IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

WRIT PETITION NO. 4197 OF 2016

1]	Vyomesh Shah, Age 56 years, Residing at 23-F, Dongersi Road, Walkeshwar, Mumbai – 400 006.	]
2]	Kiran Contractor, Residing at 7C/303, Spring Leaf, Lokhandwala Township, Akurli Road, Kandivli (East), Mumbai – 400 001.	]
3]	Suhass Dumbre, Residing at 2/A/1601, Dreams Complex, L.B.S.Marg, Bhandup West, Mumbai – 400 078.	] ..Petitioners.

Versus.

1]	State of Maharashtra.	]
2]	Supdt. Of Police,State CID (Kokan Bhavan)	]
3]	Dy. Supdt. Of Police, State CID (Kokan Bhavan)	] ..Respondents.

Mr. Abad Ponda, Pooja Thorat, Anukul Seth and Shridevi Kotkar i/b Fauzan Shaikh for the Petitioner.
Mr. P.P.Chavan, Spl. PP and Mr. K. V. Saste, APP for Respondent-State.

CORAM : RANJIT MORE & PRAKASH D. NAIK, JJ.
Date on which judgment reserved : October 10, 2017.
Date on which judgment pronounced: November 10, 2017.

JUDGMENT :

1. This petition is filed under Article 226 of the Constitution of India seeking declaration that (i) arrest of the Petitioners is illegal, unlawful and unwarranted, (ii) the proceedings against the Petitioners in respect of CR. No. 336 of 2015 of Dahisar Police Station are illegal. The Petitioners are also claiming relief for quashing and setting aside condition Nos. 2(i), 2(ii) and 2(iii) in the order dated 12th February 2016 passed by the learned Special Judge in CR. No. 336 of 2015 registered with Dahisar Police Station to the extent that it imposes conditions of depositing Rs.59 crore for granting bail. The Petitioners have further sought direction to the Respondents to defreeze the bank account No. 0111256053215 of Hubtown Limited maintained with Canara Bank, Santacruz (East),

2. On 20th January 2017, this petition was placed for admission before this Court. After hearing the learned Counsel appearing for the respective parties, we passed following order :

> "Having considered the rival submissions of the learned counsel and learned Special PP appearing for the respective parties and having gone through the compilation of the petition, at this stage, we find that :
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> 1. The transaction between Hubtown Ltd. and Mr.Ramesh Kadam for divesting the holding in Comral Realty Pvt. Ltd. is commercial one.

2. The amount received by Hubtown Ltd. and others was never received directly from Sahityaratna Lokshahir Annabhau Sathe Development Corporation and the same was received by cheques and/or RTGS.

3. The land admeasuring about 800 square yards situated at Bhulabhai Desai Road, bearing Cadastral Survey No.1/701 and 1/72 of Malabar and Cumballa Hill Division, situate in 'D' Ward of the Municipal Corporation of Greater Mumbai was valued at Rs.101 crores in the transaction between Hubtown Ltd. and Mr.Ramesh Kadam. Even in the charge-sheet filed by respondent No.2, the value of this property is shown to be Rs.111 crores. The application filed by respondent for attachment of the said land is pending before the Special Court and as a matter of fact, this property is already attached by Enforcement Directorate. The petitioners cannot be made to lose the property and money both.

4. The petitioners were arraigned as accused in the subject complaint for the purpose of recovery of money. Though the petitioners undertook to deposit the amount of Rs.59,00,00,000/- as a condition for bail, it is the contention of the petitioners that they were forced to make that statement when they were in police custody.

In the above circumstances, fairly arguable case is made out. We, accordingly, grant Rule. Rule is made returnable on 17th February, 2017. To be placed at the bottom of admission matters.

2. By way of interim relief, further deposits as per Condition Nos. 2(i), 2(ii) and 2(iii) of the impugned order dated 12th February, 2016, are stayed. "

. In due course, the writ petition is place before us for final hearing. Accordingly, we have heard Mr. Ponda, the learned Counsel for the Petitioner and Mr. Chavan, the learned Special PP for the

Respondent – State. We have also gone through compilation of writ petition and annexures annexed thereto as well as affidavit-in-reply and rejoinders.

3. The Crime Investigation Department of State (for short "CID") conducted an enquiry into the allegations about mis-appropriation and defalcation of funds given by the State Government to Sahityaratna Lokshahir Annabhau Sathe Development Corporation [in short "the Corporation"]. The enquiry revealed that there was misappropriation of huge funds of the Corporation to the tune of Rs.147 crore. Accordingly FIR bearing CR.No. 336 of 2015 was registered on 18th July 2015 for the offence punishable under sections 406, 408, 409, 420, 465, 467, 468, 471, 384, 120(b), 201 and 109 read with section 34 of the Indian Penal Code, 1860 and sections 7, 8, 13(1)(c) and (d) of the Prevention of Corruption Act, 1988 against one Ramesh Kadam, the then Chairman of the said Corporation and others. Mr. Ramesh Kadam and others were arrested on 17th August 2015. The charge-sheet was filed on 15th October 2015. It is the case of the prosecution that during investigation it was revealed that initially main conspiracy was hatched by accused Ramesh Kadam, Vijay Kasabe and others with dishonest intention of misappropriating and

siphoning of crores of rupees from the Corporation. Around August 2014, the present Petitioners knowingly and with common intention participated in the said conspiracy to misappropriate funds of the Corporation. The Petitioners were arrested in the said FIR on 8th February 2016 and produced before the Special Court for remand on 9th February 2016. The police remand was granted till 12th February 2016. The Petitioners preferred bail applications along with undertaking that they are ready and willing to deposit the amount of Rs.59 crore. The prosecution gave no objection to the release of the Petitioners on bail. Accordingly, the learned Special Judge by his order dated 12th February 2016 granted bail to the Petitioners on conditions that Hubtown Limited would deposit total amount of Rs. 59 crore in 12 monthly installments.

4. It is the case of the Petitioners that the only property owned by Comral Realty Private Limited was the plot of land at Peddar Road, the market value of the plot is more than Rs.120 crore. In the year 2013, in view of the huge losses, the Petitioners intended to sell this property. Once, they had received offer of 90 crore, but the transaction did not go through. Prior to last week of November 2014, they did not know Ramesh Kadam. The transaction between Comral

Realty Private Limited and Ramesh Kadam for transfer of shares of Comral Realty Private Limited is purely a commercial transaction. The Petitioners had adopted the similar procedure when they acquired Kamala Shanti Realty Private Limited. The Petitioners were arrested only to recover the amount misappropriated by Ramesh Kadam. They have no role in the offence of misappropriation, cheating, forgery committed by Ramesh Kadam. The Petitioners cannot be made to loose the land as well as money.

5. It is the stand of the State CID that main conspiracy was hatched around 2009 by group of accused, namely, Ramesh Kadam and others by first diverting the huge funds from the Corporation and routing it to Metri Sugar and Trading Company, Sutgirani, Shree Santoshi Civil Services Pvt. Ltd, etc., the dummy institutions where either Ramesh Kadam is a Chairman or his ally has control over it and then in August 2014 routed it to Hubtown Limited and Comral Realty Private Limited in which the Petitioners have control. The stand of the State CID is that transaction was suspicious for want of document to discharge the liability of Comral Realty Private Limited to the extent of Rs.59.19 crore.

6. Having heard the learned Counsel appearing for the respective parties, we find merit in the petition.

7. There is no dispute that piece of land admeasuring 800 square yards situated at Bhulabhai Desai Road, bearing cadastral survey No. 1/701 and 1/702 of Malbar and Cumballa Hill Division, prior to 2007 was owned by one Dr. Rajendra R. Singh. By the registered deed of conveyance dated 17th August 2007, said Dr. Rajendra Singh sold, transferred and conveyed his rights in the said land to Kamla Shanti Realty Private Limited for consideration of Rs.29.70 crore.

. Under the agreement for purchase of shares dated 26th March 2010, copy of which is annexed at Exhibit-B, Akruti City now known as Hubtown Limited along with others purchased the shares of Kamla Shanti Realty Pvt. Limited for Rs.15.45 lakh and the new shareholders cleared out the old liabilities of Kamla Shanti Realty Private Limited aggregating to Rs.32.72 crore by advancing loans / advances to the company – Kamla Shanti Reality Private Limited on interest basis. On acquisition of shares of said Kamla Shanti Reality Private Limited, the new shareholders (1) Hubtown Group (2) Shah group and (3) Adani Group appointed Rajendra Shah and Mayur D. Shah as the directors of Kamla Shanti Reality Private Limited. Hubtown group was 50% shareholder of the entire project. On 26th

November 2011 the name of said company was changed from Kamla Shanti Reality Private Limited to Comral Realty Private Limited.

. Over a period of time, substantial funds were pumped into Comral Realty Private Limited for the development of the project on the said land. A substantial amount of these funds were brought in by Hubtown Limited by way of advances and loan. This fact is evident in the final account of Comral Realty Private Limited which were audited and submitted to the statutory authorities, like Registrar of Companies and Income Tax Authorities. The chart given at page No. 5 of the petition deals with the amounts reflecting in the account of Comral Realty Private Limited and the annual accounts which have been duly filled at the office of Registrar of Companies and the Income Tax Authorities. This chart shows that between 2009 and 2015 an amount of Rs.67,39,31,754/- was the amount reflecting in the accounts of Comral Realty Private Limited. This was because there was interest running on this amount from March 2010 to April 2014 plus there were other expenses made like security expenses, architectural fees, construction upto plinth, approval cost and professional fees.

8. We find material on record that in September 2013, the shareholders of Hubtown Limited attempted to sell the property and

there were negotiations going on based upon a broker between Mr. Vallabh Bhansali and Mr. Rajesh Gupta and in this regard Kanga and Company, Solicitors and Advocates were involved in the negotiation process and there was an advertisement published in the Times of India and the Economic Times on 20th September 2013, inviting objections. The copy of the said advertisement is annexed at page 80. It is the case of the Petitioners that they received an offer of Rs.90 crore for the subject land. This corroborates the Petitioner's contention that they were not knowing Ramesh Kadam. Even otherwise also there is no material on record to show that prior to November 2014, the Petitioners were knowing Ramesh Kadam. We also find that the Petitioner while entering into transaction with Ramesh Kadam, followed the similar procedure which was adopted by them at the time of transfer of shares of Kamala Shanti Realty Private Limited. The value of the land arrived at was Rs.101 crore and this amount is paid to Hubtown Limited and others. Out of this amount, approximately an amount of Rs.67 crore was paid towards the liabilities and Rs.32 crore were paid towards the share value which was fixed at Rs.414/- per share.

9. It is the case of the Petitioners that in the last week of

November 2014, a broker by name Mr. Rahul Jadhav introduced Ramesh Kadam to Hubtown Limited. Ramesh Kadam claimed that he was an MLA. In fact, none of the other shareholders or other persons of Comral Realty Private Limited had met Ramesh Kadam before that. He was introduced as he was interested in taking over Comral Realty Private Limited. It was explained to him that he had to follow the same procedure of taking over Comral Realty Private Limited as was done by the existing shareholders when they had acquired Kamala Shanti Realty Private Limited. Ramesh Kadam was aware that the company had the land at Peddar Road as the only asset, based upon the current market value, value of the land was Rs.120 crore and it was agreed to sell this property at Rs.101 crore wherein the liabilities of Comral Realty Private Limited will be taken over along with other expenses. Ramesh Kadam agreed to acquire 9 lakh shares of Comral Realty Private Limited at the rate of Rs.441/- per share, aggregating to Rs.39.69 crore. The liabilities were ascertained at Rs.67.91 crore. Ramesh Kadam agreed to pay Rs.67.91 crore which included Rs.5.88 crore, which was paid towards the BMC and other expenses bringing the total amount to Rs.107 crore.

. Said Ramesh Kadam was made director of Comral Realty Private Limited and thereafter an amount of Rs.50 crore under his signature was received by way of cheque into Comral Realty Private Limited towards the clearing of old liabilities of the said company. The balance amount of Rs.17.19 crore towards clearing the other outstanding liabilities and incurring further expenses were caused to be paid into Comral Realty Private Limited periodically through RTGS by Ramesh Kadam.

. The documents on record reveal that On 4th April 2015 share-purchase agreement was entered into between Hubtown Limited and Ramesh Kadam and another agreement between Hubtown Limited and Vijay Kasabe for the sale of Hubtown's shares of Comral Realty Private Limited. Between 8th to 11th April 2015, original records were handed over to Ramesh Kadam and his company. After transfer of shares was complete, post 7th April 2015, new management of Comral Realty Private Limited under Ramesh Kadam claimed that his chartered accountant wanted the entire account entries to be transferred and maintained in an account software called Oracle. This request was accepted whereby the very same entries which were already in the Excel-sheet were transferred to the Oracle package without any kind of change in the entries or altering any figures. Last payment of Rs.39.69 lakh was received by RTGS from Vijay Kasabe on

18th May 2015 to complete the full consideration for divesting the holding of Comral Realty Private Limited.

. In the charge-sheet filed against Ramesh Kadam on 15th December 2015, he is shown as holder of Comral Realty Private Limited. The schedule at page 324 reveals that State CID has priced the open plot of land in question at Rs.111 crore when they applied to the Special Court for attachment of the said property. The schedule shows that Ramesh Kadam is holder of the property. This means that the transaction of transfer of property was accepted and complete against valuable consideration. The record shows that the property is attached by the ED and the said land is priced at Rs.110 crore. Against this, it is the case of the Petitioner that market price of the land in question at the relevant time was approximately Rs.120 crore. The record shows that when Kamala Shanti Realty Private Limited was taken over by Hubtown and others in the year 2010 there was only one document of transfer of shares and no separate document for land as an asset of the company got transferred with the shares. There was no document for taking over the liabilities. The record shows that identical procedure was followed in the current transfer of shares in a transaction between Hubtown Limited and Ramesh Kadam.

10. The entire amount of Rs.101 crore towards consideration was paid to Hubtown and other shareholders either through banking channel or RTGS. Hubtown and others already transferred the shares of Comral Realty Private Limited along with the property owned by them to Ramesh Kadam and he is shown as owner of the company. The Petitioners appears to have received the said amount towards the market price, which was fair market price of the said land at the time of transaction. The Petitioners being seller were not obliged to enquire into the source wherefrom Ramesh Kadam brought money for the said transaction.

11. It appears that Ramesh Kadam has committed various crimes and thereafter transferred the funds to his own entities, from which he has purchased the Petitioners' property. The Petitioners appears to had no knowledge about this but anyway, they have traded their commodity against these monies and given their property, shares and liabilities have been transferred.

12. Thus, in short the material on record shows that there was a plot of land admeasuring 800 square yards at Peddar Road owned by Comral Realty Private Limited. This property was acquired by

Hubtown Limited and others by purchase of shares of Kamala Shanti Realty Private Limited and the company was renamed as Comral Realty Private Limited. By an agreement to transfer shares, the ownership / control of Comral Realty Private Limited was transferred to Ramesh Kadam and Vijay Kasabe. The entire property was transferred through banking channel. The value of the shares was commensurate with the fair market value of the property. The property at Peddar Road was earlier in the year 2010 acquired by Hubtown Limited and others. In the similar fashion it has been transferred to Ramesh Kadam. We see no illegality in the manner of transfer of shares of Comral Realty Private Limited.

13. It is not the case of prosecution that the Petitioners before us and their company has undertaken this isolated transaction. The record reveals that the Petitioners as well as Hubtown Limited were into the business of real estate for many years and there were attempts made to sell the property at Peddar Road on earlier occasions. The reliance is placed on the advertisements issued in Times of India and the Economic Times issued by Kanga & Company. We are, therefore, not inclined to believe that the Petitioners have hatched a conspiracy with common intention to cheat the Corporation

or to misappropriate its funds. From the record before us it does not appear at this stage that the Petitioners had knowledge about the motives or intentions of Ramesh Kadam and his allies. The Petitioner seem to be only unfortunate victims of the circumstances as it is apparent that they have entered into pure commercial transaction, which is valid and legal in the eyes of law and not benami or illegal transaction as alleged.

14. We also find merit in the contention of the Petitioners that they were arrested only to recover the amount of Rs.59 crore, as according to the investigating agency this transaction is not supported by any document. This is evident from the fact that the Petitioners were co-operating in the investigation of subject crime. They diligently remained present whenever they were called by the Investigating Officer and were ultimately arrested on 8th February 2016 and thereafter prosecution obtained police custody of the Petitioners till 12th February 2016. On 12th February 2016, the investigating agency gave no objection to release the Petitioner on bail as soon as they showed willingness to deposit the amount of Rs.59 crore. These facts show that the Petitioners were not arrested for the investigation purpose but only to recover the money. Otherwise there is no reason

for the investigating agency to give no objection for the Petitioners' release on bail when they the Petitioners produced before the Court for further remand.

15. It is well settled law that while granting bail though the Court may impose such conditions as it thinks fit but the object of putting conditions should be to avoid the possibility of the person hampering investigation. The discretion of the Court while putting conditions should be in exercise of judicial discretion. In an the offence under sections 409 and 420 of IPC, the Court is certainly not going to recover the alleged amount as a condition to granting of bail. In other words, Courts are expected to put reasonable conditions in exercise of judicial discretion and such conditions should be aimed at securing the presence of the accused at the time of trial and he should not hamper the evidence or prosecution witnesses during pendency of trial. The Court is not expected to recover the amount in a criminal proceedings by putting condition to deposit money while granting bail. In this regard, reference can be made to Apex Court decisions in *Sandeep Jain vs. National Capital Territory of Delhi*[1], *Shyam Singh vs. State through CBI*[2] and *Sheikh Ayub vs. State of M.P*[3].

1 (2000) 2 SCC 66.
2 (2006) 9 SCC 169.
3 (2004) 13 SCC 457.

16. The learned Counsel for the Respondents relied upon the decision of the learned Single Judge of this Court in the matter of *Jamnaben H. Shah vs. Smt. Manjulaben*[4] to contend that the Petitioners having voluntarily given undertaking to deposit the amount, now cannot resile. We have gone through the said decision. Perusal of the decision shows that the contempt proceedings were initiated against the Respondent-tenant for breach of an undertaking to vacate the suit premises. The learned Single Judge observed that undertaking is a solemn promise made by the party to the Court and once such promise has been made to the Court and on the faith of such promise, the Court sanctions a particular course of action or inaction, such parties are bound to observe or comply with such undertaking. The facts of the present case and the case before the learned Single Judge are clearly distinguishable. In the present case when the undertaking was given by the Petitioners to deposit the said amount, they were in the custody of State CID. The fact that once Petitioners furnished the undertaking, State CID gave no objection to release them on bail substantiates the Petitioner's contention in this regard. It appears that in fact the Petitioners were arrested for the purpose of recovery of money which was paid to them by Ramesh

4 [1997] 4 BomCR 65.

Kadam towards a commercial transaction for sale of Comral Realty Private Limited along with property owned by it.

17. In the above facts and circumstances, it appears that arrest of the Petitioners was not necessary and the conditions of bail are excessive, which are hereby quashed and set aside. We direct the Respondents and Registrar of Sessions Court to return to the Petitioners the monies deposited by them along with interest accrued thereon. Since the property in question has been attached both by the concerned Sessions Court as well as by the Directorate of Enforcement, we find that no purpose would be served by keeping the bank account of the Petitioners freezed. Accordingly, the Respondents are directed to de-freeze the bank account of the Petitioners.

18. Rule is made absolute in above terms.

19. Before parting with this order, we must make note that Petitioner No.1, the Managing Director of Hubtown Limited has filed an affidavit cum undertaking on 1st August 2017 that in the event of the Petitioners being found guilty in a case arising out of the subject crime pending in the Sessions Court, Mumbai and being called upon to deposit a sum of Rs.59 crore, which is the disputed amount and the

subject matter of the current writ petition, then Hubtown Limited shall pay the same. By way of abundant precaution, we are accepting this undertaking.

20. It is clarified that observations made hereinabove are made to support the present order and trial Court shall not be influenced by any of those observations at the time of trial of Special Case No. 12 of 2017, and same shall be disposed of independently on its merit.

[PRAKASH D. NAIK, J.] **[RANJIT MORE, J.]**