

GJSK010003532023



IN THE SESSIONS COURT AT HIMMATNAGAR

Order below Exh. 4

IN

Criminal Appeal No. 37/2023

In the matter of

Kamleshkumar Rasiklal Maheta

... Appellant

V/s

Ketankumar Ramchandrabhai Soni & Anr.

... Respondents

1. The present appellant has been convicted on 03.02.2023 by the learned Judicial Magistrate First Class, Talod in Criminal Case No. 366 of 2016 filed under Section 138 of the Negotiable Instruments Act (in short "N.I. Act"), wherein, the appellant - accused has been convicted with simple imprisonment of one year and double amount of check i.e. ₹40,00,000/-, (Rupees Forty Lakhs only) to be paid as compensation to the complainant and to undergo simple imprisonment for six months' if the amount of compensation is not paid. Being aggrieved and dissatisfied by the impugned judgment, the present appellant has preferred the present appeal under Section

374 of the Criminal Procedure Code.

2. The appellant has filed an application at Exh. 4 under Section 389 of Criminal Procedure Code, praying to enlarge the appellant/accused on bail during the pendency of the present appeal and to suspend the implementation and execution of the order of the learned Trial Court.
3. A notice was issued to the respondents and the learned Advocate Mr. A.A. Modi has appeared for the opponent No.1/original complainant, whereas learned APP Mr. N.R. Shah has appeared on behalf of the opponent No. 2/the State.
4. I have heard the learned Advocates for the both sides.
5. Learned Advocate for the appellant Mr. A.K. Pandya has submitted that, the learned Trial Court has committed an error in holding the accused guilty and merely based on presumptions and assumptions, has convicted the accused. The learned Advocate for the appellant further submitted that the facts admitted by the complainant during his cross-examination, were not considered by the learned Trial Court and learned Trial Court has wrongfully convicted the accused beyond the law. That all these contentions deserve to be considered and execution of the sentence or order, appeal be suspended. Hence, the accused be enlarged on bail during the pendency of appeal.
6. The offence under the Negotiable Instruments Act is

compoundable and as per the record, the accused had remained on bail throughout the trial and if the application of the applicant is not allowed, which amounts to dismiss the matter at threshold and which would confirm the conviction recorded by the learned Trial Court at the preliminary stage and therefore, with view to being the substantial justice between the parties and to allay apprehension of the injustice and keeping in mind the provisions of law under Section 148 of the N.I. Act, I am inclined to allow the present application and pass following order:

∴ ORDER ∴

1. This application is hereby allowed.
2. The order of conviction dated 03.02.2023 passed in Criminal Case No. 366/2016 by the learned Judicial Magistrate First Class, Talod, is suspended and the appellant **Kamleshkumar Rasiklal Maheta** is hereby enlarged on bail on furnishing bond of ₹15,000/- (Rupees fifteen thousand only) and surety of the like amount, subject to the following conditions:
 - (i) The appellant accused shall deposit an amount of **₹4,00,000/- (Rupees Four Lakhs only)** as per the provisions of Section 148 (1) of the Negotiable Instruments Act in the first instance.
 - (ii) The appellant – accused shall cooperate in disposal of

- the appeal and shall not prolong the proceedings;
- (iii) The appellant – accused shall submit his permanent Mobile number/s, which he shall not change without the prior permission of this Court, and also submit the document of his residential address.
3. A copy of this order be sent to the learned trial Court.
4. Call for record and proceedings of Criminal Case No. 366/2016 from the concerned Trial Court.

Dictated, signed and pronounced in open Court on this 02nd day of March 2023.

(Susan Valentine Pinto)
Sessions Judge
Sabarkantha at Himmatnagar
Code No. : GJ00416

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