

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

**CRIMINAL APPLICATION NO. 272 OF 2018
with
APPP/943/2018 IN APPLN/272/2018**

Mr. Rajendrasinh Sopanrao Suryavanshi ..Applicant

v/s.

The State of Maharashtra . ..Respondents

Mr. Balwant V. Salunkhe for the Applicant.

Mr. A.D.Kamkhedkar, APP for the State.

P.N. Auti Police Constable, Pandharpur P.Stn. Present.

Mr. Purshottam Chavan for the Intervenor in APPP/943/2018.

**CORAM : ANUJA PRABHUDESSAI,J.
DATED : OCTOBER 10, 2018.**

P.C.

1. By the present application the applicant has sought following reliefs:

(a) The Hon'ble Court may pass appropriate orders and relax /modify the condition of depositing the amount of Rs.50,00,000/- as second installment and amount of Rs.50,00,000/- as third installment as imposed upon the applicant by Ld. Sessions Court, Pandharpur by order dated 20/1/2018 in Criminal Application No. 646/2017.

(b) Pending the hearing and final disposal of this application this Honble Court be pleased to stay the condition of depositing the amount of Rs.50,00,000/- as second installment and amount of Rs.50,00,000/- as third installment as imposed upon by the Ld. Sessions Court, Pandharpur by order dated 20/1/2018 in Criminal Application No. 646/2017.

2. Heard Mr. Salunkhe, the learned Counsel for the applicant and Shri Kamkhedkar, the learned APP for the State. I have perused the records and considered the submissions advanced by the learned Counsel for the respective parties .

3. The records reveal that the applicant was arrested in Crime No. 312 of 2017 registered at Pandharpur City Police station for the offences under Section 420, 465, 467, 469, 471, 34 of the Indian Penal Code.

4. The applicant had filed application for bail being Criminal Bail Application No. 646 of 2017. The learned Addl. Sessions Judge, Pandharpur allowed the said application on following terms :

“(ii) Accused Rajendrasinha Sopanrao Suryavanshi, is

directed to deposit Rs.50,00,000/- (Rs. Fifty Lakhs Only) in the Bank of Maharashtra, Branch Pandharpur, as earliest so that he may get benefit of subsequent conditions of bail.

(iii) After depositing the said amount of Rs.50,00,000/- he is directed to deposit next installment of Rs.50,00,000/- within three months from the date of first deposit.

(iv) He is further directed to deposit Rs.50,00,000.- (Rs. Fifty Lakhs only) within a period of six months, from the date of second installment.

(v) All amount deposited, will remain as a security, till trial of the case, with the Bank of Maharashtra, Branch Pandharpur.

(vi) While depositing first installment of Rs.50,00,000/- he is directed to furnish P.R. and Solvent Surety of Rs.25,00,000/- before the Magistrate concerned, before whom charge-sheet is filed.

(vii) He shall not tamper with the prosecution evidence and shall attend regularly Magistrate Court before whom charge-sheet is filed.

(viii) Failure of complying aforesaid conditions will automatically stand bail cancelled.”

5. 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.1,50,00,000/-. In this regard, the learned Counsel for the applicant has relied upon the decision of the Apex Court in ***Sumit Mehta vs. State (NCT of Delhi) (2013) 15 SCC 570***. The Apex Court after considering the several previous judgments in ***Gurbaksh Singh Sibbia v. State of Punjab (1980) 2 SCC 565***; ***Amarjit Singh vs. State (NCT of Delhi) (2009) 13 SCC 769***, ***State Ayub vs. 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. In *Vyomesh Shah & Ors. Vs. 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 offence under Sections 409 and 420 of IPC, the Court is certainly not going to recover the alleged amount as a condition of

granting of bail. In other words, Courts are expected to put reasonable conditons 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, Shyam Singh vs. State through CBI and Sheikh Ayub vs. Stae of M.P.”

7. The principles laid down in the aforesaid decisions are squarely applicable to the facts of the present case. In the instant case, the question whether the applicant has misappropriated the amount or not and or has committed the alleged offence is a matter of trial. Hence the learned Judge could not have treated the proceedings as recovery proceeding and directed the applicant to deposit the amount of Rs.1.5 Crores as a condition of bail. Furthermore, it is seen that the learned Judge has directed the applicant to furnish P.R. Bond to the tune of Rs.25 lakhs. Needless to state that the condition is onerous, unreasonable and amounts to denial of bail. Such condition defeats the very object of bail. In the facts and circumstances, the

said condition cannot be sustained.

6. In the light of above, the application is granted in terms of prayer clauses (a) and (b);

(ii) the aforesaid conditions at serial nos. (ii), (iii), (iv) and (v) are set aside.

. The application stands disposed of in above terms.

7. In view of disposal of this application, Application for intervention being Criminal Application No.943 of 2018 does not survive and stands disposed of accordingly.

(ANUJA PRABHUDESSAI, J.)