

Anand

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

BAIL APPLICATION NO. 1901 OF 2017

Kumar Shankar Karajagi	.Applicant
Vs.	
The State of Maharashtra	.Respondent

**WITH
CRIMINAL APPLICATION NO. 797 OF 2017
(For Intervention)
IN
BAIL APPLICATION NO. 1901 OF 2017**

Ajitkumar Nagesh Deshpande	.Intervenor
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IN THE MATTER BETWEEN

Kumar Shankar Karajagi	.Applicant
Vs.	
The State of Maharashtra	.Respondent

Mr. Shirish Gupte, Senior Counsel i/b. Mr. Sudhir Halli, for the Applicant
Mr. A. A. Palkar, APP, for the Respondent – State
Mr. Satyavrat Joshi a/w Mr. Nitesh Mohite i/b. Mr. J. D. Mane, Advocate, for the Intervenor

CORAM : A.S.GADKARI, J.

DATE : 28.11.2017

P.C.

. This is an application under Section 439 of Cr. P.C. for bail in CR No. 164 of 2017 registered with Foujdar Chawadi Police Station, Solapur under Sections 406, 420, 467, 468, 471, 477(A), 120B r/w 34 of the Indian Penal Code.

2. Heard Shri Gupte, the learned senior counsel for the Applicant, the learned APP and Shri Joshi, the learned counsel for the Intervenor. Perused the record and charge-sheet.

3. It is the case of the prosecution that a Spinning Mill namely Juni Mill situated at Solapur went into liquidation. That with a view to protect the interest of workers and/or their legal heirs, it is alleged that the Applicant formed Juni Mill Sangharsh Samiti in the year 1998 and registered it with the office of Charity Commissioner. That the landed property of the said mill was put into auction under the orders of High Court. That the Applicant gave an advertisement in the News paper calling upon the workers of the said Mill and/or their legal heirs for depositing certain amount with the said Samiti for placing a bid for lot No.1 of the property of the Mill. The Applicant and other accused instead of bidding for lot No.1 submitted bid for the entire landed property of the Mill and were declared as successful bidders. After the said landed property was directed to be allotted in favour of the said Samiti, it is alleged that the Applicant in conspiracy with co-accused Mr. Sharad Mutha and by keeping the other members of the said Samiti in dark, formed a separate co-operative housing society namely Uma Sahakari Grahnirman Sanstha Ltd., by taking persons from his confidence and his family members and got it registered. It is further

alleged that the Share Certificates of the said Juni Mill were diverted in the name of Uma Sahakari Grahnirman Sanstha Ltd., Solapur instead of transferring in the name of Samiti and revenue records were accordingly prepared/mutated in the name of Uma Sahakari Grahnirman Sanstha Ltd., Solapur. That the Applicant retained all the powers in the said Society. It is further alleged that the Applicant in connivance with other accused persons put a Scheme for effecting plotting over the said landed property of the Juni Mill and issued allotment letters in that behalf to approximately 700 persons. That the Applicant under the guise of development of the said property even induced various investors to deposit the amount in the account of M/s. K. K. Associates and forced them to carry out construction on the said property from a particular contractor. It is alleged that the Applicant and other accused persons without keeping proper record or receipt of amount, defalcated an amount of Rs. 2,59,94,629/- of 215 persons as on 19.06.2017. During the course of investigation, the Applicant has been arrested on 23.03.2017 and after completion of investigation, police have submitted charge-sheet on 19.06.2017. That the police have thereafter conducted further investigation and filed supplementary charge-sheet on 18.11.2017 thereby further alleging that the Applicant has defalcated a total sum of Rs. 2,90,73,234/- of total number of 242 investors.

4. The record clearly indicates that as on 18.11.2017, it is alleged that the Applicant alongwith other accused persons have defalcated a sum of Rs. 2,90,73,234/- of 242 members of the said Uma Sahakari Grahnirman Sanstha Ltd., Solapur. The record further indicates that after the land was allotted in favour of Uma Sahakari Grahnirman Sanstha Ltd. The Municipal Corporation of Solapur has put a reservation on part of the said land for public purpose such as, garden, hospital etc. and therefore, prima facie, it appears that the Applicant could not further convey the plots of land to the members of the said society. It is to be noted here that as per the submissions of the learned senior counsel for the Applicant, about 400 members of the said society have already been allotted with the agreed piece or parcel of land by the Applicant and other accused persons and the said persons have already constructed their residential premises on the said plots. It is submitted that due to the said reservation put by the Municipal Corporation, the Applicant could not further handover the possession of the plots to the members of Uma Sahakari Grahnirman Sanstha Ltd., Solapur. It is submitted that certain members of the said society have already filed Civil Suits for specific performance of the Sale Agreement and the same are pending before the Competent Court having jurisdiction for final adjudication.

5. During the course of arguments on 07.11.2017, the learned senior counsel for the Applicant had submitted that without prejudice to his rights and contentions to be raised at the time of trial or in other proceedings to be adopted by the Applicant, the Applicant is ready and willing to deposit the said alleged defalcated amount of Rs. 2,59,94,629/- in the Court of the Judicial Magistrate First Class, Solapur and in furtherance thereof, he submitted an Affidavit of Undertaking duly affirmed by the Applicant on 08.11.2017, giving an undertaking to deposit the said entire amount of Rs. 2,59,94,629/- in the Court of the Judicial Magistrate First Class, Solapur on or before 20.05.2018. The Schedule of payment is specifically mentioned in the said Affidavit. The daughter of Applicant namely Smt. Varsha Ravikiran Vibhute has also filed an Affidavit-of Undertaking before this Court stating that she on behalf of the Applicant will deposit the said amount of Rs.2,59,94,629/- in the Court of the Judicial Magistrate First Class, Solapur within the stipulated period mentioned in para 3 of the said Undertaking. Both the said Affidavits of Undertaking are taken on record and marked as “X” and “X-1” for identification. The undertakings mentioned in the said Affidavits are treated as undertakings given to this Court.

6. As noted earlier, at the time of filing of supplementary charge-sheet on 18.11.2017, it is revealed that there is an increase of

about 27 members of the said housing society who also claim that they have been cheated by the Applicant. It is revealed that as of today, the number of members whose money is alleged to have been defalcated are 242 and the total amount alleged to have been defalcated is Rs. 2,90,73,234/-. Mr. Gupte, the learned senior counsel for the Applicant on instructions from the daughter of the Applicant who is personally present in the Court submitted that the Applicant will deposit the said balance amount of Rs.30,78,605/- in the Court of the Judicial Magistrate First Class, Solapur within a period of one month from 20.05.2018 i. e. on or before 19.06.2018 to make a total amount of deposit of Rs. 2,90,73,234/-. The said statement is accepted.

7. The investigation of the present crime is already completed. The Applicant is aged about 70 years. As noted earlier, the Applicant has filed Affidavit of Undertaking to deposit the amount alleged to have been defalcated in the present crime in the Court of the Judicial Magistrate First Class, Solapur within the aforesaid period. In view thereof, further incarceration of the Applicant in jail is not necessary and the Applicant can be released on bail.

Hence, the following Order:

(i) The Applicant be released on bail in CR No. 164 of 2017 registered with Foujdar Chawadi Police Station, Solapur on his

furnishing PR bond of Rs. 1,00,000/- with one or two solvent local sureties in the like amount;

(ii) After his release from jail, the Applicant shall attend the concerned Police Station every 1st Monday of the month between 10.00 a.m. to 1.00 p.m. till the conclusion of trial;

(iii) Applicant shall also attend all the dates before the trial Court;

(iv) Applicant shall deposit the instalments of the amount mentioned in the Affidavit and in para Nos. 5 and 6 hereinabove on stipulated dates without seeking extension on any count;

(v) Any two consecutive defaults in complying with aforesaid conditions will attract the provisions of cancellation of bail;

(vi) Applicant shall not tamper with the evidence and/or influence the prosecution witnesses.

8. Application is allowed in the aforesaid terms.

9. In view of the order passed in B. A. No. 1901 of 2017, Cri. Application No. 797 of 2017 does not survive and is accordingly disposed of.

All concerned to act on the authenticated copy of this order.

(A.S.GADKARI, J.)