

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
Interim Application No.853 of 2026
In
Criminal Appeal No.271 of 2004**

Jayesh Gor
Age: 39 years, Occ: Nil
Residing at Kunj Needle Industries
Plot No.1502, III Phase, Umergaon,
District Valsad, Gujrat-396171
(at present in Mumbai Central Jail) ... Appellants.

Vs.

1.M/s Pooja Investments
A partnership concern, carrying on
business at Devansh, 133,
DSP road, Near Ranjit Studio
Dadar (E), Mumbai-400 014.
Through its partner,
Mr Vipul Ramesh Vira
Age: 35 yrs, resident of
Dadar(E), Mumbai-28.

2. The State of Maharashtra ... Respondent.

Mr Shailesh Kharat for the appellant.
Ms MR Tidke, APP for the respondent / State.
Mr Jatin Karia for respondent No.1.
PSI Dipak Khandekar, VP Road Police Station.

**Coram : R.N.Laddha, J.
Date : 16 March 2026.**

P.C. :

Heard Mr Shailesh Kharat, the learned Counsel

appearing on behalf of the applicant/ original accused; Mr Jatin Karia, the learned Counsel appearing for respondent No.1/ original complainant; and Ms MR Tidke, the learned Additional Public Prosecutor representing respondent No.2/ State.

2. The present interim application is an offshoot of the orders dated 2 May 2025, 30 July 2025 and 14 November 2025 passed by this Court in Criminal Appeal No.271 of 2004, whereby non-bailable warrants were issued against the applicant. Subsequently, the non-bailable warrant was executed and the applicant was taken into custody on 5 March 2026. Thus, by way of the present application, the applicant seeks his release on bail pending the hearing and final disposal of the appeal. It is pertinent to note that the appeal has been filed by respondent No.1 challenging the legality and propriety of the judgment and order dated 11 September 2003, passed by the learned Additional Chief Metropolitan Magistrate, 40th Court, Girgaon, Mumbai, in CC No.144/S/2001, whereby the applicant was acquitted of the offence punishable under Section 138 of the Negotiable Instruments Act, 1881.

3. The learned Counsel appearing on behalf of the applicant submits that the present appeal was filed in the year 2004 and, after issuance of notice, the matter came to be listed for hearing on 21 March 2025. As none appeared on behalf of the applicant on that date, an Advocate was appointed to represent and espouse the applicant's case and the matter was subsequently adjourned to 17 April 2025. Thereafter, when the matter came up for hearing on 2 May 2025, a non-bailable warrant came to be issued against the applicant without the issuance of a fresh notice. It is further submitted that fresh warrants were thereafter issued on 30 July 2025 and 14 November 2025.

4. It is contended that although notice had been issued in the year 2004, the appeal was listed for hearing after a considerable lapse of time and the applicant was not aware of the listing of the matter. According to the learned Counsel, the non-bailable warrant was issued on the basis of the notice issued in 2004. It is further submitted that the applicant has always been available at his given address and has neither absconded nor attempted to evade the process of law. His absence, it is submitted, was neither deliberate nor intentional. The learned Counsel further submits that

the applicant undertakes to regularly remain present before this Court, either personally or through his advocate. He emphasises that the appeal challenges a judgment of acquittal, wherein the applicant has already been found not guilty, and therefore he is entitled to be released on bail on such terms and conditions as this Court may deem fit, including the payment of cost to be paid to respondent No.1.

5. The learned Counsel appearing on behalf of respondent No.1 opposes the application for bail and submits that the applicant has repeatedly failed to remain present during the course of the appeal proceedings. The learned Additional Public Prosecutor for respondent No.2 submits that the warrant has already been executed and that the applicant was taken into custody on 5 March 2026. It is further submitted that, considering that the appeal is directed against an order of acquittal, appropriate orders may be passed.

6. The record indicates that the present appeal was filed by respondent No.1 in February 2004. On 10 February 2004, when the appeal was admitted, one Smt SA Damale

appeared on behalf of the applicant; however, she did not file her vakalatnama, as recorded in Office Note No.4 dated 17 November 2021. A considerable period has elapsed since then. As reflected from the order dated 11 October 2024, none appeared on behalf of the contesting parties and the matter was accordingly adjourned with an observation that if none appeared on behalf of respondent No.1, the appeal would be dismissed for want of prosecution. Office Note No.4 dated 17 October 2024 records that the erstwhile Advocate-on-Record for respondent No.1 had expired, and accordingly, notice was issued to respondent No.1. The order dated 19 December 2024 indicates that respondent No.1 thereafter entered appearance before this Court.

7. Thereafter, on 21 March 2025, since none appeared on behalf of the applicant, an Advocate was appointed through Legal Aid to espouse his cause and the matter was adjourned. However, on 2 May 2025, considering the issues involved in the appeal, a non-bailable warrant was issued against respondent No.1. On 20 June 2025, a report was called from the Senior Inspector of Police, Umbergaon, Valsad, Gujarat, regarding the execution of the said warrant. As no report was received, a fresh non-bailable warrant was

issued against the applicant on 30 July 2025. On 14 November 2025, it was brought to the notice of this Court that the warrant issued pursuant to the order dated 30 July 2025 could not be executed due to a law-and-order situation, and therefore, a fresh non-bailable warrant was again issued. On 22 January 2026, a report was placed before this Court stating that the warrant could not be executed as the applicant was not found at the concerned address. Subsequently, as per the report dated 6 March 2026, the non-bailable warrant was executed and the applicant was taken into custody on 5 March 2026.

8. Significantly, there is no material on record to indicate that the applicant had deliberately absconded or intentionally evaded the process of law. The appeal itself arises out of a complaint under Section 138 of the Negotiable Instruments Act, 1881, and challenges an order of acquittal. The presence of the applicant for the purposes of hearing of the appeal can be sufficiently secured by imposing appropriate conditions.

9. Having regard to the nature of the proceedings, in particular the fact that the applicant had been acquitted by

the trial Court, and taking into consideration the circumstances in which the non-bailable warrant came to be issued and ultimately executed, coupled with the undertaking given by the applicant to remain present before this Court as and when required and to cooperate for the expeditious disposal of the appeal, I am of the opinion that further incarceration of the applicant is not warranted at this stage. Hence, the following order:

ORDER

- (i) The applicant shall be released on bail during the pendency and the disposal of the appeal, subject to the payment of cost of Rs.25,000/-. The cost amount shall be paid to respondent No.1.
- (ii) The applicant, himself or through his Advocate, shall regularly attend the proceedings before this Court and cooperate for the expeditious disposal of the appeal.

10. The interim application stands disposed of accordingly.

[R. N. Laddha, J.]