

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

Criminal Writ Petition No.4139 of 2025

Onyx Tradelink Pvt. Ltd. ... Petitioners.
V/s.
Shree Sai Consultants and others ... Respondents

Mr. Vijay Jha i/b. Law Juris	Advocate for the Petitioners.
Mr. N.B. Patil	Advocate for the Respondents

CORAM : S.M. MODAK, J

DATE : 04th August 2025.

P.C. :

Heard learned Advocate for the Petitioner.

2. Considering the limited controversy, I find it proper not to adjourn the matter but to hear and decide.

3. The arguing counsel Mr. Ghanshyam Upadhyay is busy before Supreme Court. The matter has come on Board for the first time for admission. With the assistance of learned counsel for the Petitioners, I have gone through the impugned order, copy of petition and annexures. The present Petitioner is a Complainant on whose complaint the Respondents were convicted for the offences punishable under Section 138 r/w. Section 141 of Negotiable Instrument Act. The Accused Nos.2 and 3 are sentenced to suffer

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simple imprisonment for one year. They were directed to pay compensation of Rs.20,43,170/- within two months and simple imprisonment for 3 months in case of default. This judgment is delivered on 6th May 2025 by the Court of JMFC, Mazgaon, Mumbai.

4. The present Respondents intend to prefer an appeal, however, there is a delay. That is why delay application was preferred. Yet the Petitioner has not appeared in that application. There was a separate application for suspension of sentence. Yet it is to be heard and decided.

5. In the meantime, the Respondents filed a Criminal Misc. Application. The learned Appellate Court Judge on 14th July 2025 has stayed the conviction warrant and adjourned to 25th August 2025 (Page-14). There is a finding recorded that inspite of the notice served on the present Petitioner by speed post, no one has appeared.

6. The submission is that notice was served on 14th July 2025 at 4.00 p.m. and there was no time available. Further contention is raised, yet the appeal is not registered and hence conviction warrant cannot be stayed.

7. It is true unless and until the delay condonation application is decided, the appeal cannot be entertained but it does not mean that the Appellate Court cannot pass any urgent orders if they are justified. About the late service of notice, even though it is correct,

that cannot be the ground for entertaining the petition. At the most, the Petitioner can raise all contentions before the Appellate Court.

8. What I feel is the Appellate Court ought not to have stayed the execution of conviction warrant simply. It is a fact that it was stayed pending hearing of delay condonation application and of the appeal. The Appellate Court ought to have been conscious of the fact that there was a substantive sentence and order of compensation also.

9. Had it been the fact that the Appellate Court has passed certain orders on those applications then to certain extent staying the conviction warrant could have been justified.

10. There is every reason to hold that the view taken by the Appellate Court of simply staying the conviction warrant cannot be justified. I am dismissing the petition by giving following directions:

ORDER

- (i) The Petitioner can appear before the Appellate Court on **25th August 2025** with the liberty to file reply to Cr. Mis. Application No.1422/2025 by raising all contentions.
- (ii) The Appellate Court to deal with the issue of suspension of substantive sentence imposed under the provisions of Section 138 of the Negotiable Instrument Act. And also to decide delay condonation application on merits.

11. The Writ Petition stands disposed of. It is made clear that there is no observation on merits. All right of the parties are kept open.

(S.M. MODAK, J.)