

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

INTERIM APPLICATION NO.2705 OF 2024
[FOR SUSPENSION OF SENTENCE]

WITH

INTERIM APPLICATION NO.2653 OF 2024
[FOR BAIL]

IN

CRIMINAL REVISION APPLICATION NO.349 OF 2024

Ramesh Satyapal Nagpal

...Applicant
(Original Accused)

In the matter between:-

Ramesh Satyapal Nagpal

...Applicant

Versus

1. The State of Maharashtra

...Respondent No.1

2. National Spot Exchange Ltd.

...Respondent No.2
(Original Complainant)

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ALONG WITH

INTERIM APPLICATION NO.2655 OF 2024
[FOR SUSPENSION OF SENTENCE]

WITH

INTERIM APPLICATION NO.2706 OF 2024
[FOR BAIL]

IN

CRIMINAL REVISION APPLICATION NO.350 OF 2024

Ramesh Satyapal Nagpal

...Applicant
(Original Accused)

In the matter between:-

Ramesh Satyapal Nagpal

...Applicant

Versus

- | | | |
|----|-----------------------------|--|
| 1. | The State of Maharashtra | ...Respondent No.1 |
| 2. | National Spot Exchange Ltd. | ...Respondent No.2
(Original Complainant) |

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ALONG WITH
INTERIM APPLICATION NO.2657 OF 2024
[FOR SUSPENSION OF SENTENCE]
WITH
INTERIM APPLICATION NO.2656 OF 2024
[FOR BAIL]
IN
CRIMINAL REVISION APPLICATION NO.351 OF 2024

- | | | |
|----|--------------------------|--------------------|
| 1. | Shree Radhey Trading Co. | ...Applicants |
| 2. | Ramesh Satyapal Nagpal | (Original Accused) |

In the matter between:-

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|----|---------------------------|--------------------|
| 1. | Shree Radhey Trading Co.. | ..Applicants |
| 2. | Ramesh Satyapal Nagpal | (Original Accused) |

Versus

- | | | |
|----|-----------------------------|--|
| 1. | The State of Maharashtra | ...Respondent No.1 |
| 2. | National Spot Exchange Ltd. | ...Respondent No.2
(Original Complainant) |

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Mr.Pradeep Yadav a/w Mr.Saumitra Salunke and Ms.Swapnali Chavan:-	Advocates for Applicants in Revision Application No.349 of 2024.
Mr.Jatin Shah i/b.Mr.Pradeep Yadav:-	Advocates for Applicants in Revision Application No.350 of 2024.
Mr.Rishi Bhuta a/w Mr.Ujjwal Gandhi, Mr.Saumitra Salunke, Ms.Swapnali Chavan, Ms.Ankita Bamboli, Ms.Saakshi Jha, Ms.Risha Rathod, Mr.Prateek Dutta, Mr.Omer Farooq i/b. Mr.Pradeep Yadav:-	Advocates for Applicants in Revision Application No.351 of 2024.
Mr.Ashok Gawai:-	APP for Respondent No.1-State in Revision Application Nos.349 of 2024 and 350 of 2024.
Ms.Sangita E. Phad:-	APP for Respondent No.1-State in Revision Application No.351 of 2024.
Mr.Yashpal Thakur a/w Mr.Jalpa Shah, Mr.Nimeet Sharma, Mr.Vinit Vaidya, Mr.Javed Dararjiwala i/b. MZM Legal LLP:-	Advocates for Respondent No.2.

CORAM : S. M. MODAK, J.

DATED : 8th AUGUST 2024P. C. :

1. Heard learned Advocates representing the Applicants in all these

Interim Applications. I have also heard learned Advocate for Respondent No.2 – Complainant.

2. One Application is for suspension of sentence and another Application is for grant of bail¹.

3. Applicant No.1 – is the Proprietary Firm² of which Applicant No.2 – Ramesh Satyapal Nagpal³ is the Proprietor. The Court of Metropolitan Magistrate, 33rd Court, Ballard Pier, Mumbai as per the judgment and order dated 14th October 2022 convicted both the Applicants for the offence punishable under Section 138 of the Negotiable Instruments Act, 1881⁴. The sentence is as follows:-

(a) Applicant No.2 – Ramesh Satyapal Nagpal to suffer simple imprisonment for one (1) year.

(b) Both the Applicants to pay fine.

4. There is simple imprisonment of one (1) year in every case but the amount of fine is different. It is as follows:-

(a)and to pay fine of **Rs.3,50,00,000/-** (Rupees Three Crore

Fifty Lakh Only) within 1 (One) month from the date of

this Order, in default,.....⁵

1 In every case i.e. 3 cases.

2 In Interim Application No.2657 of 2024 and 2656 of 2024.

3 In rest of viz., Interim Application Nos.2705 of 2024, 2653 of 2024, 2655 of 2024 and 2706 of 2024, Applicant – Ramesh Satyapal Nagpal is the sole Applicant.

4 Henceforth, “the NI Act” for the sake of brevity.

5 Vide Clause No.(2) of trial Court judgment dated 14th October 2022 (Page No.628)

(b)and to pay fine of **Rs.3,54,00,000/-** (Rupees Three Crore Fifty Four Lakh Only) within 1 (One) month from the date of this Order, in default,.....⁶

(c)and to pay fine of **Rs.62,13,80,558/-** (Rupees Sixty Two Crore Thirteen Lakh Eighty Thousand Five Hundred Fifty Eight Only) within 1 (One) month from the date of this Order, in default,.....⁷

There is a default sentence for six (6) months and it is simple imprisonment.

5. The Applicant(s) filed three (3) Criminal Appeals before the Court of Additional Sessions Judge – Greater Mumbai. Their Appeals were dismissed on 24th May 2024. There is only one modification. All the substantive sentences in all the cases were to run concurrently. It is the direction No.3(ii). During pendency of the Appeals, the substantive sentence was suspended by the Appellate Court on 4th January 2023. However, there was a condition to deposit 20% of the amount of compensation within a period of 60 days. This time was extended. However, Applicant – Ramesh Satyapal Nagpal could not deposit a single paisa towards the compensation. That is how, he was

⁶ Vide Clause No.(2) of trial Court judgment dated 14th October 2022 (Page No.42)

⁷ Vide Clause No.(2) of trial Court judgment dated 14th October 2022 (Page No.641)

taken into custody on 20th June 2023. However, learned Single Judge could not agree to his contention and the condition to deposit certain amount was held as perfectly justifiable. Even, he approached the Hon'ble Supreme Court by way of Special Leave to Appeal (Crl.) No(s).9788 of 2023. However, there also, he could not find favour and it was dismissed on 21st August 2023. That is how, the Applicant (No.2) is in jail.

6. The question is, the Applicant who was taken into custody for non-fulfillment of a condition to deposit the amount of compensation, now is asking for suspension of sentence and bail and that too, with a prayer of waiving the condition to deposit the amount of compensation. It is true that the Hon'ble Supreme Court in case of *Jamboo Bhandari v/s. M.P. State Industrial Development Corporation Ltd. and Ors.*⁸, has clarified, “*in an exceptional case, the Appellate Court can waive a condition to deposit the amount of compensation. The only rider is, Court has to give reasons.*”⁹

7. According to Mr.Yashpal Thakur, the facts in *Bhandari's* case are different. In that case, an Appeal against conviction was pending whereas, in the case before us, it is already dismissed and the conviction

⁸ (2023) 10 Supreme Court Cases 446

⁹ Vide Para No.7

is maintained.

8. In support of his contention, learned Advocate Mr.Rishi Bhuta has relied upon the following judgments:-

- (i) *Jolly George Varghese and Another v/s. The Bank of Cochin*¹⁰
- (ii) *Sikandar Govind Kale v/s. State of Maharashtra and Anr.*¹¹
- (iii) *Aslam Salim Shaikh v/s. The State of Maharashtra and Anr.*¹²

9. In addition to above submission, Mr.Rishi Bhuta also relied upon the observations of the Hon'ble Supreme Court in case of *Satender Kumar Antil v/s. Central Bureau of Investigation*¹³ and more specifically, paragraph Nos.46 and 47. Whereas, Mr.Yashpal Thakur has invited my attention to the observations in paragraph No.42. Whereas, Mr.Yashpal Thakur relied upon the observations in case of *Stanny Felix Pinto v/s. Jangid Builders Pvt. Ltd., and Ors.*¹⁴.

10. It is true that in *Satender Kumar Antil* (cited supra), the Hon'ble Supreme Court has laid down various categories of the offences and what should be the approach of the Court while dealing with Bail

10 AIR 1980 Supreme Court 470

11 Criminal Writ Petition No.1148 of 2024 : 27th June 2024 : Bombay High Court (Division Bench)

12 Criminal Writ Petition No.3157 of 2022 : 17th July 2023 : Bombay High Court (Division Bench)

13 AIR 2022 SC (Criminal) 1025

14 MANU/SC/0034/2001

Applications. Filing of Bail Applications before the Supreme Court has perturbed the Supreme Court and that is why, those guidelines were given¹⁵. At the same time, the Supreme Court has also dealt with the effect of the provisions of Section 436-A of the Code of Criminal Procedure, 1973¹⁶. The effect was considered on an “*undertrial prisoner*”¹⁷ as well as on a “*prisoner undergoing the sentence during the pendency of the Appeal and during the pendency of the Revision*” also.

11. It is true, the provisions relating to bail pending trial are different from the provisions for suspension is Section 389 of the Cr.P.C. It is discussed in paragraph No.42 of the said judgment. But, we can certainly say that the provisions of Section 436-A of the Code can also be invoked by a convicted prisoner. The effect of observation in paragraph No.42 is apart from the initial consideration, the Court has to keep in mind the fact that the “*presumption of innocence*”¹⁸ will not be available because there is a verdict against an accused person. When, the Applicant(s) pleads that condition to deposit compensation is to be

15 Vide Para No.73

16 Hereinafter referred to “the Cr.P.C.” for the sake of brevity.

17 ‘Undertrial prisoners’ are those who are imprisoned during the investigation, inquiry, or trial of the crime for which they were arrested.

18 Is a legal principle that every person accused of any crime is considered innocent until proven guilty.

waived, this Court has to consider, whether there are exceptional circumstances. From the point of view of the Complainant, the conviction before two Courts is one of the factors.

Provisions of Section 436-A of Cr.P.C.

12. If we analyses the provisions of Section 436-A of the Code, we may find following are the essential conditions:-

- (a) The concerned person must have undergone a detention for a period exceeding one half of the maximum period of imprisonment imposed for that offence.
- (b) While calculating the period, the Court has to exclude the period for which the Accused has delayed the proceeding.

13. Here, the principle of maximum punishment for that offence is not relevant but the sentence imposed by the trial Court and confirmed by the Appellate Court is relevant. The substantive sentence and in-default sentence has to be considered together. The substantive sentence is one (1) year concurrently. In default sentence is 18 months (6 months each in 3 cases). So, in total, sentence comes to 30 months. It is settled law that in-default sentence cannot run concurrently but it will run consecutively. If, this total sentence and the period undergone by the Applicant – Ramesh Satyapal Nagpal is considered, the

following facts emerges:-

(i)	The date on which, the Applicant was taken into custody:-	20 th June 2023
(ii)	The Applicant No.2 must have undergone a period of substantive sentence of one (1) year:-	In the month of June-2024
(iii)	In-default sentence of eighteen (18) months will start from:-	June-2024
(iv)	At the most, the Applicant will come out of jail in the month of:-	December-2025
(v)	This will be subject to the Prison Rules about calculation of the period.	

At this stage, copy of certificate issued by Senior Superintendent, District : Saharanpur is placed on record and according to Mr.Yadav, the Applicant has been given a benefit of remission and if it is considered, then he has undergone the sentence for more than fifteen (15) months which is half of thirty (30) months. This is not the original, so, I am not considering this certificate. In that view of the matter, it cannot be said that the Applicant No.2 has undergone half of the sentence imposed by the trial Court and confirmed by the Appellate Court. So, benefit of Section 436-A of the Code cannot be granted.

Suspension of sentence

14. Now, the issue arises, whether there can be a suspension under

Section 389 of Cr.P.C., and if yes, on what conditions. For deciding the same, this Court has to consider, whether there are exceptional circumstances as observed in case of *Bhandari* (cited supra). If, this Court will weigh the reasons, we may find following are the reasons quoted on behalf of the Applicant.

- (a) He has already undergone the substantive sentence of one (1) year.
- (b) The period which he has to undergo in future is for non-payment of fine and for that purpose, he should not be punished.
- (c) If, the sentence is not suspended, then the Applicant will have to undergo the sentence for entire period, because, there is unlikelihood of hearing of this Revision in near future which includes voluminous documents.
- (d) If the Applicant may be required to undergo the remaining sentence and if the Revision is not heard during that period, there will be an irreparable loss to the Applicant.
- (e) One more ground is claimed and it is about attachment of properties not only belonging to the Applicant but also of his families and now, he has got no means to pay the fine

amount and that is why, he could not pay it earlier when he was taken into custody when the Appeal was pending.

Judgments relied upon by Applicant

- (i) There is a strong emphasis on the observations in case of *Jolly George Varghese* (supra), wherein the Hon'ble Supreme Court dealt with the rights of a person sent to jail in execution of a warrant on one hand and the right of personal liberty enshrined under Article 21 of the Constitution of India and Article 11 of the International Covenant on Civil and Political Rights, 1966.
- (ii) In cases of *Aslam Salim Shaikh* and *Sikandar Govind Kale* (cited supra), a Division Bench of this Court also considered what will be the effect if a person is required to undergo long incarceration for non-payment of fine. Ultimately, in both the matters, the Petitioners were released only on undergoing the substantive sentence.

Reasons quoted by Complainant

15. As against this, learned Advocate Mr.Thakur quoted the following reasons for not relaxing the condition. They are:-

- (a) If, the condition is relaxed, then the amount which can be

deposited by the Applicant No.2 in Escrow Account and it will be distributed to various investors and they will lose the amount, if the condition is relaxed.

- (b) It is emphasised, that the Applicant(s) have lost before the two Courts and his case is not similar to the case in case of *Jamboo Bhandari* (supra). When the Applicant(s) has lost before the learned Single Judge and before the Apex Court when he challenged the condition imposed by the Appellate Court, he cannot be exempted from paying part of the compensation.
- (c) Already, the Hon'ble Supreme Court in case of *Stanny Felix Pinto* (supra), has upheld a condition to deposit at least part of the fine amount¹⁹.
- (d) Mr.Thakur contended that both the Courts below have given a finding against both the Applicant(s) on the point of liability and procedural compliances.
- (e) He also submitted that the learned Single Judge of this Court in Third Party Notice proceedings have passed a Decree on the basis of Report submitted by the Committee appointed

¹⁹ Vide Para No.2

by this Court.

- (f) All the proceedings filed by National Spot Exchange Limited are transferred to the Committee appointed by the Hon'ble Supreme Court and the matter is pending for execution. It is contended that even though there is an Appeal filed before a Division Bench at the instance of the Applicant against the decision of the learned Single Judge, there are no interim reliefs.

Consideration

16. After considering the above submissions, I am inclined to suspend the in-default sentences and I am inclined to waive the condition to deposit any amount of compensation. It is for the reason that the "*Right to Liberty*²⁰" stands on higher pedestal as compared to other Rights. It is true that the amount of fine can be recovered as per the provisions of Section 421 of Cr.P.C. No doubt, the trial Court is empowered to pass an in-default sentence. But, the issue is, when the Applicant has already undergone the substantive sentence of one (1) year, I think, he needs to be given an opportunity to prosecute these Revision Applications by coming out of the jail. In that eventuality, he

²⁰ Vide Article 21 of the Constitution of India

will be in a better position to assist his Advocates.

17. As said above, it is undisputed that all the properties of the Applicant are attached. So, if the Applicant is released on bail, he can take some steps so that the amount of fine will be paid. Because, if he will continue to remain in jail for remaining period and if the Revision Applications are allowed, then there will be an irreparable loss to the Applicant. No doubt, if the amount of fine is deposited, certainly the investors will be benefited of distribution of amount as contended by Mr.Yashpal Thakur. But, I am inclined to give more priority to the '*Liberty*' as compared to the '*Rights*' of investors to get certain amount. It is very well true that the Appeals of the Applicant(s) are dismissed. The consideration prevailing at the time when learned Single Judge upheld the condition was different from the consideration prevailing now. Already, he has undergone a period of one (1) year sentence. So, I am inclined to relax the condition.

18. Hence, following order is passed:-

ORDER

- (i) **In default sentence²¹ imposed by the Court of Metropolitan Magistrate, 33rd Court, Ballard Pier, Mumbai in C.C.No.9360/SS/2016 (Old Case No.3436/SS/2013) dated**

²¹ Clause No.(2) of the Operative Order dated 14th October 2022 (Page No.628)

14th October 2022 and confirmed by the Additional Sessions Judge, Court Room No.54, Greater Mumbai vide order dated 24th May 2024 in Criminal Appeal No.703 of 2022 are suspended, on furnishing personal bond and surety bond of Rs.50,000/- (Rupees Fifty Thousand Only).

- (ii) In default sentence²² imposed by the Court of Metropolitan Magistrate, 33rd Court, Ballard Pier, Mumbai in C.C.No.9359/SS/2016 (Old Case No.2982/SS/2013) dated 14th October 2022 and confirmed by the Additional Sessions Judge, Court Room No.54, Greater Mumbai vide order dated 24th May 2024 in Criminal Appeal No.702 of 2022 are suspended, on furnishing personal bond and surety bond of Rs.50,000/- (Rupees Fifty Thousand Only).
- (iii) In default sentence²³ imposed by the Court of Metropolitan Magistrate, 33rd Court, Ballard Pier, Mumbai in C.C.No.8452/SS/2015 (Old Case No.2022/SS/2014) dated 14th October 2022 and confirmed by the Additional Sessions Judge, Court Room No.54, Greater Mumbai vide order dated 24th May 2024 in Criminal Appeal No.701 of 2022 are suspended, on furnishing personal bond and surety bond of Rs.50,000/- (Rupees Fifty Thousand Only).
- (iv) The bail be furnished before the trial Court.
- (v) After furnishing bail in all these above three (3) cases, the Applicant – Ramesh Satyapal Nagpal be released from Jail, if not required in any other case.

22 Clause No.(2) of the Operative Order dated 14th October 2022 (Page No.42)

23 Clause No.(2) of the Operative Order dated 14th October 2022 (Page No.641)

- (vi) If the Passport is not already surrendered or attached, the Applicant – Ramesh Satyapal Nagpal to surrender his Passport to the Court of trial Magistrate.
 - (vii) Applicant – Ramesh Satyapal Nagpal not to leave India without permission of the Court.
- 19. Parties to act on an authenticated copy of this order.
 - 20. All the Interim Applications stand disposed of accordingly.
 - 21. Stand over to 25th September 2024.

[S. M. MODAK, J.]