



IN THE HIGH COURT OF GUJARAT AT AHMEDABAD
R/SPECIAL CRIMINAL APPLICATION (QUASHING) NO. 6185 of 2024
With
R/SPECIAL CRIMINAL APPLICATION NO. 6186 of 2024
With
R/SPECIAL CRIMINAL APPLICATION NO. 6211 of 2024
With
R/SPECIAL CRIMINAL APPLICATION NO. 6225 of 2024

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TALHA YUNUS SARESHWALA
Versus
DEENA MUKESH SHETH & ANR.

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Appearance:

MR YH MOTIRAMANI(3720) for the Applicant(s) No. 1

PRITHU PARIMAL(9025) for the Applicant(s) No. 1

MR.ABHISST THAKER for the Respondent(s) No. 1

MR.H.K.PATEL ADDL. PUBLIC PROSECUTOR for the Respondent(s) No. 2

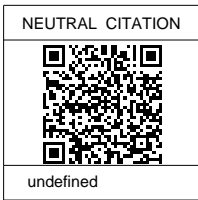
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CORAM: HONOURABLE MRS. JUSTICE M. K. THAKKER

Date : 28/05/2024

COMMON ORAL ORDER

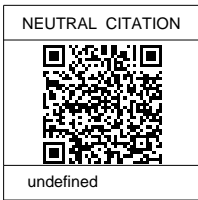
1. Since the issue raised in the these applications are similar, they are being decided by a common order. The facts of Special Criminal Application No.6185 of 2024 are taken for the purpose of adjudication.
2. This application is preferred under section 482 of the Code of Criminal Procedure, 1973 (hereinafter referred to as the "Cr.P.C.") read with section 227 of the Constitution of India, challenging the order passed by the learned Sessions Court, Kalol, Gandhinagar below Exh.10 in Criminal Appeal No.09 of 2024, Criminal Appeal No.12 of 2024, Criminal Appeal No.06 of 2024 and Criminal Appeal



No.03 of 2024 dated 03-05-2024 in S.Cr.A. No. 6185 of 2024, S.Cr.A. No. 6186 of 2024, S.Cr.A. No. 6211 of 2024 and S.Cr.A. No. 6225 of 2024 respectively, whereby the order of suspension of sentence can be vacated and the nonailable warrant was issued against the petitioner.

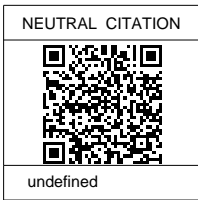
3. It is the case of the petitioner that, the petitioner was convicted by judgment and order of conviction dated 07-12-2023 passed by learned Additional Chief Judicial Magistrate, Kalol, Gandhinagar and ordered to undergo sentence of one year of simple imprisonment alongwith the other accused. It was further directed to make the payment of Rs.3,03,45,000/- and in default further simple imprisonment of 4 months was imposed. Being aggrieved by the aforesaid judgment and order of conviction, the present petitioner has preferred the appeal before the learned District and Sessions Court, Kalol being criminal appeal Nos. mentioned above.

3.1. Alongwith the appeal, petitioner has also preferred an application under section 389 of the Cr.P.C. for suspension of sentence during the pendency of appeal. Vide order dated 08-01-2024, learned Sessions Court was pleased to suspend the sentence on



condition to deposit 20% of the cheque amount within a period of 60 days. One of the co-accused has preferred an application being Special Criminal Application No.3158 of 2024 seeking direction on prorata basis for deposit of 20% amount. This court vide order dated 07-03-2024 was pleased to allow the said petition and was pleased to issue direction that deposit of 20% amount is permitted on prorata basis on 16-03-2024. The application was preferred by the present petitioner for extension of time before the learned Sessions Court below Exh.8 for making deposit as per the order dated 08-01-2024. Learned Appellate Court was pleased to extend the time for further period of 30 days, thereafter the petitioner has preferred the application below Exh.9 for adjournment as well as direction to deposit the amount on the basis of prorata. Aforesaid application was granted by the learned Sessions Court vide order dated 22-04-2024 and granted time up to 02-05-2024 to deposit the amount.

3.2. Petitioner fails to deposit the amount as directed by the learned Sessions Court therefore application was

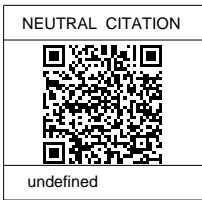


preferred by the respondent No.1 below Exh.10 seeking cancellation of the suspension order as well as for issuance of nonailable warrant. Learned Sessions Court has allowed the aforesaid application and vacate the order of suspension of sentence and has issued the nonailable warrant against the present petitioner.

4. Heard learned advocate Mr.Y.H.Motiramani for the applicant and learned advocate Mr.Abhisst Thaker for respondent No.1.

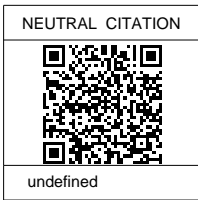
4.1. Learned advocate Mr. YH.Motiramani submits that because of the grave financial distress the amount could not be arranged and deposited within the stipulated period and there are 04 appeals filed wherein similar orders were passed by the learned sessions court which was challenged by way of different petitions.

4.2. Learned advocate Mr. YH.Motiramani submits that, in all as per the decision rendered by this court the deposit on the basis of prorata, 1/5th share of the petitioner comes to Rs.3,38,33,352/- and 20% of the said amount comes to Rs.67,66,670/- and the petitioner has now arranged funds and had prepared



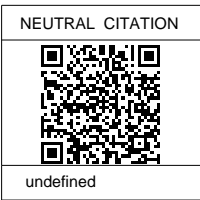
the demand draft of the amount of Rs.67,66,670/- for all four appeals together.

- 4.3. Learned advocate Mr. YH.Motiramani submits that, due to the bonafide reasons the petitioner was unable to deposit the amount and therefore time be granted to deposit the aforesaid demand draft before the learned sessions court and the impugned order be quashed and set aside.
5. On the other hand learned advocate Mr.Abhisht Thaker for the respondent has opposed this application by submitting that, though sufficient opportunity was granted, learned advocate fails to avail the same and therefore no further time is required to be granted and application is required to be rejected.
6. Considering the arguments advanced by the learned advocates of the respective parties, it transpires that proceedings under section 138 of the Negotiable Instruments Act were initiated wherein the judgment and order of conviction was passed against the applicant alongwith other 4 accused.
7. Learned Appellate Court has passed an order imposing



the condition while suspending the sentence to deposit 20% of the cheque amount and that was challenged by one of the accused before this court in the petition being Special Criminal Application No.3158 of 2024. This court has directed the co-accused to deposit the amount of 20% on the basis of prorata. It is true that time was extended by the learned appellate court to deposit the aforesaid amount, but the petitioner could not deposit due to financial crunch. The prosecution of private complaint for offence under section 138 of the NI Act largely differs from the prosecution in respect of other IPC offences.

8. The test is always to be of good faith. From the facts recorded as above, it transpires that due to the circumstances mentioned herein above the amount could not be deposited as directed by the appellate court. Learned advocate Mr. YH.Motiramani has placed the copy of demand draft on record which shows that the petitioner has prepared the demand draft of Rs.67,66,670/- which is the 1/5th share of 20% amount of total 4 cheques of Rs.16,91,66,760/-.



9. In view of above facts this court deems it fit to allow this application by granting further period of one week's time to deposit the demand draft before the learned appellate court and on depositing the aforesaid amount, the complainant shall have liberty to withdraw the said amount subject to furnishing the bank guarantee of the aforesaid amount with a condition that in case the petitioner succeeds in the appeal, then alongwith the prevailing rate of interest of the bank, the original complainant shall return the said amount to the petitioner. With the aforesaid direction, the present petitioner succeeds and the present petitions are allowed accordingly.

10. This court has not examined matters on merits and the learned appellate court shall have liberty to decide the appeals on their own merits.

11. Rule made absolute. Direct service is permitted.

NIVYA A. NAIR

(M. K. THAKKER,J)