

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

CRIMINAL BAIL APPLICATION NO.1171 OF 2019

Mahendra Krushnarao Gamare
Aged 56 Years, Occ : Service;
R/at C/202, Shrikar Society,
Haridwar Complex, Badlapur(W),
Taluka Ambernath, Dist.Thane.
(Presently lodged at Taloja Central Prison,
Navi Mumbai)

... Applicant

Versus

The State of Maharashtra

... Respondent

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Mr. Nilesh R. Pandey a/w Gajanan A. Sangle a/w Mr. Sameer Vispute
i/b. Equa Juris, Advocates for the Applicant.

Mr. A. R. Kapadnis, APP for the Respondent – State.

Mr. Arun Gholap, A. P. I. Bazarpeth Police Station, Kalyan.

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CORAM : PRAKASH D. NAIK, J.

DATE : 16th DECEMBER, 2020.

PER COURT:

1. The applicant was arrested on 4th October, 2018, in connection with C.R. No.I-162 of 2018 registered with Bazarpeth Police Station, Kalyan for offence punishable under Section 420 r/w Section 34 of Indian Penal Code.

2. The prosecution case is that the complainant was given false assurance of government service at CHM college for the post of clerk. The complainant parted an amount of Rs.4,00,000/- through R.T.G.S. into account of accused No.1. However, the assurance was

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not fulfilled. During investigation statement of several victims were recorded and it was revealed that they were cheated to the tune of Rs.1,10,57,000/-. The applicant had acted in connivance with accused No.1. Rs.50,000/- were transferred into the bank account of the applicant by accused No.1. The applicant played vital role in cheating victims. On completing investigation, charge-sheet was filed.

3. The applicant was also arrested in another case registered with Bazarpeth Police Station, vide C.R. No. I-167 of 2018 for similar offence.

4. Learned advocate for the applicant submitted that the applicant is in custody from 4th October, 2018. The offence under Section 420 is at the most punishable with imprisonment upto Seven years. The applicant has undergone jail custody of Two years. The offence is triable by the Court of Magistrate. The allegation that huge amount was parted to the applicant is not supported by any evidence. It is submitted that the applicant has filed undertaking dated 6th August, 2020 in this Court stating that as per the allegations, the sum of Rs.35,00,000/- was allegedly misappropriated by the applicant in connection with both offences registered vide C.R. No.I-162 of 2018 and C.R.No.I-167 of 2018. Without prejudice to his right and defence, the applicant is willing to deposit the said amount. It is further submitted that the applicant had deposited the

amount of Rs.5,00,000/- in the registry of this Court in terms of order dated 13th August, 2020. The applicant would deposit the balance amount of Rs.30,00,000/- within stipulated period.

5. Learned APP opposed the application for bail. It is submitted that several persons were cheated by the accused. He disputed that only an amount of Rs.35,00,000/- is allegedly attributed to the applicant. He has received more than Rs.35,00,000/-.

6. On 30th July, 2020 this application came up for hearing, learned counsel for the applicant on instructions had submitted that the applicant shall deposit Rs.5,00,000/- and balance amount within Two months thereafter before this Court. The statement was accepted. It was further submitted that, the applicant shall forward separate undertaking to that effect. The Superintendent of Taloja Central Prison was directed to permit the applicant to forward such undertaking. The application subsequently came up for hearing on 13th August, 2020. It was submitted on behalf of the applicant that, he is ready and willing to deposit the amount. In order dated 13th August, 2018, the Court referred to order dated 30th July, 2020. It was observed that, learned APP submitted that the applicant had not abided by his undertaking and not deposited the amount. The total amount with which the applicant is charged is an amount of Rs.35,00,000/- which is not disputed by learned APP. The order

further records the submission of learned counsel for the applicant that, he undertake to deposit the amount of Rs.5,00,000/- and that he would make an arrangement for the balance amount after he is released on bail. The application was then listed on 25th September, 2020. Vide order dated 25th September, 2020 this Court observed that, in terms of order dated 13th August, 2020, learned counsel for the applicant had submitted that he had deposited amount of Rs.5,00,000/- in the registry of this Court. The statement was accepted. Applicant has filed undertaking in September, 2020 and undertook to pay balance amount of Rs.30,00,000/-. However, the said undertaking is not before the Court. For verification the application was adjourned to 7th December, 2020. It is not disputed that Rs.5,00,000/- were deposited by the applicant in the registry of this Court. On 14th December, 2020 the application was again listed for hearing. This Court referred to the fact that the amount of Rs.5,00,000/- is deposited in this Court and that the affidavit-cum-undertaking dated 6th August, 2020, mentions that, alleged liability of the applicant in relation to Two cases is in the sum of Rs.35,00,000/-.

7. Learned APP, however contended that, the amount involved is more than Rs.35,00,000/-. It is pertinent to note that in the previous hearing, the prosecution had not disputed the liability of the applicant to the extent of Rs.35,00,000/-. Which fact has been

recorded in the previous order passed by this Court. The prosecution could not pointed out any authenticate material to show that the applicant had received the amount is more than Rs.35,00,000/-. The contention of the applicant is that, in fact the amount is less than Rs.35,00,000/- but to show his bonafides. He had agreed to deposit the said amount. It is also contended that the amount of Rs.35,00,000/- is in respect to both the cases. The applicant is also in custody in respect to another case vide C.R. No. I-167 of 2018 registered with Bazarpeth Police Station. It would be open to the applicant to satisfy the Court while adjudicating the application for bail in connection with another case registered against him vide C.R. No.I-167 of 2018 that his total liability in both cases is allegedly Rs.35,00,000/-. Considering the fact that, the applicant is in jail for a period of about Two years and in view of undertaking to deposit the amount, the applicant can be granted to the bail. Hence, I pass the following order :-

ORDER

- (i) Bail Application No.1171 of 2019 is allowed;
- (ii) The applicant is directed to be released on bail in connection with C.R. No.I-162 of 2018 registered with Bazarpeth Police Station, Kalyan, on executing P.R. Bond in the sum of Rs.30,000/-, with one or more sureties in the like amount;

(iii) The applicant shall deposit the amount of Rs.30,00,000/- before the trial Court within a period of Two months from the date of release.

(iv) The applicant shall report concerned Police Station once in a month on first Saturday of the month between 11:00 a.m. to 1:00 p.m. till further order;

(v) The trial Court shall deal with the amount deposited by applicant in this Court and trial Court in the trial in accordance with law.

(vi) Application stands disposed of accordingly.

8. This order will be digitally signed by the Private Secretary/Personal Assistant of this Court. All concerned will act on production by fax or email of a digitally signed copy of this order.

(PRAKASH D. NAIK, J.)