

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

CRIMINAL WRIT PETITION NO.218 OF 2023

Sanjay Dinkar Rane

.... Petitioner

versus

The State of Maharashtra

.... Respondents

.....

- Mr. Sugandh Zende a/w Akshata Borode, Advocate for Petitioner.
- Ms. Pallavi N. Dabholkar, APP for the State/Respondent.

CORAM : SARANG V. KOTWAL, J.

DATE : 13th DECEMBER, 2023

P.C. :

1. The Petitioner was the accused No.1 in C.C.No.277/PW/2013 before the Additional Chief Metropolitan Magistrate, 2nd Court, Mazgaon at Sewree, Mumbai.

2. The learned Magistrate vide his Judgment and Order dated 29/04/2022 convicted and sentenced him as follows:

- (1) Under section 409 r/w 34 of the Indian Penal Code., he was sentenced to suffer R.I. for seven years and to pay fine of Rs.25,00,000/- and in default to suffer further R.I. for one year.

- (2) Under section 465 r/w 34 of the Indian Penal Code., he was sentenced to suffer R.I. for two years and to pay fine of Rs.25,00,000/- and in default to suffer further R.I. for six months.
- (3) Under section 468 r/w 34 of the Indian Penal Code., he was sentenced to suffer R.I. for seven years and to pay fine of Rs.25,00,000/- and in default to suffer further R.I. for one year.
- (4) Under section 471 r/w 34 of the Indian Penal Code., he was sentenced to suffer R.I. for two years and to pay fine of Rs.25,00,000/- and in default to suffer further R.I. for six months.
- (5) Under section 420 r/w 34, he was sentenced to suffer R.I. for seven years and to pay fine of Rs.25,00,000/- and in default to suffer further R.I. for one year.

All the sentences were directed to run concurrently.

Out of the fine amount, Rs.1 Crore 10 lakhs were directed to be give to the MGM Hospital, Parel.

- 3. The Petitioner has challenged the said Judgment and Order before the Court of Session, Greater Mumbai, by filing Criminal Appeal No.280 of 2022. Learned counsel for the

Petitioner submits that the Appeal is already admitted. The Petitioner preferred Criminal Miscellaneous Application No.898 of 2022 in Criminal Appeal No.280 of 2022 before the Additional Sessions Judge, Greater Mumbai. The said application was for suspension of sentence. The learned Appellate Judge suspended the sentence subject to conditions that the Petitioner had to deposit 50% of the fine imposed by the Trial Court within 8 weeks from the date of the Appellate Court's order. The Petitioner was directed to execute bond of Rs.2 lakhs with solvent surety of like amount. The Petitioner was directed to appear before the Appellate Court on every date. This order was passed on 30/09/2022.

4. The Applicant preferred Bail Application No.1196 of 2022 in the said Appeal. It was also allowed on the same terms. The Petitioner preferred Criminal Miscellaneous Application No.899 of 2022 in the said Appeal for waiving of the fine imposed by the Trial Court. That application was rejected vide the order dated 30/09/2022.

5. The Petitioner has preferred this Petition for setting aside the orders passed in Criminal Miscellaneous Application No.898 of 2022 and Criminal Miscellaneous Application No.899 of 2022.
6. Heard Mr. Sugandh Zende, learned counsel for the Petitioner and Ms. Pallavi N. Dabholkar, learned APP for the State.
7. Learned counsel for the Petitioner submits that the Petitioner is in custody since 29/04/2022 i.e. from the date of his conviction because he was not in a position to deposit 50% of the fine amount and was not in a position to furnish surety of two lakhs. With the result, the Petitioner is in custody since 29/04/2022. His Appeal is pending before the Court of Session.
8. Learned counsel for the Petitioner submits that he needs to add consequential prayer of his release on bail during the pendency of his Appeal before the Sessions Court. He seeks leave to amend that prayer. He also seeks leave to amend the prayer clause (b), where the number pertaining to the Criminal Appeal

is wrongly mentioned. In the interest of justice leave to amend for those prayers is granted. The amendment is to be carried out forthwith.

9. The prosecution case is that the Petitioner was working with the MGM Hospital, Parel, Mumbai as an Assistant Account Officer. He used to prepare cheques and obtain signatures on the cheques. He was to use them for disbursing those amounts to various parties. The hospital used to pay electricity bill to BEST undertaking. The Petitioner opened an account in the name of M/s BEST Enterprises, at Kurla Nagarik Sahakari Bank Limited, S. G. Barve Marg, Kurla (West). He diverted various cheques in that account and misappropriated these amounts. The prosecution case is that misappropriation was to the tune of Rs.1,19,42,666/-. The prosecution examined 12 witnesses in its support before the Trial Court. The learned Trial Judge convicted and sentenced the Petitioner as mentioned earlier.

10. Learned counsel for the Petitioner submitted that he has good case on merits which can be argued before the

Appellate Court. However, the Petitioner is in custody and his Appeal has practically become ineffective. He submitted that the learned Magistrate did not have authority to impose fine of Rs.25 lakhs, each under different heads. He relied on section 29 of Cr.P.C. which reads thus:

“29. Sentences which Magistrates may pass -

- (1) The Court of a Chief Judicial Magistrate may pass any sentence authorised by law except a sentence of death or of imprisonment for life or of imprisonment for a term exceeding seven years.*
- (2) The Court of a Magistrate of the first class may pass a sentence of imprisonment for a term not exceeding three years, or of fine not exceeding ten thousand rupees, or of both.*
- (3) The Court of a Magistrate of the second class may pass a sentence of imprisonment for a term not exceeding one year, or of fine not exceeding five thousand rupees, or of both.*
- (4) The Court of a Chief Metropolitan Magistrate shall have the powers of the Court of a Chief Judicial Magistrate and that of a Metropolitan Magistrate, the powers of the Court of a Magistrate of the first class.”*

STATE AMENDMENT

Maharashtra:

In Section 29, -

(a) in sub-section (2), for the words “ten thousand rupees”, substitute the words “fifty thousand rupees”;

(b) in sub-section (3), for the words “five thousand rupees”, substitute the words “ten thousand rupees”.

11. He further submitted that the conditions imposed while granting bail are too onerous and that is practically denying him bail during pendency of Appeal. He further submitted that those onerous conditions be deleted and the Applicant be released on bail during pendency of his Appeal on reasonable terms. Learned counsel submitted that the Petitioner was on bail during trial. He has not misused the same.

12. Learned APP opposed these submissions. However, she accepted that the learned Magistrate did not have power to impose the fine beyond what is laid down u/s 29 of Cr.P.C. She submitted that while granting bail to the Petitioner some

reasonable conditions be imposed. She further submitted that the offence is serious. A huge amount is misappropriated, which was to be used for the benefit of the patients.

13. I have considered these submissions. It is without doubt that the allegations are serious. However, the Appeal is already admitted by the Appellate Court. The Applicant is in custody since 29/04/2022 i.e. for more than 1½ year. The maximum substantive sentence imposed on the Applicant is for 7 years.

14. As far as the prayer for waiving of the fine amount, as prayed for in Criminal Miscellaneous Application No.899 of 2022 in the Criminal Appeal No.280 of 2022 before the Sessions Court, Greater Mumbai; is concerned, it can only be considered at the final hearing stage of the Appeal. Therefore, that question is left open. At this stage, I do not find any reason to interfere with the order passed in Criminal Miscellaneous Application No.899 of 2022. However, the other order passed in Criminal Miscellaneous Application No.898 of 2022 definitely deserves

interference and the Petitioner deserves to be released on bail during pendency of the Appeal on reasonable terms.

15. Hence, the following order :

ORDER

- (i) Leave to amend to correct the prayer clause and to add the prayer clause for his release on bail during pendency of the Appeal, is granted. Amendment shall be carried out forthwith.
- (ii) During pendency and final disposal of the Criminal Appeal No.280 of 2022 preferred by the Petitioner pending before the Additional Sessions Judge, Greater Mumbai, the Petitioner is directed to be released on bail on his executing P.R. bond in the sum of Rs.50,000/- (Rupees Fifty Thousand Only), with one or two sureties in the like amount.
- (iii) The condition of depositing 50% of the fine amount, imposed by the Trial Court while granting bail by the Appellate Court, is deleted.
- (iv) The amount of bond and solvent surety, stands modified as mentioned in this order.

- (v) The Petitioner shall co-operate with early disposal of the Appeal and attend every date before the Appellate Court.
- (vi) The Writ Petition is disposed of.

(SARANG V. KOTWAL, J.)