

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPEAL NO. 123 OF 2018**

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**Annasaheb Kalidas Dadhe } Appellant
 versus
The State of Maharashtra } Respondent**

Mr. Gaurav Parkar for the appellant.

Ms. M. H. Mhatre-APP for State.

**CORAM :- S. C. DHARMADHIKARI &
 PRAKASH. D. NAIK, JJ.**

DATED :- MARCH 21, 2018

P.C. :-

1. Since short point is involved and both sides are before us,
we proceed to admit this appeal.
2. Hence Admit.
3. Paper book dispensed with. With the consent of both sides,
we dispose of this appeal by the present order.
4. This appeal is brought by the appellant seeking to challenge
only that part of the order of the learned Sessions Judge, by
which, according to him, an onerous and excessive condition has

been imposed while enlarging him on bail. The order dated 16th January, 2016 has been passed below Exhibit-1 in Criminal Bail Application No. 677 of 2015.

5. An application seeking bail was preferred by the present appellant-applicant no. 3 in the court of Sessions, Solapur. It is stated that on 6th June, 2015, the Additional Commissioner, Social Welfare Department, Solapur filed a First Information Report (FIR) at Sadar Bazar Police Station against a office servant in the office of the said Commissioner alleging that he was working as technical assistant and helper to Mestek Company and his family members and associates committed misappropriation of scholarship given by the Social Welfare Department. The amount was earmarked for backward class students. The allegations are that those who were appointed for rendering on-line services and disbursement of amounts did not credit them in the bank account of the backward class students. Thus, there is a misappropriation of these amounts and because the public servants are involved, the offences alleged are punishable not only under the Indian Penal Code, 1860, but under section 13(1)(c) of the Prevention of Corruption Act, 1988 and because the amounts were legitimately payable to the backward class students, an offence of atrocity, punishable under the

Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 has also been committed.

6. The applicant was one of the three accused, who sought bail in such a criminal case. The application for bail was placed before the learned Sessions Judge and after hearing both sides, the learned Judge allowed the application. In releasing the applicants before it, the learned Sessions Judge, Solapur, in the order dated 16th January, 2016 was pleased to observe that the investigations are over, the documents have been seized by the police and the physical custody of the applicants is no longer required. Further, the applicants appear to be permanent residents at the addresses set out by them. However, during the course of the arguments, a statement was made by the appellants'/applicants' advocate, on instructions, that either the applicants and/or their relatives are ready to deposit an equivalent amount and which was credited in the accounts of the individual applicant without prejudice to their rights of refund in the event the applicants are not held guilty of the crime. It is stated that one Suraj Mahadeo Mali made some statements before this court and that is why he was enlarged on bail. Further, this is a case of alleged misappropriation of Government/public money. The extent of the amounts, which are misappropriated, is

huge, according to the learned Judge. It was thus a fraud in the tune of Rs.4,81,99,595/-. There are about 58 accused in all. In these circumstances, the present appellant-applicant no. 3 was released on bail, but with the impugned condition. The impugned condition reads as under:-

“(c) Applicant No. 3 or his relatives to deposit an amount of Rs.52,12,614/- (Rs. Fifty Two Lakhs, Twelve 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 Nationalized Bank initially for one year, to be renewed there after from time to time.”

7. The learned advocate submitted before us that an application was made before the Sessions Judge for modification of this condition. It was stated that these applicants are the sole earning members in their family. They are arrested from June, 2015. Due to poor financial condition, they are unable to deposit the diverse amounts. It is in these circumstances they sought modification of this condition imposed on them. This application is also rejected by order dated 3rd May, 2017. That order is also impugned before us. The learned Judge was influenced to a great extent by the contents of the FIR and the observations of the Sessions Judge while considering the request for release on bail. In the light of these observations and further an order imposing several conditions passed by this court, the additional Sessions

Judge-IV was of the view that there is no need to modify this condition, much less delete it. The learned Judge opined that considering the huge public money involved and the materials on record indicating that the applicants have received the amounts from the Government Department, the condition imposed is just, fair and reasonable. These are economic offences and ruining the economy of the country. In these circumstances, the application for modification was rejected.

8. However, the learned counsel appearing for the appellant before us brought to our notice an order dated 20th November, 2017 passed by this court in Criminal Appeal No. 933 of 2017 deleting similar condition imposed on accused Balaji Shivaji Devkar and others, who are the applicants/accused in the same crime. This court, after referring to a landmark decision of the Hon'ble Supreme Court held that a direction to deposit an amount as condition precedent at the time of bail is not warranted. In any event, the condition imposed in this case is *ex-facie* unreasonable. It is onerous and excessive and incapable of being complied with by the appellant given his financial condition.

9. Following this court's order in the above Criminal Appeal No. 933 of 2017 decided on 20th November, 2017, we grant the request of the present appellant-applicant for deletion of this

condition. This condition shall stand deleted from the order dated 16th January, 2016. The amount, therefore, shall not be deposited and the condition is relaxed. The appeal is allowed accordingly.

(PRAKASH.D.NAIK, J.)

(S.C.DHARMADHIKARI, J.)