

5. On perusal of the record, *prima facie*, it is clear that amount of Rs.50,00,000/- was transferred through bank transfer in the account of accused. The accused admitted receipt of said amount. The accused deposited amount of Rs.27,00,000/- out of Rs.50,00,000/- in the trial court. It is therefore clear that the amount of Rs.27,00,000/- is owned by the petitioner. The Courts below therefore erred in rejecting the application under Section 451 of the Code of Criminal Procedure, 1973. Therefore, I pass the following order :-

(i) The impugned Judgment and Order passed by Additional Sessions Judge, Thane in Criminal Revision Application No.155 of 2022 dated 15th September, 2022 confirming the Judgment and Order dated 13th June, 2022 passed by Judicial Magistrate First Class, Court No.6, Thane in RCC No.1841 of 2021 in Crime No.487 of 2022 below Exhibit-53 is quashed and set aside.

(ii) The application below Exhibit-53 dated 13th June, 2022 filed by the petitioner in RCC No.1841 of 2021 in connection with Crime No. 487 of 2022 with Naya Nagar Police Station is allowed.

6. The Writ Petition stands disposed of in the above terms. No costs.

(AMIT BORKAR, J.)