



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

CRIMINAL WRIT PETITION NO.690/2023

Shaikh Akhil s/o Shaikh Kadir .Vs. State of Maharashtra

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Mr. A. S. Londhe, Advocate for petitioner.
Ms S. Kolhe, A.P.P. for respondent.

CORAM : ANIL L. PANSARE, J.
DATE : 30.10.2023

On previous date, following order was passed:

“The petitioner is seeking to quash and set aside order dated 2-8-2023 passed by learned Additional Sessions Judge, Akola in Special Case No. 81/2018 whereby the application filed by the petitioner for return of cash security amount of Rs. 50,000/- is rejected.

Having heard learned counsel for the petitioner and learned Additional Public Prosecutor, it appears that pending trial, this Court, in Criminal Application (BA) no. 884/2018, vide order dated 8-10-2018, directed to release the applicant on bail on furnishing cash security of Rs. 50,000/- and two solvent sureties for Rs. 20,000/- each. The Court then proceeded to pass further order stating therein that cash security that would be deposited by the petitioner shall be treated as muddemal and orders regarding its disbursal shall be passed at the time of conclusion of the trial.

The trial Court has rejected the application on the ground that though trial as regards the petitioner has been concluded resulting into his acquittal, the charge-sheet is yet to be filed

against the absconding accused. Accordingly the trial Court held that the trial in totality has not been concluded and, therefore, the amount of cash security cannot be returned.

The contention is that since the trial against the petitioner has been concluded and further the petitioner having been acquitted, there is absolutely no reason as to why the amount of cash security be retained for the trial of other accused.

It appears from the clause (iii) of the operative part of the order passed by this Court that while releasing the petitioner on bail, this Court directed to treat the cash security as muddemal with further direction that orders regarding its disbursal shall be passed at the time of conclusion of the trial. The trial Court has not passed orders as regards its disbursal.

Issue notice, returnable on 30-10-2023.

Learned Additional Public Prosecutor waives notice for the State/respondent and shall take instructions on disbursal of the amount deposited by the petitioner.”

Learned A.P.P. submits that since the trial Court has treated the amount of Rs.50,000/- as muddemal in terms of the order passed by this Court and since the trial Court found that the absconding accused is not yet arrested, in that sense, the trial is not complete, the order as regards disbursal of the cash surety has not been passed despite acquitting the petitioner. She has invited my attention to the impugned order wherein the learned Sessions Court has made a passing remark that the petitioner/original accused is at liberty to seek

modification in the condition/direction issued by this Court.

Thus, it appears that the direction issued by this Court vide order dated 08.10.2018 has, in a way, prevented the Sessions Court to pass order of disbursal. To my mind, the direction was given considering the nature of the crime and role of the petitioners in the crime. The allegations against the petitioner were that he has put his own daughter in trafficking. This allegation has been not proved. The petitioner has been acquitted. The direction that the cash surety of Rs.50,000/- be treated as Muddemal, appears to me was with a view to compensate the victim, consequent upon the conviction of the petitioner. As such, the trial Court was at liberty to grant compensation to the victim of the crime even in a case where the person(s) accused of a crime is/are acquitted. Therefore, the order of disbursal of cash surety ought to have been passed by the trial Court. The Court, however, thought it proper to keep the amount under the custody of the Court for further trial, as and when the absconding accused is/are arrested.

The approach of the trial Court appears to be far fetched. The cash surety has been furnished while releasing the petitioner on bail. Though the amount was to be treated as muddemal, the purpose has already been served. The petitioner is acquitted. The whereabouts of absconding accused are not known. The trial Court could have passed the order of compensation in the present case and disbursed the amount under question.

This amount is not the muddemal used in the crime. I do not find any reason to withheld the amount of cash surety deposited by the petitioner while releasing him on bail. Hence, following order is passed.

ORDER

- (i) The writ petition is allowed.
- (ii) The impugned order dated 02.08.2023 passed by Additional Sessions Judge, in Special Case No.81/2018, is quashed and set aside.
- (iii) The amount of Rs.50,000/- deposited by the petitioner as cash surety shall be returned back to him upon his furnishing usual undertaking to the satisfaction of the trial Court.

Order accordingly. The petition is disposed of.

(Anil L. Pansare, J.)