

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO. 2330 OF 2018

Dharamendra Hasmukh Sanghvi

....Petitioner.

Vs.

The Senior Inspector of Police & Anr.

....Respondents.

Mr. Mathew Nedumpara i/by C.J. Joveson for the Petitioner.

Mr. Ameet Palkar APP, for the Respondent-State.

CORAM : A. S. GADKARI, J.

DATE : 29th JUNE, 2018.

P.C.:-

The present Petition is filed by the wife of the Petitioner, Dharmendra Sanghavi an accused in CR No. I-312 of 2017 registered with Nalasopara Police Station, District Thane under Section 420 of the Indian Penal Code, thereby challenging one of the condition for grant of bail i.e. to deposit an amount of Rs.7,50,000/- in the Court, imposed upon him by the learned Additional Sessions Judge-I, Vasai by its order dated 8th May, 2018 in Bail Application No. 337 of 2018.

In pursuance of the Order dated 26th June, 2018, the present Petition has been re-affirmed by the accused Dharmendra Sanghavi before the concerned authority of Taloja Central Prison, Navi

Mumbai.

2 Heard Shri Nedumpara, the learned counsel for the Petitioner and Shri. Palkar the learned APP for the Respondents. Perused the record.

3 The Petitioner is an accused in CR No. I-312 of 2017 registered with Nalasopara Police Station, District Thane for an offence punishable under Section 420 of the IPC.

 The allegation against the Petitioner in brief is that, the Petitioner is a partner of M/s. Sai Shakti Enterprises. The first informant approached the Petitioner with the help of her friend, with a view to purchase a flat in a building constructed by the Petitioner. The Petitioner showed her flat No.5 in C-Wing of 'Sai Plaza' building. The informant agreed to purchase the said flat for a total consideration of Rs.13,21,000/- plus registration and society charges of Rs.1,50,000/- extra. The first informant from time to time paid total sum of Rs.9,50,000/- towards the purchase of the said flat. That, the Petitioner sold the said flat/room to another person and thereafter promised to sale another flat No. 203 in 'Ganesh Building' to the informant. In the month of May, the first informant and her husband visited the accused and it came to their knowledge that the Petitioner

had sold the said flat to another person. The first informant, therefore, realized that she was deceived by the Petitioner. She therefore, asked her money back. The Petitioner returned Rs.2,00,000/- to her from time to time, however, did not pay the balance amount of Rs.7,50,000/- to her. The first informant realized that her hard-earned money has been defalcated by the Petitioner and therefore she lodged the present crime.

4 The record further indicates that, the Petitioner moved an Application under Section 437 of the Code of Criminal Procedure for bail, which came to be rejected by the learned Judicial Magistrate, First Class-IV, Vasai by its order dated 21st April, 2018. The Petitioner, thereafter preferred Criminal Bail Application No. 337 of 2018 in the Court of Additional Sessions Judge-I, Vasai. The learned Additional Sessions Judge, by the impugned Order dated 8th May, 2018 was pleased to grant bail to the Petitioner on his execution of personal bond of Rs.25,000/- with one or two solvent sureties in the like amount, with other conditions. The condition No.1 imposed upon the Petitioner is that, the Petitioner shall deposit an amount of Rs.7,50,000/- immediately in the said Court. As stated earlier, the said condition is challenged by the Petitioner herein.

5 Mr. Nedumpara, the learned counsel appearing for the Petitioner submitted that, imposition of such a condition by the learned Additional Sessions Judge, amounts to passing of a decree in a Suit without adjudication. He further submitted that, once the Court grants bail to the accused, the Court cannot impose any such condition which makes the accused incapable of compliance thereby making the grant of bail illusory. He further submitted that, either the Court grants bail or rejects it, but, once the bail is granted, the Court cannot impose such strict, harsh and onerous conditions, which are difficult in nature for its compliance. He submitted that, it is well settled principle of law that, bail is a rule and jail is an exception. In support of his contentions, he relied on the decisions of the Hon'ble Supreme Court namely- (i) Nikesh T. Shah Vs. Union of India & Anr. Dated 23rd November, 2017 in Writ Petition (Criminal) No. 67 of 2017; (ii) Gudikanti Narasimhulu & Ors. Vs. Public Prosecutor, High Court of Andhra Pradesh, reported in (1978) 1 SCC 240; (iii) Moti Ram and Ors. Vs. State of Madhya Pradesh, reeported in (1978) 4 SCC 47 and; (iv) Dataram Singh Vs. State of Uttar Pradesh & Anr. reported in (2018) 3 SCC 22.

Mr. Nedumpara, then submitted that the Petitioner is

unable to deposit the said amount in the Court, as he is behind the bars. He submitted that, the said condition is onerous one. He further submitted that, if this Court is not inclined to delete/waive the said condition from the impugned Order dated 8th May, 2018, it may be suitably modified so as to enable the Petitioner to comply with the same.

6 Mr. Palkar, the learned APP opposed the Petition and submitted that the Petitioner has been charged with a defalcation of a sum of Rs.7,50,000/- of a gullible woman, hailing from the economically middle class strata of the Society. He submitted that, the condition imposed upon the Petitioner is reasonable and needs no variation. The learned APP however, fairly submitted that in view of the facts of the present case, this Court may pass appropriate orders in the interest of justice.

7 It is to be noted here that, by now, it is the settled position of law that, economic offences constitute a class apart and need to be visited with a different approach in the matter of bail.

8 As noted earlier, it is the allegation against the Petitioner that he has defalcated a sum of Rs.7,50,000/- of the informant, who hails from economically middle class strata of the Society. It appears

that, with a view to have assurance of securing the said defalcated amount, the learned Additional Sessions Judge has imposed the said condition and according to me, imposition of such condition is not bad in law and is just and proper. However, in view of the profused pleadings by Shri Nedumpara, the learned counsel thereby submitting that it is difficult for the Petitioner to comply with the said condition, this Court is of the view that the quantum of amount imposed upon the Petitioner can be reduced by half in the interest of justice and the Petitioner can be directed to deposit a sum of Rs.3,75,000/- in the Registry of the Court of Additional Sessions Judge-I, Vasai as a condition for bail.

9 In view of the above, the said condition is hereby modified and the Petitioner is directed to deposit a sum of Rs.3,75,000/- in the Registry of the Court of Additional Sessions Judge-I, Vasai.

10 The Petition is allowed in the aforesaid terms.

(A.S. GADKARI, J.)