

GRM

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

CRIMINAL WRIT PETITION NO. 4564 OF 2022

Omprakash Ramgopal Rathii ... Petitioner

V/s.

The State of Maharashtra & Anr. ... Respondents

Swaraj Jadhav a/w Amit Shirsat a/w Rama Somani i/b Chetan Alai, Adv. for the Petitioner.

Mr. M. G. Patil, APP for the State/Respondent.

Mr. Ranvir Shekhawat i/b M/s. Raj Legal, Adv. for Respondent No. 2.

CORAM : R. G. AVACHAT, J.

DATED : FEBRUARY 20, 2023

P.C. :

Heard.

2. The challenge in this writ petition is to the order dated 22/11/2022 closing the evidence of defence and posting the matter for final arguments.

3. It is the case under Section 138 of the Negotiable Instruments Act, 1881. The amount covered by cheque is Rs. 36,00,000/-. The record indicates that the respondent/complainant closed his evidence in 2019. The examination of accused under Section 313 of the Code of Criminal Procedure, 1973 was conducted thereafter. In one of the questions, the petitioner/accused admitted that he did not propose to examine any witness in his defence. It appears that he then changed his mind and requested the Trial Court to permit him to

examine the bank witness.

4. Learned Advocate for the petitioner would submit that the petitioner proposes to examine himself and the bank employee in his defence. Moreover he seeks production of zerox copy of the agreement. The original agreement is in the custody of other side. The application seeking production of the original agreement, was moved before the Trial Court. As he has moved an application before the Trial Court seeking direction to the other side to produce the original agreement, he is therefore permitted to produce a zerox copy of the agreement.

5. Learned Advocate for the respondent/complainant took this Court through various dates to indicate that the petitioner has used delaying tactics.

6. The record however indicates that some of major time passed by during Covid Pandemic. Considering it being an offence under NI Act and the cheque amount being Rs. 36,00,000/-, in all fairness and with a view to give the petitioner/accused a fair opportunity to lead evidence, this writ petition is allowed subject to cost of Rs. 30,000/-, to be paid by the petitioner to the respondent/complainant within a period of two weeks. The Trial Court is directed to permit the petitioner/accused to lead evidence in his defence.

7. Learned Advocate for the petitioner makes a statement that he will co-operate with the Trial Court to ensure that it will conclude the trial within a time-frame of three months.

8. In view of the same, the Trial Court is requested to conclude the trial within time-frame of three months.
9. Criminal Writ Petition No. 4564/2022 stands disposed of accordingly.

(R. G. AVACHAT, J.)