

MHCC050052282021



Presented on : 13-10-2021
Registered on : 13-10-2021
Decided on : 08-11-2021
Duration : years, months, 26 days

Exh. 3

**IN THE COURT OF SESSIONS AT DINDOSHI
(BORIVALI DIVISION), GOREGAON, MUMBAI
CRIMINAL REVISION APPLICATION NO. 200 OF 2021
(CNR No.MHCC05-005228-2021)**

**IN
REMAND APPLICATION NO.2984 OF 2021
(BEFORE THE LD. M.M., 26TH COURT AT BORIVALI, MUMBAI)**

- | | | | |
|----|----------------------------------|---|----------------------|
| 1. | Dharamsingh C. Mita |) | |
| | Age : 38 years, Occu: |) | |
| | R/at: Piloda, Sawai |) | |
| | Madhopur, Rajasthan 322 205. |) | ..Applicant |
| | |) | (Orig. Accused No.1) |
| 2. | Aashishkumar Ramhari Mita |) | |
| | Age 36 years, Occ: |) | |
| | Residing at Ronsi, Karauli, |) | |
| | Rajasthan – 322 220. |) | ..Applicant |
| | |) | (Orig. Accused No.2) |

Versus

The State of Maharashtra	)	
(Through Borivali Police Station)	)	..Respondent

Ld. Advocate Mr. Vikas Mishra for the applicants/accused.
Ld. A.P.P. Mrs.R.S. Kanojia for the State.

**CORAM : H.H. THE ADDITIONAL SESSIONS JUDGE,
SHRI. D. D. KHOCHHE
(C.R. No.13)**

DATE : 8TH NOVEMBER, 2021

ORAL JUDGMENT

This is an application under section 397 of the Criminal Procedure Code seeking to quash and set aside the order dated 1.10.2021 passed by the learned Metropolitan Magistrate, 26th Court, Borivali, Mumbai in C.R. No.965/2021 registered with Borivali Police Station for the offence punishable under Section 380 r/w. 34 of the Indian Penal Code, 1860.

2. Court perused the application and the reply filed by the learned APP. Perused the documents filed alongwith the application and in particularly bail order as well as the impugned order passed by the learned Metropolitan Magistrate, 26th Court, Borivali, Mumbai. Heard the learned advocate Mr. Vikas Mishra for the applicants/accused and the learned APP Mrs. R.S. Kanojia for the State.

3. Following point arises for determination of this Court. Court records its finding thereon for reasons to be recorded below.

Sr. No.	POINT	FINDING
1.	Whether the impugned order passed by learned Metropolitan Magistrate, 26 th Court, Borivali, Mumbai is legal, correct and proper ?	No
2.	What Order?	As passed below.

REASONS

AS TO POINT NO.1 AND 2 :-

4. Certainly, the police reply shows prima facie involvement of the applicants/accused-Dharamsingh C. Mita and Aashishkumar Ramhari Mita in crime. Not only this, the police reply also shows that there are similar crimes registered against the applicants/accused. Though it is so, the learned Metropolitan Magistrate preferred to release the applicants/accused on bail.

5. However, when the applicants/accused are residents of Rajasthan, it is much more probable that they will be unable to furnish surety. In such circumstances, it was natural for them to move application for releasing them on cash security under Section 445 of the Code of Criminal Procedure. The learned Metropolitan Magistrate, 26th Court, Borivali rejected the said application on two grounds that the applicants/accused are habitual offenders and they are residents of Rajasthan and if they are released on cash bail, the possibility of their fleeing away cannot be ruled out.

6. However, it must be noted that the learned Metropolitan Magistrate himself had kept a condition that the applicants/accused should not leave the jurisdiction of the court, without permission. In such circumstances, there was least possibility of they being absconding. In addition to this, the learned Metropolitan Magistrate had put up other conditions of bail that the applicants/accused shall furnish their address proof on affidavit and shall produce their mobile number. In aforesaid circumstances, the ground that the applicants/accused are residents of Rajasthan was not just to reject their application of cash

security.

7. Rather India is one and therefore, there cannot be geographical discrimination to release the applicants/accused on cash security. The second material thing is that in the case of **Motiram Vs. State of Madhya Pradesh, 1978 AIR 1594** guides that in such case, the applicants/accused are proper to be released on cash security. In addition to this, there was and is no material before the learned Metropolitan Magistrate or before this court to gather that the applicants/accused would possibly flee away. In such circumstances, the said observation of the learned Metropolitan Magistrate cannot be held as legal, correct and proper.

8. The second observation of the learned Metropolitan Magistrate that the applicants/accused are habitual offenders cannot be said as correct one for the reason that as per Section 2(e) of the Bombay Habitual Offenders Act, "habitual offender" means any person who, since his attaining the age of eighteen years, - (i) during any consecutive period (whether before or after the commencement of this Act or partly before and partly after such commencement) of five years, has been sentenced on conviction on not less than three occasion, to a substantive term of imprisonment for one or more of the scheduled offences committed on separate occasion, being offences which are not so connected together as to form parts of the same transaction and (ii) such sentence has not been reversed in appeal or revision: Provided that in computing the consecutive period of five years aforesaid, any period spent in jail either under a sentence of imprisonment or under detention shall not be taken into account.

9. In the present case, there is no record to gather that the applicants/accused are convicted and sentenced at any point of time. Rather unless and until offence is proved, they are held to be innocent. In such circumstances, the observations of the learned Metropolitan Magistrate, 26th Court, Borivali was apparently wrong. Thus, after considering aforesaid points, impugned order can be held as incorrect, illegal and improper.

10. Rather taking into consideration that the applicants/accused were unable to furnish surety at relevant time, since they are in jail, further observing that they could not furnish surety till today, further taking into consideration observation in the case of **Motiram (supra)**, this court finds this to be a fit case to release the applicants/accused on cash security of equal amount of bail i.e. Rs.20,000/- for the period of three months with direction to furnish surety during the said period. Hence, the court records negative finding to point No.1 and passes the following order :-

ORDER

1. Criminal Revision Application No.200/2021 is conditionally allowed.
2. The impugned order dated 1.10.2021 passed by the learned Metropolitan Magistrate, 26th Court, Borivali on the application of cash bail stands set aside.
3. The applicants/accused-Dharamsingh C. Mita and Aashishkumar Ramhari Mita be released on cash security of Rs.20,000/- each for next three months, with directions to furnish surety within the said period and with further directions to comply the other conditions of bail order passed by the learned Metropolitan Magistrate.

4. Copy of this order be sent to the learned Metropolitan Magistrate for information and necessary action.
5. Criminal Revision Application No.200/2021 stands disposed of.

(Dictated and pronounced in open Court)

Date: 8.11.2021

**(D. D. KHOICHE)
THE ADDL.SESIONS JUDGE
CITY CIVIL & SESSIONS COURT,
BORIVALI DIVISION, DINDOSHI**

Dictated on : 8.11.2021
Transcribed on : 8.11.2021
Checked & corrected on : 8.11.2021
Signed on : 8.11.2021
Sent to Dept. on :

**CERTIFIED TO BE TRUE AND CORRECT COPY OF THE ORIGINAL
SIGNED JUDGMENT/ORDER”**

Date : 08.11.2021	Mr. Atul Suryakant Bhogte
Time : 5.50 P.M.	(Stenographer Grade-I)
UPLOAD DATE AND TIME	NAME OF STENOGRAPHER

Name of the Judge (with Court room no.)	HHJ D.D.KHOICHE (Court Room No.13)
---	---

Date of Pronouncement of JUDGMENT/ORDER	08.11.2021
---	------------

JUDGMENT/ORDER signed by P.O. on	08.11.2021
----------------------------------	------------

JUDGMENT/ORDER uploaded on	09.11.2021
----------------------------	------------

