

MHCC020057702023



IN THE COURT OF SESSIONS FOR GREATER BOMBAY
AT BOMBAY

ORDER BELOW APPLICATION EXHIBIT-4

IN
CRI. APPEAL NO.269 OF 2023
IN
C.C. NO.170/SS/2016

Anand Oberoi]
Having his office at: 603 A, Shakti,]
'A' Wing, Kelyar Complex, Yari Road,]
Andheri (West), Mumbai – 400 061.]
And also address at:
511, 5th Floor, Shalimar Morya Park,]
New Link Road, Andheri (West),]
Mumbai – 400 053.]
And also address at:
30/E, Laxmi Vijay Building, Laxmi]
Industrial Estate, New Link Road,]
Andheri (West), Mumbai – 400 053.] Appellant.

Versus

1. Jawaharlal Lachmandas Agicha]
Age: 60 years, Having his office at:]
C/o. Laxmandas & Co., 99 Reay]
Road, Near Ghorupdev Temple,]
Mumbai – 400 033.]
2. The State of Maharashtra] Respondents.

Appearance:

Ld. Adv. Mr. Anand Pandey i/b RJ Law for the Appellant/Orig.
Accused.

Ld. Adv. Ms. Reema Maurya i/b H.H. Nagi Associates for Respondent
No.1/Orig. Complainant.

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Ld. APP Mr. S.S. Panjwani for Respondent No.2/State.

**CORAM: H.H. THE ADDL. SESSIONS JUDGE
SHRI R.N. ROKADE
(CR NO.54)**

DATE : 21st August, 2023.

ORAL ORDER
(Dictated and pronounced in open Court)

This is an application on behalf of the respondent no.1 for withdrawal of interim compensation amount deposited by the appellant towards suspension of the sentence as per direction of this Court.

2. It is contended in the application that the appellant is convicted for the offence under Section 138 r/w 141 of the Negotiable Instrument Act. The appellant preferred an appeal against the said order of conviction before this Court and this Court vide order dated 17.04.2023 suspended the sentence on the condition of depositing 20% amount of the total fine amount. Respondent no.1 is in financial crises due to non-payment of the financial assistance i.e. friendly loan by the appellant. Hence, in view of Section 148(3) of the NI Act, respondent no.1 prayed for release of the amount deposited by the appellant towards suspension of the sentence.

3. The application is resisted by the appellant by filing say at Exhibit-4A. It is contended that the entire case of respondent no.1 is based on falsehood. The appellant has a strong case on merit and is likely to succeed in the present appeal. Respondent no.1 is a senior citizen and suffering from various health related issues. If this Court

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after hearing both sides, is pleased to allowed the appeal and if some untoward incident occurs with respondent no.1 on account of his advanced age, appellant will not be able to recover the said amount from respondent no.1. It is further contended that the amount deposited in the appeal be released to respondent no.1, subject to respondent no.1 providing security for refund of the amount with interest as per law.

4. Heard the ld. Advocate appearing for the appellant, ld. Advocate for respondent no.1 and ld. APP for respondent no.2/State. Perused the application and say.

5. Having regard to the finding of the ld. Metropolitan Magistrate that the impugned cheques were drawn by the accused towards a legally enforceable debt and the complainant has established that the accused dishonoured the impugned cheque and despite of service of the demand notice in compliance to Section 138 of the NI Act, the appellant failed to repay the cheque amount, I am of the considered view that respondent no.1 is entitled to withdraw the amount, subject to condition that in the event the impugned judgment is set aside and the accused is acquitted, the entire amount would be deposited in the Court alongwith accrued interest. With this, I am inclined to pass the following order:

ORDER

- (1) Application at Exhibit-4 in Criminal Appeal No.269/2023 is hereby allowed.
- (2) Respondent no.1 Jawaharlal Lachmandas Agicha is permitted to withdraw the 20% amount of the total fine amount deposited by

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the appellant towards suspension of the sentence in this Court, subject to condition that in the event the impugned judgment is set aside and the accused is acquitted, the entire amount would be deposited in the Court alongwith accrued interest.



Date: 21.08.2023.

(R.N. ROKADE)
Addl. Sessions Judge
Court Room No.54, Gr. Bombay.

Dictated on : 21.08.2023
Transcribed on : 21.08.2023
Signed by HHJ on : 21.08.2023

"CERTIFIED TO BE TRUE AND CORRECT COPY OF THE ORIGINAL SIGNED JUDGMENT/ORDER"		
UPLOAD DATE	TIME	NAME OF STENOGRAPHER
21.08.2023	3.55 p.m.	Bharat Kashinath Gaikwad
Name of the Hon'ble Judge		SHRI R.N. ROKADE Addl. Sessions Judge Court Room No.54, Gr. Bombay.
Date of Pronouncement of Judgment/Order		21.08.2023
Judgment/order signed by PO. on		21.08.2023
Judgment/order uploaded on		21.08.2023