



IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO. 2914 OF 2024  
IN APPLN/5648/2017

Vinit Sureshkumar Tayal

....Applicant

VERSUS

The State Of Maharashtra And Another

.....Respondent

Advocate for Applicant : Mr. Vishal Amritlal Bagdiya

APP for Respondent No.1: Mr. P.D. Patil.

Advocate for Respondent No.2 : Mr. Namit Muthiyian Sunil and S.R. Nehri,

CORAM : MEHROZ K. PATHAN, J.

RESERVED ON : 30TH JANUARY, 2026  
PRONOUNCED ON : 10<sup>th</sup> FEBRUARY, 2026.

PC. :-

1. The applicant has filed the present application for withdrawal of the amount of Rs. 10 Lakhs deposited by the accused as per the order dated 15.11.2017 passed in Criminal Application No. 5648 of 2017.

2. The learned counsel for the applicant submits that this court vide order dated 15.11.2017 has recorded that the respondent No.2/accused is ready to deposit 50% of the amount of Rs. 20 Lakhs, which is due from him as alleged in the FIR, without prejudice to the contention of the accused that he is innocent and has been falsely implicated in the case.

3. The learned counsel for the applicant further submits that upon deposit of Rs. 10 Lakhs by the accused in Criminal Application No. 5648 of 2017, the respondent No.2/accused Thirumoorthy was granted anticipatory bail vide order dated 9.1.2018. The applicant, therefore, prays that the said amount of Rs. 10 Lakhs is lying with this court and the applicant who is the first informant in Crime No. 442 of 2017 may be allowed to withdraw the said amount, as the applicant is ready to give bank guarantee of the said amount, if the applicant is allowed to withdraw the said amount.

4. The learned counsel for the respondent No.2 Thirumoorthy who was granted anticipatory bail by this court upon depositing 50% of the disputed amount, which was due from him as alleged in the FIR, opposes the said application on the ground that the applicant has paid the said amount to the middle-man i.e. Kaushalji, who is prime accused and who was interrogated after being arrested and was granted regular bail. The amount of Rs. 20 Lakhs shall be recoverable to the complainant only from prime accused Kaushalji and not from the accused Thirumoorthy. The earlier application filed by the present applicant bearing Application No. 352 of 2018 was disposed of by this court vide order dated 14.3.2018 as withdrawn, with liberty to the applicant to file appropriate application before the appropriate forum for appropriate relief. The present application, therefore, is not maintainable in view of the earlier order dated 14.3.2018 passed by this Court.

5. The learned counsel for the respondent No.2/accused relied upon the judgment of the Bombay High Court passed in ***Criminal Application No. 1118 of 2018 in Criminal Application No. 159 of 2016*** in the case of ***Amul Navnitlal Rawal vs. State of Maharashtra***, wherein the Bombay High Court has rejected the said application for withdrawal on the ground that the amount deposited by the accused in that case, which

was Rs. 10,83,000/- was deposited without prejudice. The trial was pending and the deposited amount cannot be recovered under the provisions of the Code of Criminal Procedure as the amount was not seized by the police and was deposited voluntarily without prejudice to the rights of the accused.

6. The counsel for the accused has further relied upon the judgment of the Honourable Supreme Court in the case of ***Dharmesh @ Dharmendra @ Dhami Jagdishbhai @ Jagabhai Bhagubhai Ratadia and another vs. State of Maharashtra*** in Criminal Application No. 432 of 2021 arising out of SLP No. 663 of 2021, wherein, the court has observed as under :

*“17. We may hasten to add that we are not saying that no monetary condition can be imposed for grant of bail. We say so as there cases of offences of property or otherwise but that cannot be a compensation to be deposited and disbursed as it that grant has to take place as a condition of the person being enlarged on bail.”*

7. The learned counsel for the respondent No.2/accused, therefore, submits that the present application is devoid of substance and merit and thus liable to be rejected.

8. I have gone through the order dated 14.3.2018 rejecting the earlier application for withdrawal of the amount passed by this Court in Criminal Application No. 352 of 2018 and the order dated 9.1.2018 allowing the bail application of accused Thirumoorthy passed in Criminal Application No. 5648 of 2017 and the initial order dated 15.11.2017, passed by this Court, wherein the accused Thirumoorthy has voluntarily made an offer of depositing 50 % of the alleged amount, to show his bonafides, was recorded by this court.

9. Perusal of the aforesaid order would show that the said amount was deposited by the accused Thirumoorthy without prejudice to his contentions that he has already paid Rs. 20 Lakhs against the goods received from the applicant, to the prime accused Kaushalji. The record shows that the trial is still pending and has not yet completed. The learned Single Bench of this Court, at the Principal Seat, vide order dated 22.2.2019 passed in Criminal Application No. 1118 of 2018, filed in ABA No. 159 of 2016, has rejected an identical request made by the complainant for withdrawal of the amount deposited by the accused while hearing the application for anticipatory bail on the ground that the amount was deposited by the accused without prejudice to his rights. It is further observed by the learned Single Judge as under :-

*“10. On perusal of the order dated 14<sup>th</sup> March, 2016, it is apparent that statement was made by the counsel for the Respondent No.2 that the amount of Rs. 10,83,000/- was withdrawn and he is ready to deposit the same in the Court. The Respondent No.2 was directed to deposit the amount of Rs. 10,83,000/- within stipulated time in this Court without prejudice. It was further directed that the amount be kept in fixed deposit in any Nationalized Bank. Thus the order categorically mentions that the amount is to be deposited without prejudice. The trial is pending. This cannot be termed an application for return of property under the provisions of the Code of Criminal Procedure. The amount was not seized by the Police. The guilt of the accused is yet to be proved. In the circumstances, I do not find that the Applicant has made out any ground for allowing this application. The trial court, however, will be at liberty to pass appropriate orders with regard to the said amount at appropriate state.”*

10. Considering the fact that the amount was deposited by the accused without prejudice to his claim that he has paid Rs. 20 Lakhs to the prime accused Kaushalji, even though the applicant is ready to submit

bank guarantee of the amount, taking into consideration the fact that the earlier application was already rejected by this court vide order dated 14.3.2018 as withdrawn, with liberty to the applicant to file appropriate application before appropriate forum for appropriate relief, I am not inclined to grant the prayer for withdrawal of the amount by the complainant/applicant. The trial is pending. This cannot be termed an application for return of property under the provisions of the Code of Criminal Procedure. The amount was not seized by the Police. The guilt of the accused is yet to be proved. Even though the applicant has agreed to give bank guarantee for the aforesaid amount for withdrawal, I do not find that the Applicant has made out any ground for allowing this application. The trial court, however, will be at liberty to pass appropriate orders with regard to the said amount at appropriate state.

11. For the reasons stated hereinabove, the application is devoid of substance and hence, same is rejected.

[MEHROZ K. PATHAN]  
JUDGE.

grt/-