

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

CRIMINAL APPLICATION NO. 349 OF 2018

Sujeet Shankar Pandit

....Applicant

V/s.

The State of Maharashtra

....Respondent

Mr. Kedar J. Patil for the applicant.

Mr. S.R. Agarkar, APP for the State.

CORAM: SMT. ANUJA PRABHUDESSAI, J.

DATED: 23rd OCTOBER, 2018.

P.C.:

. This is an application for modification of condition no.3 imposed by the learned Additional Sessions Judge, Ichalkaranji while granting bail to the applicant vide order dated 30/06/2018 in Criminal Bail Application No.143/2018.

2. Heard Mr. Kedar Patil, learned counsel for the applicant and Mr. S.R. Agarkar, APP for the State. I have perused the records and considered the submissions advanced by the learned counsels for the respective parties.

3. The records reveals that the applicant was arrested in

C.R.No.269/2016 registered at Hatkanangale Police Station, Kolhapur for offences punishable under section 406, 420, 467, 468, 471, 472, 477(a) r/w. 34 of the Indian Penal Code and under section 65 of Information Technology Act. The applicant had filed the application under section 439 of Criminal Procedure Code being Criminal Bail Application No.143/2018 before Additional Sessions Judge, Ichalkaranji. The learned Additional Sessions Judge allowed the said application and ordered the applicant to be released on bail on following conditions :-

“ (1) On his furnishing P.R. & S.B. of Rs.30,000/- with one solvent surety in like amount or two sureties of Rs.15,000/- each in like amount.

(2) Applicant shall deposit the amount of Rs.5 lac.

(3) Applicant shall furnish bank surety of Rs.10 lac for the period of two years.

(4) Condition of bail be complied before the Trial Court. ”

4. The challenge in the present application is to the condition no.3 whereby the applicant herein has been directed to furnish bank surety of Rs.10 lacs for a period of two years. The short question for my consideration is whether it was within the jurisdiction of the Additional Sessions Judge to impose a condition to deposit Rs.10 lacs.

5. It may be mentioned that the Apex Court in the case of ***Sumit Mehta v/s. State (NCT of Delhi) (2013) 15 SCC 570***. The Apex Court after considering the several previous judgments in ***Gurbaksh Singh Sibbia v/s. State of Punjab (1980) 2 SCC 565***; ***Amarjit Singh v/s. State (NCT of Delhi) (2009) 13 SCC 769***, ***Sk. Ayub v/s. State of M.P. (2004) 13 SCC 457*** has observed thus :-

“12) The law presumes an accused to be innocent till his guilt is proved. As a presumably innocent person, he is entitled to all the fundamental rights including the right to liberty guaranteed under Article 21 of the Constitution.

13) We also clarify that while granting anticipatory bail, the Courts are expected to consider and keep in mind the nature and gravity of accusation, antecedents of the applicant, namely, about his previous involvement in such offence and the possibility of the applicant to flee from justice. It is also the duty of the Court to ascertain whether accusation has been made with the object of injuring or humiliating him by having him so arrested. It is needless to mention that the Courts are duty bound to impose appropriate conditions as provided under sub-section (2) of Section 438 of the Code.

14) Thus, in the case on hand, fixed deposit of Rs. 1,00,00,000/- for a period of six months in the name of the complainant and to keep the FDR with the investigating officer as a condition precedent for grant of anticipatory bail is evidently onerous and

unreasonable. It must be remembered that the Court has not even come to the conclusion whether the allegations made are true or not which can only be ascertained after completion of trial. Certainly, in no words are we suggesting that the power to impose a condition of this nature is totally excluded, even in cases of cheating, electricity pilferage, white-collar crimes or chit fund scams etc.

15) The words “any condition” used in the provision should not be regarded as conferring absolute power on a Court of law to impose any condition that it chooses to impose. Any condition has to be interpreted as a reasonable condition acceptable in the facts permissible in the circumstance and effective in the pragmatic sense and should not defeat the order of grant of bail. We are of the view that the present facts and circumstances of the case do not warrant such extreme condition to be imposed. ”

6. Similarly, in **Vyomesh Shah & Ors. V/s. State of Maharashtra in Writ Petition No.4197 of 2016**, the Division Bench of this Court has held thus :-

“ 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 CBI² and Sheikh Ayub vs. State of M.P.³ 1 (2000) 2 SCC 66. ”

7. In the light of aforesaid principles, in my considered view, the learned Sessions Judge was not justified in imposing the said condition. It is seen that despite the order of bail, the applicant is still in custody as he has not been able to comply with the condition no.3. It is thus evident that the applicant has been deprived of his personal liberty due to such onerous condition.

8. Under the circumstances, the Application is allowed. The condition no.3 of the order dated 30/06/2018 in Criminal Bail Application No.143/2018 whereby the learned Additional Sessions Judge, Ichalkaranji is directed to furnish bank surety of Rs.10 lacs for a period of two years is hereby set aside.

(SMT. ANUJA PRABHUDESSAI, J.)