

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL WRIT PETITION (ST) NO.17011 OF 2023

Gopal Damodar Pandey Petitioner

versus

The HCCS Urban Co-Op.
Credit Soc. & Anr. Respondents

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- Mr. M. K. Kocharekar i/b. Mr. Akhilesh Singh, Advocate for Petitioner.
- Mr. A. R. Patil, APP for the State/Respondent.

CORAM : SARANG V. KOTWAL, J.
DATE : 16th OCTOBER, 2023

P.C. :

1. The Petitioner is the original accused in Case No.0606579/SS/2018 before the Metropolitan Magistrate, 6th Court, Mazgaon (Sewri), Mumbai. The Petitioner was convicted by the Trial Court vide Judgment and Order dated 30/09/2023 u/s 138 of the Negotiable Instruments Act. He was sentenced to suffer simple imprisonment for three months and to pay compensation of Rs.25,89,986/- and in default to suffer simple imprisonment for 15 days.

2. The Petitioner challenged that order vide Criminal Appeal No.635 of 2022 before the Court of Sessions at Greater Mumbai. The Appellate Court vide order dated 25/11/2022 suspended the substantive sentence on the condition of the Petitioner depositing 20% of the compensation within two months from 25/11/2022. The Petitioner did not deposit that amount. He filed fresh application vide Criminal Miscellaneous Application No.758/2023 in Appeal No.635 of 2022 before the same Appellate Court for relaxation of the same condition of depositing that amount. That application was rejected by the impugned order dated 14/08/2023.

3. Learned counsel for the Petitioner submitted that the transaction in question involved two shops. Both these shops as of today are surrendered by the Petitioner in favour of the Respondent No.1 – complainant. Those shops were given as collateral security for obtaining loan. Therefore, as of today he has lost the shops and he has incurred the liability to pay

compensation. He therefore submitted that the condition of the depositing of 20% of the compensation amount to be deleted.

4. He further submitted that the impugned order was passed on 14/08/2023. The Hon'ble Supreme Court has passed judgment on 04/09/2023 in the case of *Jamboo Bhandari Vs. M. P. State Industrial Development Corporation Ltd. & Ors., in Criminal Appeal No.2741 of 2023*. According to Mr. Kocharekar, the ratio of this judgment is that, under certain circumstances, the condition of depositing of 20% of the compensation amount, can be relaxed. He submitted that this is a fit case in which the condition can be relaxed.

5. Considering these submissions, it is necessary to hear the other side. Learned counsel for the Petitioner has made out a case for grant of ad-interim relief.

6. Hence, the following order :

ORDER

- (i) Issue notice to the Respondent No.1 returnable on 15/12/2023.
- (ii) Till the next date, the substantive sentence of the Petitioner shall remain suspended.
- (iii) Stand over to 15/12/2023.

(SARANG V. KOTWAL, J.)