

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

CRIMINAL REVISION APPLICATION NO. 342 OF 2023

Alpesh Vasantlal Mistry

..Applicant

Versus

The State of Maharashtra

..Respondent

**WITH
INTERIM APPLICATION NO. 3861 OF 2023
IN
CRIMINAL REVISION APPLICATION NO. 342 OF 2023**

Mr. Saurabh S. More for Applicant.

Mr. Ajay Patil, APP for State/Respondent.

CORAM : SARANG V. KOTWAL, J.

DATE : 23 OCTOBER 2023

PC :

1. The Applicant was the original accused No.1 in C.C.No.204/PW/2009 before the Metropolitan Magistrate, 18th Court, Girgaon, Mumbai. The learned Magistrate vide his Judgment and order dated 17.04.2018 convicted the applicant and his other co-accused for commission of the offences punishable under sections 465, 471, 467, 468 and 420 r/w. 34 of the I.P.C. The applicant was convicted and sentenced as under:

Sections	Sentence
Section 465 and 471 r/w.34 of I.P.C.	Fine of Rs.1000 and in default S.I. for three months.
Section 467 r/w. 34 of I.P.C.	S.I. for three years and fine of Rs.3000/- and in default S.I. for 1 year.
Section 468 r/w. 34 of I.P.C.	S.I. for three years and fine of Rs.3000/- and in default S.I. for 1 year.
Section 420 r/w. 34 of I.P.C.	S.I. for three years and fine of Rs.3000/- and in default S.I. for 1 year.

All the sentences were directed to run concurrently.

2. The Applicant challenged this order before the Additional Sessions Judge, Greater Mumbai, vide Criminal Appeal No.308 of 2018. Learned Sessions Judge vide his Judgment and order dated 30.09.2023 maintained the conviction. However, the sentence was modified and instead of substantive sentence of three years for all the aforementioned offences, the applicant was sentenced to suffer S.I. for one year. The sentence of fine and the in default sentence was maintained.

3. The applicant was in custody during the period of investigation from 19.02.2009 up to 30.05.2009 and after

dismissal of his appeal from 30.09.2023 till today. Thus, he is in custody for around four months out of the substantive sentence of one year which was imposed on him as of today.

4. Heard Mr. Saurabh More, learned counsel for the Applicant and Mr. Ajay Patil, learned APP for the State/Respondent.

5. The prosecution case is that the applicant was employed for a brief period with M/s. Orocraft Jewels Pvt. Ltd. from February 2008 up to May 2008 as a Production Manager. Between October 2008 to January 2009, some amount from the account of said Orocraft Jewels Pvt. Ltd. maintained with the Bank of India, Opera House, Mumbai was found to be short by the Director of the said company. He made enquiries with the bank. The enquiries revealed that the amount of Rs.5,72,000/- was found short and it was found to have been transferred in the accounts of both the accused. On this basis, at the instance of the bank, the F.I.R. was lodged and the investigation was carried out. During trial, the prosecution examined six witnesses. The main witnesses were

PW-1 Uday Kesarkar, who was the Chief Manager of the Bank of India, Opera House, Mumbai, PW-5 Sanjay Shah, who was the Director of the said company and PW-6 Annasaheb Patil was examined as the Hand writing expert.

6. Learned counsel for the applicant submitted that the company's Director PW-5 himself did not lodge an F.I.R. The F.I.R. was lodged by the bank officer. There were 21 transactions by cheques. On the basis of those cheques the amounts were transferred. He submitted that, those amounts were transferred to the account of the applicant as his salary dues. It was not possible to believe that, on all these occasions, none of the bank officers could not have suspected that the signatures were forged. He submitted that, the hand writing expert's opinion is inconclusive. He has not even opined that the signatures on all the cheques were not of the Director of the company. He submitted that, during the same period, the company was in the process of being wound up and, therefore, the company wanted to pay the dues to the employees and only at the instance of creditors of the company, this prosecution was launched against the applicant. He further

submitted that, out of the substantive sentence of one year, the applicant has nearly completed four months of actual imprisonment and by utilizing remission, his actual remaining sentence would be much less. Therefore, his bail application be considered sympathetically as the revision application is likely to take a long time to be decided.

7. Learned APP supported the Judgment passed by the Trial Court, as well as, the Appellate Court. However, he also accepted that, out of one year of substantive sentence, four months have already passed when the applicant was in custody.

8. Learned counsel submitted that the Charge U/s.420 of the I.P.C. was not specifically framed, though, the applicant was also convicted for commission of offence punishable U/s.420 r/w. 34 of the I.P.C. This legal aspect is important. In this view of the matter, arguable points are raised. Therefore, the revision application deserves to be admitted.

9. Considering the period which the applicant has already undergone in the past and also taking into account the fact that

the revision application is not likely to be decided in near future, the applicant deserves to be released on bail. The Applicant has already deposited the fine amount in the trial Court.

10. Hence, the following order:

O R D E R

- i) The Criminal Revision Application is admitted.
- ii) Record and proceedings be called.
- iii) During the pendency and final disposal of the revision application, the applicant is directed to be released on bail on his furnishing P. R. bond in the sum of Rs.10000/- with one or two sureties in the like amount.
- iv) The substantive sentence imposed on the applicant stands suspended till final disposal of the revision application.
- v) The Interim Application No.3861 of 2023 is disposed of.

(SARANG V. KOTWAL, J.)