

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

CRIMINAL APPLICATION NO. 6311 OF 2015

Gunjan s/o Jitendrabhau Faldu,
Age: 28 years, Occ: Trade,
R/o. 8, Padma Bungalow,
Near Chanyakya School,
Manasi Apartment, Naroda,
Ahmedabad (Gujrat).

...Applicant

versus

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

...Respondent

.....
Mr. N.L. Chaudhari, Advocate for applicant
Mr. S.P. Deshmukh, A.P.P. for respondent
.....

CORAM : N.W. SAMBRE, J.

DATE : 3rd MARCH, 2016

ORAL ORDER :

This is an application under Section 439(1)(b) of the Code of Criminal Procedure seeking modification of conditions imposed while ordering release of the present applicant on regular bail by the learned Magistrate First Class.

2. Few facts, as are necessary for deciding the present application, are as under :-

Complainant Sanjay Ramrao Deshmukh, holding traders

licence from Agricultural Produce Market Committee, Sengaon, District Hingoli was approached by the present applicant alongwith other co-accused by introducing themselves to be traders of national level dealing in the purchase of groundnut beans.

3. Having bestowed faith on the complainant by demonstrating his registration with Sales Tax Authorities, other Tax Authorities, complainant Sanjay Deshmukh has sold them groundnut beans worth of Rs. 10,69,260/-, for which present applicant has executed bond, assuring payment on 05/11/2014, as cheque that was issued in favour of complainant Sanjay by the applicant was dishonoured for want of payment.

4. Complainant Sanjay, who was also required to pass on the amount to the farmers from whom he had purchased the said groundnut beans, approached the investigating agency on the ground that the applicant has played fraud and has committed offence of criminal breach of trust, resulting into registration of crime No. 82 of 2015.

5. The applicant thereafter came to be arrested and was produced before learned Judicial Magistrate, First Class, Sengaon on 31/08/2015 and was subjected to Police Custody Remand and

thereafter was remanded to Magisterial Custody on 21/09/2015.

6. The applicant, claiming to be Managing Director of Revolt Oil and Seeds Company Private Limited, Ahmedabad, whose cheques were dishonoured, approached learned Sessions Judge seeking regular bail, as his request to that effect was rejected by learned Judicial Magistrate, First Class. By making such request for grant of regular bail before learned Sessions Judge, the applicant during the hearing has given an undertaking to the Court that he shall abide by each and every condition as shall be imposed, in case if he is released on bail, as is apparent from the submissions of the applicant.

7. As a consequence, learned Sessions Judge, Basmath, on 28/09/2015 was pleased to allow the application under Section 439 of the Code of Criminal Procedure by the applicant with following conditions:-

- (1) Petition is allowed.
- (2) Applicant be released on bail of Rs.50,000/- (Rupees Fifty Thousand) on execute of P.R. Bond along with one solvent surety like amount on following conditions:-
 - (a) he shall deposit Rs.11,00,000/- (Rupees eleven lakh) in the Court till the conclusion of this trial. No parties will be permitted to withdraw the amount till the conclusion of the trial.

- (b) If amount comes to be deposited in the Court that be fixed with State Bank of India till further order of the Court.
- (c) Petitioner shall deposit his pass port with police.
- (d) Petitioner shall not go abroad without permission of the Court.
- (e) He shall attend police station once in a month preferably in a first week.
- (e) He shall not tamper with prosecution witnesses and evidence.

8. The applicant thereafter again approached learned Sessions Court seeking modification of the conditions pursuant to the provisions of Section 439(1)(b) of the Code of Criminal Procedure stating that condition of deposit as was imposed is unreasonable. The said request came to be rejected by learned Sessions Judge on 26/10/2015. As such, present application.

9. Mr. Chaudhari, learned Counsel for the applicant would urge that the applicant's application needs to be allowed in view of the fact that parameters for consideration of grant of bail and that of cancellation are altogether different. He would submit that the bail granted in the present case in favour of applicant has become redundant on account of imposition of unreasonable condition, as the said condition of deposit of amount is inconvenient to him. It is also claimed in paragraph-4 of the application that it is difficult for the

applicant to attend Sengaon police station once in a month, preferably in the first week, as he is residing about 400 kms. away from the said place in Gujrat. He would then submit that the condition of deposit is unreasonable, unjust and is causing serious prejudice to him. Learned Sessions Court has failed to consider financial condition and social liability of the applicant.

10. Learned Counsel for the applicant has invited my attention to the order dated 30/10/2015 delivered in the case of ***Bharatkumar Madanbhai Chikani vs. The State of Maharashtra*** in Criminal Application No. 5821 of 2015, so as to canvass that this Court in exercise of powers under the provisions of Section 439(1)(b) of the Code of Criminal Procedure has already declared the similar condition as onerous and excessive. He has also relied upon the judgment of the Apex Court in the matter of ***Munish Bhasin and others vs. State (Govt. of N.C.T. of Delhi) and another*** reported in **A.I.R. 2009 S.C. 2072**.

11. Learned A.P.P. while opposing the application would urge that the case of applicant is different and cannot be treated at par with the case of co-accused Bharatkumar. He would then submit that the applicant while seeking bail in paragraph-5 of the order passed by learned Sessions Court has already undertaken that he

shall abide by each and every condition, however, when the Court has ordered him to deposit the amount, the applicant is seeking modification claiming the said condition to be onerous. According to him, same is not permissible as he cannot blow hot and cold in the background of his earlier submission. Learned A.P.P. would urge that the Apex Court in the catena of judgments has observed that offences having the economic colour are required to be viewed differently, as the same directly affects the economy of institution. He would submit that in the facts as are narrated herein above, which has prompted the registration of crime, depicts that the applicant is *prima facie* involved in the commission of the offence having financial implication, as such, according to him, present application lacks merit and be rejected.

12. Having bestowed my thought to the submissions made, it is required to be analyzed whether the case of the applicant is at par with that of Bharatkumar, at whose behest, this Court has declared condition of deposit as onerous. This Court, by an order dated 30/10/2015 has declared similar condition in the matter of Bharatkumar, who is co-accused, as onerous by observing that the condition can be imposed under Section 437 of Code of Criminal Procedure by directing deposit as the Apex Court in the matter of Munish Bhasin (*supra*) has already held that the condition was found

to be irrelevant for releasing the applicant therein on bail. It was also noticed that in the background of allegations in the F. I. R. against the said Bharatkumar, the condition was found to be unreasonable.

13. So far as the case in hand is concerned, it is not in dispute that *prima facie* the liability of the applicant is to make payment to the complainant, as the applicant has issued cheque to the complainant for the amount of Rs.10,69,260/- towards consideration of groundnut beans. The said cheque was dishonoured and thereafter a bond was executed on 05/11/2014. Though the bond is executed, still the applicant has not paid the present complainant though applicant has claimed that he shall abide by all conditions before learned Sessions Court. It is to be noted that provisions of Negotiable Instruments Act draw presumption against the applicant as he was responsible for honouring cheque that was issued. He has not taken any steps to honour the cheque and make payment to the complainant, who thereafter shall require to pass on the same to the farmers/agriculturists from whom agricultural produce was purchased.

14. The applicant's case, in view of above, cannot be treated at par with that of case of co-accused Bharatkumar. The condition as was incorporated is based on the submission of the applicant that he

shall abide by such terms and conditions as shall be imposed by the learned Sessions Court.

15. In my opinion, as the condition is imposed by learned Sessions Court is reasonable, having regard to the nature of criminal attributions against the applicant in the first information report and his conduct of issuing cheque for the amount and dishonouring of the cheque.

16. Though earlier time was sought to seek instructions, the learned Counsel for applicant is unable to inform the Court about the compliance of the condition. Learned Counsel for the applicant also refused to deposit the amount, even if the installments are offered.

17. In view of thereof, in my opinion, the condition imposed on the applicant by learned Sessions Court, cannot be termed as onerous, hence the application fails, stands rejected.

[N.W. SAMBRE, J.]