

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL APPLICATION NO. 5821 OF 2015

Bharatkumar Madanbhai Chikani,
Age: 55 years, Occu: Business,
R/o. I-403, Mansi Apartment,
Naroda,
Ahmedabad (Gujarat State)

...Applicant

versus

The State of Maharashtra,
Through Police Station, Hingoli,
Dist. Hingoli

...Respondent

**WITH
CRIMINAL APPLICATION NO. 5511 OF 2015**

Bharatkumar Madanbhai Chikani,
Age: 55 years, Occu: Business,
R/o. I-403, Mansi Apartment,
Naroda,
Ahmedabad (Gujarat State)

...Applicant

versus

The State of Maharashtra,
Through Police Station, Sengaon,
Dist. Hingoli

...Respondent

**WITH
CRIMINAL APPLICATION NO. 5802 OF 2015
IN
CRIMINAL APPLICATION NO. 5511 OF 2015**

Sanjay Ramrao Deshmukh,
R/o. Sengaon, Tq. Sengaon,
Dist. Hingoli

...Applicant

versus

1. The State of Maharashtra,
2. Bharatkumar Madanbhai Chikani,
Age: 55 years, Occu: Business,

R/o. I-403, Mansi Apartment,
Naroda,
Ahmedabad (Gujarat State)

...Respondents

.....
Mr. L. D. Vakil, Advocate for applicants
Mrs. M. A. Deshpande, A.P.P. for respondent/State
Mr. S. S. Rathi, Advocate for respondent/complainant
.....

CORAM : N.W. SAMBRE, J.

DATE : 30th OCTOBER, 2015

ORAL ORDER :

Criminal Application No. 5802/2015 to assist the prosecution is allowed.

2. By these application, the applicants have questioned the order of imposing conditions while releasing on bail by Additional Sessions Judge, Hingoli, in crime Nos. 177 of 2015 and 82 of 2015 for the offence punishable under Sections 420, 406 read with Section 34 of the Indian Penal Code.

3. Learned Sessions Judge, while ordering release of applicant on regular bail, directed to deposit Rs.62,06,794/- by order dated 14/10/2015 and Rs.11,00,000/- by order dated 19/09/2015. As such present applications.

4. Mr. Vakil, learned Counsel for the applicants, while

questioning the legality and validity of imposing such condition while pressing reliance upon the provisions of Section 437 of the Code of Criminal Procedure, would urge that the said condition is unreasonable and without jurisdiction. According to him, there is false implication of the applicant in crime as he has already resigned from Directorship of the Company in question.

5. According to him, he has no liability in the matter.

6. Learned A.P.P. and Mr. Rathi, learned Counsel for the complainant, while opposing the present applications, would urge that the condition is reasonable and the Court is empowered in law to impose reasonable condition and as such, sought dismissal.

7. Upon perusal of the condition incorporated in the order of granting bail, it is required to be noted that the condition of deposit of the amount without adjudicating the liability to pay same, in my opinion, *prima facie*, is unreasonable and is also contrary to the scheme of Section 437 of the Code of Criminal Procedure. Appropriate support to that effect can be drawn from the judgment of the Apex Court in the matter of **Avinash Arora and others vs. State of U.T. Chandigarh and another** reported in **AIR 2002 SC 3563**

and in the matter of ***Munish Bhasin and others vs. State (Govt. of N.C.T. of Delhi) and another*** reported in ***AIR 2009 SC 2072*** (Para.8), which reads thus :

Para-2 in the matter of ***Avinash Arora*** (supra) reads thus :

“2. The appellants have been alleged to have committed offence under Sections 420, 406, 468, 467, 471 and 120B, I.P.C. On an application being filed under Section 438 of the CrPC, the High Court of Punjab and Haryana granted anticipatory bail, subject to deposit Rs. 10 crores. The appellants did avail of the order by issuing a cheque of Rs. 10 crores from the IFCI 'No Lien Account'. The earlier order was, however, modified requiring the appellants to deposit Rs. 10 crores from his own account. It is this order which is now being assailed before us. Mr. Jain, the learned senior counsel appearing for the appellants contends that requiring to deposit Rs. 10 crores itself is an unjust order and cannot be held to be proper exercise of discretion by the Court for grant of anticipatory bail under Section 438. Ms. Jaiswal, the learned Counsel for the State as well as the learned Counsel appearing for IFCI contend that the Court ought not to have exercised his discretion under Section 438, in view of the nature of accusation. But the Court having done so by requiring the appellants to deposit Rs. 10 crores, the same need not be interfered with. Having heard the learned Counsel for the parties, we have no hesitation to come to the conclusion that the Court committed error in passing the conditional order of depositing Rs. 10 crores for grant of anticipatory bail as in our view, this cannot be held to be an exercise of judicial

discretion. In that view of the matter, we set aside the impugned direction and remit the matter to the High Court for re-disposal of the petition filed under Section 438 of the CrPC, in accordance with law.”

Para.8 in the matter of ***Munish Bhasin*** (supra) reads thus :

“8. It is well settled that while exercising discretion to release an accused under Section 438 of the Code neither the High Court nor the Session Court would be justified in imposing freakish conditions. There is no manner of doubt that the Court having regard to the facts and circumstances of the case can impose necessary, just and efficacious conditions while enlarging an accused on bail under Section 438 of the Code. However, the accused cannot be subjected to any irrelevant condition at all. The conditions which can be imposed by the Court while granting anticipatory bail are enumerated in sub-section (2) of Section 438 and sub-section (3) of Section 437 of the Code. Normally, conditions can be imposed (i) to secure the presence of the accused before the investigating officer or before the Court, (ii) to prevent him from fleeing the course of justice, (iii) to prevent him from tampering with the evidence or to prevent him from inducing or intimidating the witnesses so as to dissuade them from disclosing the facts before the police or Court or (iv) restricting the movements of the accused in a particular area or locality or to maintain law and order etc. To subject an accused to any other condition would be beyond jurisdiction of the power conferred on Court under section 438 of the Code. While

imposing conditions on an accused who approaches the Court under section 438 of the Code, the Court should be extremely chary in imposing conditions and should not transgress its jurisdiction or power by imposing the conditions which are not called for at all. There is no manner of doubt that the conditions to be imposed under section 438 of the Code cannot be harsh, onerous or excessive so as to frustrate the very object of grant of anticipatory bail under section 438 of the Code. In the instant case, the question before the Court was whether having regard to the averments made by Ms. Renuka in her complaint, the appellant and his parents were entitled to bail under section 438 of the Code. When the High Court had found that a case for grant of bail under section 438 was made out, it was not open to the Court to direct the appellant to pay Rs. 3,00,000/- for past maintenance and a sum of Rs.12,500/- per month as future maintenance to his wife and child. In a proceeding under section 438 of the Code, the Court would not be justified in awarding maintenance to the wife and child. The case of the appellant is that his wife Renuka is employed and receiving a handsome salary and therefore is not entitled to maintenance. Normally, the question of grant of maintenance should be left to be decided by the competent Court in an appropriate proceedings where the parties can adduce evidence in support of their respective case, after which liability of husband to pay maintenance could be determined and appropriate order would be passed directing the husband to pay amount of maintenance to his wife. The record of the instant case indicates that the wife of the appellant has already approached appropriate Court

for grant of maintenance and therefore the High Court should have refrained from granting maintenance to the wife and child of the appellant while exercising powers under section 438 of the Code. The condition imposed by the High court directing the appellant to pay a sum of Rs.12,500/- per month as maintenance to his wife and child is onerous, unwarranted and is liable to be set aside.”

8. In view of the impugned condition of directing deposit of the amount is onerous and excessive, as such, condition (a) in both the orders dated 14/10/2015 and 19/09/2015 is hereby quashed and set aside.

10. Both the criminal application stand allowed in above terms.

[N.W. SAMBRE, J.]