

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO. 2457 OF 2024

Mrs. Neha Nishad Shah & Ors.

...Petitioners

Versus

The State of Maharashtra & Anr.

...Respondents

Mr. Hassan Khan for the Petitioner.

Smt. Madhavi H. Mhatre, APP for the Respondent-State.

Ms. Ashwini Dhapse, API, Borivali Railway Police Station present.

CORAM Dr. Neela Gokhale, J.

DATED: 26th June 2024

PC:-

1. The Petitioners assail the Order dated 17th November 2022 passed by the learned Additional Sessions Judge for Greater Mumbai in the Miscellaneous Application No. 552 of 2022 in Sessions Case No. 397 of 2000.

2. It is the case of Petitioners that while the Petitioner No. 1 was travelling in the First Class compartment of Sayaji Nagari Train, the Respondent No. 2, one of the Accused threatened her at the point of knife and robbed all her gold ornaments, cash and other valuables. The complaint was lodged being C. R. No. 36 of 2000 with the Borivali Railway Police Station, Mumbai for the offense punishable under Sections 392, 397 & 506 read with 34 of the Indian Penal Code, 1860 ("IPC"). Both the Accused were arrested and the valuables were seized from them.

3. The final report was filed before the learned trial Court in Sessions Case No. 397 of 2000. Both the Accused were enlarged on

bail. During the trial, the Respondent No. 2 absconded and the trial against him came to be separated. The other Accused-Nashibulla Khalilulla Khan was acquitted by the judgment and order dated 24th August 2004 passed by Additional Sessions Judge for Greater Mumbai. The other Accused remains absconding till date and his prosecution has been deferred. In the meantime, the Petitioner No. 2, who is the Power of Attorney holder for Petitioner No. 1 i.e. the original Complainant, had furnished documents of his residential flat as surety for the amount of Rs. 1,50,000/- in pursuance of Order dated 2nd August 2010 passed by the learned trial Court. According to the Petitioner No. 2, the valuation of the flat is much more than Rs. 1,50,000/- and he was unable to dispose off the said residential flat.

4. Thus, the Petitioner No. 2 made an Application seeking permission to replace the flat as security by a Bank Guarantee. On pursuance of Order dated 22nd November 2013, he furnished a Bank Guarantee No. 1310IGFIN000615 dated 7th April 2015 for Rs. 1,50,000/- drawn of Bank of Baroda. The validity of the Bank Guarantee was for a period of five years from the date of furnishing it. The Bank Guarantee expired on 6th April 2020 and yet the trial against the second absconded Accused remains deferred.

5. By the Miscellaneous Application No. 552 of 2022, the Petitioner No. 2 once again requested the learned trial Court for discharging the Bank Guarantee since he was in need of the said money and further requested the Court to allow him to replace the Bank Guarantee with a Personal Recognizance (PR) Bond. The trial Court rejected the said Application and it is in these circumstances, the Petitioner No. 2 has filed the present Petition.

6. Smt. Madhavi H. Mhatre, learned APP has handed over a letter of today's date signed by Ms. Ashwini Dhapse, API, Borivali Railway Police Station, Mumbai. Smt. Mhatre, on instructions, states that said API Ms. Ashwini Dhapse has the authority to sign this letter on behalf of the Police Inspector Shri. K. A. Khupekar. Vide this letter, it is conveyed that the Police officials have no objection to release of the Bank Guarantee of Rs. 1,50,000/- furnished by the Petitioner No. 2. The said letter of today's date is taken on record and marked as "X" for identification.

7. I have perused the impugned judgment and order. There is no reason recorded by the learned Additional Sessions Judge of Sessions Court for Greater Mumbai for rejecting the Application. In any case, the State has given its no objection to release the said amount. Be that as it may, I am of the considered view that since trial against the second absconded Accused still remains deferred, it will sub-serve the interest of justice, if the Petitioner No. 2 is permitted to furnish a PR Bond of the same amount of Rs. 1,50,000/- by releasing the Bank Guarantee furnished by the Petitioner No. 2.

8. In terms of the above, the Petition is allowed. No order as to costs. The Bank Guarantee is directed to be released within a period of seven days from the date on which this Order is uploaded.

(Dr. Neela Gokhale, J.)

Digitally signed
by GITALAXMI
KRISHNA
KOTAWADEKAR
Date:
2024.06.27
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