
(2014) 08 BOM CK 0204

In the Bombay High Court

Case No : Criminal Writ Petition No. 634 of 2014

Deepak

APPELLANT

Vs

The State of Maharashtra

RESPONDENT

Date of Decision : 04-08-2014

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 439
Negotiable Instruments Act, 1881 (NI) — Section 138

Citation : (2015) ALLMR(Cri) 765 : (2015) 3 BomCR(Cri) 504

Hon'ble Judges : V.M. Deshpande, J

Bench : Single Bench

Advocate : A.S. Shejwal, Advocates for the Appellant; Pratibha Bharad, A.P.P, Advocates for the Respondent

Judgement

V.M. Deshpande, J.—Rule. Rule is made returnable forthwith. With the consent of the learned counsel for the parties, the petition is taken up for final hearing. Heard A.S. Shejwal, learned counsel for the petitioner and Smt. Pratibha Bharad, learned Additional Public Prosecutor for respondent/State.

2. By order, dated 27.11.2013, the Additional Sessions Judge, Aurangabad in application No. 1434 of 2013 exercised his discretion in favour of the present petitioner and released him on bail in connection with Crime No. 1-28 of 2013, registered with police station Jinsi, Aurangabad on his executing P.R. bond of Rs. One Lac and a surety of like amount. The learned court also directed the petitioner to deposit Rs. Ten Lacs in cash in the court. The present petition is directed against the said condition of deposit of Rs. Ten Lacs as imposed by learned court below while releasing applicant on bail.

The learned court while exercising his discretion under Section 439 of the Code of Criminal Procedure has found that the first informant was required to pay Rs. Seventy Lacs to the present petitioner in order to enable the informant to obtain the admission of his son in Medical College at Manglore. The fact further depicts that the son of the first informant was not admitted in the college at Manglore.

3. It is not disputed at all that the present petitioner has given four cheques in favour of the first informant worth Rs. Seventy Lacs and when those cheques were deposited by the first informant with his bankers, all the cheques were returned as dishonoured by the bankers of the present petitioner.
4. Separate proceedings under Section 138 of the Negotiable Instruments Act are already going on against the present petitioner before the competent court.
5. The learned court below while exercising his discretion to release the petitioner on bail found that the present petitioner is permanent resident of New Delhi and the other accused are still untraceable. Even the learned Public Prosecutor before the court below while arguing the case has pointed out the fact that if the applicant is released on bail then it will be very difficult to secure his presence during trial. All these facts were considered by the learned court below while imposing condition in order, dated 27.11.2013.
6. The learned court below has considered the personal liberty of the present petitioner. At the same time, in order to secure his presence, the learned court below appears to have directed that the petitioner shall deposit Rs. Ten Lacs in the court.
7. The learned counsel for the petitioner has relied upon the reported decision of the Apex Court in the case of Sumit Mehta Vs. State of N.C.T. of Delhi, . The facts of the said case are altogether different. In the present case, in order to secure the presence of the petitioner in the court the condition is imposed. According to this court, the learned trial court has correctly exercised discretion vested in it. The discretion always lies with the court, the only thing, the court has to exercise the discretion judiciously.
8. Looking to the fact that the amount involved and the petitioner being resident of New Delhi and the other co-accused are still untraceable, I do not see any reason to interfere with the discretion exercised by the learned court below. Hence, the petition is dismissed. Rule discharged.