

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

CRIMINAL WRIT PETITION NO.219 OF 2023

Sachin Vasant Desai

.... Petitioner

versus

The State of Maharashtra

.... Respondents

.....

- Mr. Sugandh Zende a/w Akshata Borode, Advocate for Petitioner.
- Ms. Sangita D. Shinde, APP for the State/Respondent.

CORAM : SARANG V. KOTWAL, J.

DATE : 13th DECEMBER, 2023

P.C. :

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

2. At the conclusion of the trial the learned Magistrate vide his Judgment and Order dated 29/04/2022 convicted and sentenced the Petitioner 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.281 of 2022. The Petitioner preferred Criminal Miscellaneous Application No.900 of 2022 in Criminal Appeal No.281 of 2022 before the Additional Sessions Judge, Greater Mumbai for suspension of sentence. The said application was allowed vide order dated 30/09/2022, 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 and he was directed to appear before the Appellate Court on every date.

4. The Applicant preferred Bail Application No.1197 of 2022 in the said Appeal. It was allowed on the same terms. The Petitioner also preferred Criminal Miscellaneous Application No.901 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. The order passed in Criminal Miscellaneous Application No.900 of 2022 and Criminal

Miscellaneous Application No.901 of 2022 are under challenge in this Writ Petition.

5. Heard Mr. Sugandh Zende, learned counsel for the Petitioner and -Ms. Sangita D. Shinde, learned APP for the State.
6. Learned counsel for the Petitioner sought leave to amend to correct the prayer clause (b) to mention the correct number of Appeal. He also sought leave to make a prayer for his release on bail during pendency of Appeal before Sessions Court. In the interest of justice leave to amend for those prayers is granted. The amendment shall be carried out forthwith.
7. The prosecution case is that the accused No.1 was working with the MGM Hospital, Parel, Mumbai as an Assistant Account Officer. He misused the cheques and issued them to different parties. He opened an account in the name of M/s BEST Enterprises, at Kurla Nagarik Sahakari Bank Limited, S. G. Barve Marg, Kurla (West). He deposited those cheques in that

account and misappropriated these amounts. The prosecution case is that misappropriation was to the tune of Rs.1,19,42,666/-. Some of the amounts were diverted in the account of the present Petitioner maintained with Vaishya Sahakari Bank. Some amount was transferred in his wife's account. At the conclusion of the Trial, the Petitioner was convicted and sentenced along with accused No.1 as mentioned earlier.

8. Learned counsel for the Petitioner submitted that the Petitioner's role is much lesser than the accused No.1. By a separate order, the accused is granted bail by this Court during the pendency of his Appeal. Therefore, on the ground of parity, the Petitioner also deserves to be released on bail during pendency of his Appeal before the Sessions Court. He submitted that the learned Magistrate did not have power to impose such a huge fine in view of 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”.

9. Learned counsel for the Petitioner submitted that the Petitioner is in custody since 29/04/2022. Because of the onerous conditions, he could not avail of the bail order.
10. Learned APP opposed these submissions. According to her, the offence is serious and the prosecution has led sufficient evidence to prove the offence. She conceded that u/s 29 of Cr.P.C. there are limitations to the Magistrate’s powers in imposing fine.
11. I have considered these submissions. There is substance in the submissions made by learned counsel for the Petitioner. The Petitioner deserves a fair chance of pursuing his Appeal. The conditions for his release on bail are onerous. It is obvious that he cannot fulfill those conditions. He is in custody since 29/04/2022. More than 1 ½ year has passed. The maximum substantive sentence imposed on the Applicant is for 7 years. For

these reasons, it is necessary to grant him relief of bail.

12. As far as the prayer for waiving of the fine amount, as prayed for in Criminal Miscellaneous Application No.901 of 2022 in the Criminal Appeal No.281 of 2022 before the Sessions Court, Greater Mumbai; is concerned, it can be a subject matter of the final decision of the Appeal. Therefore, at this stage, there is no necessity to pass any order in that behalf. It is clarified that the said issue can be decided at the final hearing stage of the Appeal in accordance with law. However, the condition for his release on bail needs modification.

13. Hence, the following order :

ORDER

- (i) Leave to amend to correct the prayer clause and to add the prayer clause for Petitioner's 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.281 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) It will not be necessary for the Petitioner to deposit 50% of the fine amount as directed by the Appellate Court.
- (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.)