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

CRIMINAL APPEAL NO. 933 OF 2017

Balaji Shivaji Devkar and anr ... Appellants

V/s.

The State of Maharashtra and
anr ... Respondents

Mr. Gaurav Parkar, for the Appellant.
Ms. S. D. Shinde, APP for the Respondents.

**CORAM : RANJIT MORE &
DR.SHALINI PHANSALKAR-JOSHI, JJ.**

DATE : 20th NOVEMBER, 2017.

P.C. :

1] Heard learned counsel for the applicant and learned APP
for the State.

2] The appellants are the accused Nos.38 and 40 in C.R.
No.222 of 2015, registered with Sadar Bazar Police Station, Solapur,
for the offences punishable under Sections 409, 420, 467, 468, 471,
34 of the Indian Penal Code and Section 13(1) © of the Prevention of
Corruption Act and under Section 3(2)(v)(ii) of the Scheduled Caste
and Scheduled Tribes (Prevention of Atrocities) Act, 1989. This C.
R. is investigated and chargesheet is filed and further investigation

under Section 173(8) of Code of Criminal Procedure is in progress.

3] Present appellants had applied for regular bail by filing Criminal Application No.677 of 2015 which has been allowed by learned Additional Sessions Judge, Solapur, by passing the following order.

“1. Application is hereby allowed.

2. Applicants (1) Balaji Shivaji Devkar, (2) Laxman Gajendra Gawali and (3) Annasaheb Kalidas Dadhe, be released on P.R. Of Rs.1,00,000/- each and 2 solvent sureties of Rs.50,000/- each, by each of them on following conditions :-

(I) (a) Applicant N.1 or his relatives to deposit an amount of Rs.22,95,415/- (Rupees Twenty two lakhs Ninety five thousand four hundred fifteen only), in the Court of Chief Judicial Magistrate, Solapur, within one month from today which shall be a condition precedent for releasing the applicant on bail. The said amount be invested in a fixed deposit in any nationalized bank initially for one year, to be renewed there after from time to time.

(b) Applicant No.2 or his relative to deposit an amount of Rs.25,13,922/- (Twentyfive lakhs, thirteen thousand, nine hundred and twentytwo only), in the Court of Chief Judicial Magistrate, Solapur, within one month from today which shall be a condition precedent for releasing the applicant on bail. The said amount be invested in a fixed deposit in any Nationalized bank, initially for one year, to be renewed thereafter from time to time.

(c) Applicant No.3 or his relatives to deposit an amount of Rs.52,12,614/- (Rs. Fiftytwo lakhs tweleve thousand six hundred fourteen only), in the Court of Chief Judicial Magistrate, Solapur, within one month from today which shall be a condition precedent for releasing the applicant on bail. The said amount be invested in a fixed deposit in any National Bank initially for one year, to be renewed thereafter from time to time.

(ii) The applicants shall not tamper or attempt to influence or contact the complainant, witnesses, or any person concerned with the case.

(iii) The applicants shall inform their latest place of residence and mobile contact number immediately after being released and/or change of residence or mobile details, if any, from time to time to the Court seized of the matter and to the Investigating Officer of the concern Police Station.

(iv) The applicants to cooperate with the conduct of the trial.

(v) The trial Court shall pass appropriate orders with respect of the amounts so deposited at the conclusion of the trial.

(vi) It is made clear that the said amounts to be deposited by the applicants or their relatives is without prejudice to the rights and contentions of the applicants and it will not be construed as an admission of guilt by the applicants.

(vii) Applicants shall not indulge in any similar offence of which they are accused or of the commission of which they are suspected.

(viii) Bail before C.J. M. Solapur.”

4] The appellants, thereafter preferred application No.339 of 2017, for relaxation of condition of depositing amount, which has been rejected by the learned Sessions Judge, by an order 3rd May, 2017 and therefore, present appeal before this Court.

5] Mr. Parkar, learned counsel for the appellants submits that the appellants are not in position to deposit the aforesaid sums and therefore despite the order granting bail, they could not avail the same.

6] Learned APP submits the applicants are arrested in a scam worth Rs.4 crores and therefore, they have been correctly asked to deposit the amount as a condition precedent.

7] The appellants were arrested in subject crime on 26.6.2015 and they have been ordered to be released on bail by an order dated 16.01.2016, however, by way of condition precedent, they were directed to deposit an amount of Rs.22,95,415/- and Rs.25,13,922/-, respectively. The applicants could not arrange for the amounts to deposit the same and thereafter they filed separate application No.339 of 2017, for relaxation of condition. This application is also rejected by an order dated 3.5.2017.

8] Thus, the applicants are in custody since last more than 2

years. Since the chargesheet has already been filed and therefore, the custody of the applicants is not required.

9] By now it is well settled position that the direction to deposit amount as a condition precedent at the time of bail is not warranted. In this respect, reference can be made to the decision of the Apex Court in *Sheikh Ayub -vs- State of M.P. (2004) 13 SCC 457* and *Sandeep Jain -vs- National Capital Territory of Delhi (2000) 2 SCC 66*.

10] Taking totality of the facts and circumstances of the case into consideration, in our opinion, interest of justice would be subserved by relaxing the condition of depositing the amounts so far as the applicants are concerned.

11] The appeal is accordingly allowed.

12] The condition to deposit an amount of Rs.22,95,415/- and Rs.25,13,922/-, respectively, by applicants, imposed by an order dated 16.01.2016, is hereby relaxed.

[DR.SHALINI PHANSALKAR-JOSHI, J.]

[RANJIT MORE, J.]