

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

CRIMINAL WRIT PETITION NO. 5331 OF 2019

Powertech Worldwide Ltd. & Ors.

..Petitioners

Versus

Sushil Traders, Niphad & Anr.

..Respondents

Mr. J. S. Kini a/w. Aum Kini i/b. Balwant V. Salunkhe for
Petitioners.

Mr. Sugandh B. Deshmukh for Respondent No.1.

Mr. N. B. Patil, APP for State/Respondent No.2.

CORAM : SARANG V. KOTWAL, J.

DATE : 12 JULY 2023

PC :

1. The Petitioners have challenged the order dated 27/09/2019 passed below Exhibit-3 in Criminal M.A.No.15 of 2019, as well as, the order dated 14/10/2019 passed below Exhibit-16 in Criminal M.A.No.15 of 2019. Both the orders were passed by the Assistant Sessions Judge-2, Niphad.

2. Heard Shri. Kini, learned counsel for the Petitioners, Shri. Sugand Deshmukh, learned counsel for the Respondent No.1 and Shri. Patil, learned APP for the State.

3. The Petitioners were the original accused in S.C.C.No.16 of 2008 before the Additional Chief Judicial Magistrate, Niphad. They were convicted for commission of offence punishable U/s.138 of the Negotiable Instruments Act (for short 'N.I.Act') and were sentenced to pay a fine of Rs.20 lakhs. The said order was sought to be challenged by the Petitioners before the Assistant Sessions Judge-2, Niphad. There was a delay of six days in filing the Appeal. Vide order passed below Exhibit-3 in Criminal M.A.No.15 of 2019, learned Assistant Sessions Judge-2, Niphad had suspended the sentence and directed the Petitioner No.2 to deposit 50% of the amount i.e. Rs.10 lakhs out of the compensation amount in the Court. He was directed to be released on bail on his furnishing PR.Bond of Rs.50000/- with one or more sureties in the like amount. He was directed to remain present before the Court and to furnish his residential address and to produce his authentic address proof. He was directed not to leave India without prior permission of the Court.

4. The Petitioners thereafter challenged that order in the present petition. While this petition was pending, the order below

Exhibit-16 in the same application was passed by the Assistant Sessions Judge-2, Niphad recalling the order dated 27/09/2019 because the Petitioner No.2 did not remain present before the Court and he had not complied with other conditions of the order. Therefore, both these orders are under challenge before this Court.

5. This Court by the previous order had directed the Petitioner No.2 to furnish his current address on affidavit. By way of additional affidavit, the address is furnished by the Petitioner No.2.

6. Learned counsel for the Petitioners submitted that, learned Sessions Judge had not given any reasons as to why he was directed to deposit 50% of the compensation amount. According to him, this amount was on a higher side and absolutely no reasons were given. He further submitted that the Petitioner No.2 is willing to deposit 20% of the compensation amount which is the minimum prescribed U/s.148 of the N.I.Act during pendency of the Appeal. He submitted that the Petitioner No.2 has furnished his present address. He, therefore, submitted that the impugned

orders be set aside and the Appellate Court be directed to consider his bail application afresh.

7. Considering the statement made before this Court, the sentence imposed on the Petitioner No.2 is suspended for a period of six weeks from today. During that period, the Petitioner No.2 shall approach the Assistant Sessions Judge-2, Niphad and renew his prayer for suspension of the sentence and for releasing him on bail.

8. Hence, the following order:

ORDER

- i) Both the impugned orders i.e. the order dated 27/09/2019 passed below Exhibit-3 in Criminal M.A.No.15 of 2019, as well as, the order dated 14/10/2019 passed below Exhibit-16 in Criminal M.A.No.15 of 2019; passed by the Assistant Sessions Judge-2, Niphad, are set aside.
- ii) Learned Assistant Sessions Judge-2, Niphad shall consider the Petitioner No.2's application for suspension of sentence and for releasing him on bail afresh.

iii) Learned Assistant Sessions Judge-2, Niphad shall decide the application of the Petitioner No.2 afresh.

iv) The writ petition is disposed of.

(SARANG V. KOTWAL, J.)