



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO. 1601 OF 2023

Chetan Hareshwar Sawe

...Applicant.

Versus

State Of Maharashtra and Another.

...Respondents.

Ms. Lipika Biswas, Mr. Prabhat Dubey and Ms. Nikita A. Pandey for the Applicant.

Mr. Rudresh V. Jagdale, Ms. Shivani Jadhav, Mr. Rajdeep Singh, Mr. Tejas Shetty for the Respondent No. 2.

Ms. Shilpa Gajare, APP for the Respondent-State.

Coram : Sharmila U. Deshmukh, J.

Date : April 2, 2024.

P. C. :

1. Heard.

2. By this application, exception is taken to the order dated 22nd June 2023 passed by the Appellate Court staying the order passed by the Metropolitan Magistrate subject to the condition of deposit of 50% of the total arrears of maintenance, rent for separate accommodation and compensation within three months.

3. Learned counsel appearing for the Applicant submits that as of 22nd June 2023, when the order was passed by the Appellate Court,

the total arrears were Rs.22 lakh and as such 50% of the arrears were Rs.11 lakh. She would further submit that the Applicant has paid a sum of Rs.6.60 lakh and time was sought for payment of the balance amount of Rs.4.40 lakh. She submits that the application was made before the Appellate Court for extension of time by one month. She would further submit that although vide order dated 7th November 2023, time was extended by four weeks, the Applicant is unable to arrange for the balance amount and seeks modification of the order dated 22nd June 2023 to modify the condition of deposit to 35% of the arrears instead of 50% of the arrears and in the alternative to grant six months time to comply with the said order.

4. *Per contra* learned counsel appearing for the Respondent No.2 would submit that as of June 2023, the arrears were in the sum of Rs. 22 lakh, and as of today, the arrears are amounting to Rs.24.70 lakh. He submits that as the arrears are towards the maintenance, no indulgence needs to be shown to the Applicant.

5. Considered the submissions and perused the record.

6. The order of the Metropolitan Magistrate dated 12th May 2023 was stayed by the Appellate Court subject to the condition of deposit of 50% of the total arrears of maintenance, rent and compensation.

The Appellate Court vide order dated 7th November 2023 has further extended the time by four weeks to enable the Applicant to deposit the said amount. Despite thereof, the arrears of maintenance have not been deposited. As the stay was subject to condition of deposit of 50% of the arrears, it is clear that there is no stay as of today operating against the order of the Metropolitan Magistrate dated 12th May 2023 and the Respondent No. 2 is at liberty to proceed with the execution.

7. As regards the submission that the condition of stay be modified, there is no reason put forth which would warrant interference with the discretion exercised by the Appellate Court. It is open for the Applicant to seek necessary reliefs from the Appellate Court for modification. The Appellate Court after hearing the parties has granted a stay to the proceedings subject to the condition of deposit, which I do not find any reason to interfere with.

8. In the light of above, application stands dismissed.

[Sharmila U. Deshmukh, J.]