

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

CRIMINAL BAIL APPLICATION NO. 3220 OF 2019

1. Balan Florea Cristinel	
2. Lazar Alin Cristi &	
3. Irimia Dragos Ionut	... Applicants
Vs.	
The State Of Maharashtra	... Respondent

Mr.Kalpnaath Hiralal Giri a/w. Ms.D. Shah, Mr.Shivam Dubey and Mr.Rajkumar Mishra and Mr.Gaurav Borse for Applicants.
Mr.A.R. Kapadnis, APP for Respondent-State.

CORAM : A.S. GADKARI, J.
DATE : 3rd March 2020.

PC. :

1] This is a successive application for bail.

The earlier application for bail preferred by the applicant bearing Criminal Bail Application No. 2461 of 2018 was dismissed as withdrawn with liberty to file a fresh application for bail before the Trial Court if the trial arising out of C.R. No. 595 of 2017 registered with Chaturshringi Police Station, Pune (City), under Sections 419, 420, 468, 471, 474, 477 read with 34 of the Indian Penal Code, 1860 and under Sections 43(A), 66, 66(C), 66(D) of the Information and Technology Act, 2000, now culminated into R.C.C. No. 1281 of 2018, pending on the file of Judicial Magistrate, First Class, 9th Court, Pune, does not conclude within one year from the date of passing of the said Order.

2] The applicants thereafter filed an application below Exhibit-30 before the Trial Court for bail under Section 437 (6) of the Criminal Procedure Code. The prosecution opposed the said application on the ground that, the applicants are citizens of country 'Romania' and have come to India on tourist Visa. If the applicants are released on bail, they may abscond and will not be available for trial. The prosecution also contended that, the offence alleged against the applicants is an economic offence and therefore also, the applicants may not be released on bail. The Trial Court by its Order dated 30th January 2019 rejected the said application.

 In the premise, the applicants have filed the present bail application under Section 439 of Cr.PC. for non compliance of Section 437(6) of Cr.PC.

3] Mr.Giri, learned counsel for the applicants submitted that, though this Court has dismissed the earlier application preferred by the applicants as withdrawn, the applicants are entitled to be released on bail, if the mandate of law as contemplated under Section 437(6) of Cr.PC. is not complied with, i.e. if in any case triable by a Magistrate, the trial of a person accused of any non-bailable offence is not concluded within a period of sixty days from the first date fixed for taking evidence in the case, such person shall, if he is in custody during the whole of the said period, be released on bail to the satisfaction of the Magistrate, unless for reasons to be recorded in writing, the Magistrate otherwise directs.

In support of his contention, Mr.Giri, learned counsel for the applicants relied upon the following decisions of this Court.

- (i) *Gajanan Prabhakar Mapari Vs. State of Maharashtra, reported in 2018 DGLS (Bom.) 300.*
- (ii) *Amit Anand Pai Raikar Vs. State of Goa & Another, reported in 2016 (2) Bom. C.R. (Cri.) 186.*
- (iii) *Tarkeshwar Goraknath Pandey Vs. State of Maharashtra, reported in 2012(1) Bom. C.R. (Cri.) 569.*
- (iv) *Balya @ Bhalchandra Anandrao Madavi Vs. State, reported in 2012 BCI 373.*
- (v) *Khemlo Sakharam Sawant Vs. State, reported in 2002(1) Bom. C.R. 689.*

He further submitted that, while deciding an application under Section 439 of Cr.P.C., the Sessions Court or the High Court should take into consideration the mandate of law for bail under Section 437 of Cr.P.C., which is applicable to a case triable by Magistrate and the same cannot be ignored by the High Court or by the Sessions Court. In support of his contention, he relied on the observations of the Hon'ble Supreme Court in the case of *Gurucharan Singh & Others Vs. State (Delhi Administration), reported in AIR 1978 S.C. 179(1) : 1978 Cri.L.J. 129*, and in particular in para No. 14 thereof.

Mr.Giri, the learned counsel further submitted that, in the present case, the applicants are arrested on 19th December 2017 and on 9th March 2018 the Investigating Agency has filed charge-sheet. Charge is framed on 6th October 2018 and on 19th October 2018, the evidence of PW-1 was partly

recorded by the Trial Court. In view thereof, according to him, Section 437 (6) of Cr.P.C. is applicable to the present case and the applicants are entitled to be released on bail. He therefore submitted that, the present application may be allowed and the applicants may be released on bail.

4] At the outset, it is to be noted here that, except the fact that, the applicants are in jail, even as of today, after rejection of their earlier application for bail under Section 439 of Cr.P.C. by this Court by its Order dated 12th December 2018, there is no material or substantive change in circumstances which can prevail upon this Court to release the applicants on bail.

5] At the further outset, it is to be noted here that, out of five decisions cited by the learned counsel for the applicants and noted above, except in the decision of *Amit Anand Pai Raikar (supra)*, in the other four decisions, the decision of the Hon'ble Supreme Court in the case of *Gurucharansingh (supra)* has not been taken into consideration and therefore, according to me, the said four decisions are *per incurium* to the said decision of the Hon'ble Supreme Court. It is to be further noted here that, the facts involved in the case of *Amit Anand Pai Raikar (supra)* are different than the case in hand and therefore, the said decision is not applicable to the present case.

6] It is to be noted here that, the Hon'ble Supreme Court in the aforestated case of *Gurucharansingh (supra)*, in para Nos.20 and 21, has categorically held that, the principle underline 437 is therefore towards

granting of bail except in cases where there appears to be reasonable ground for believing that the accused has been guilty of an offence punishable with death or imprisonment for life and there are other valid reasons to justify the refusal of bail. It is further held that, Section 437 of Cr.P.C. is concerned only with the Court of Magistrate. It expressly excluded the High Court and the Court of Sessions. While analyzing the provisions of Section 437(1) and 437(7) of Cr.P.C., the Hon'ble Supreme Court has held that, there is a noticeable trend in the said provisions of law that even in case of such non-bailable offences a person need not be detained in custody for any period more than it is absolutely necessary, if there are no reasonable grounds for believing that he is guilty of such an offence. In view thereof, it is clear that the applicants as a matter of right cannot claim bail under Section 437 of Cr.P.C..

7] The Constitution Bench of the Hon'ble Supreme Court in the case of *Gurubksh Singh Sibba & Ors. Vs. State of Punjab* reported in (1980) 2 SCC 565, has held that, the larger interest of the public or State is also to be taken into consideration while granting bail to the accused. While dealing with the inter relation of Section 437 and 439 of Cr.P.C., the Supreme Court has held that, the Judges have to decide the case as it come before them and on the basis of facts involved in each case.

8] In this case, the applicants are foreign national and are ordinary residence of country 'Romania'. They have come to India on Tourist Visa. It is the allegation against the applicants that, they have cloned ATM Cards with the

help of skimmer and withdrew huge amounts from ATM Machines and several persons have been cheated by adopting the said *modus-operandi*.

9] The offence alleged against the applicants is relating to tampering of our banking system and it is a Cyber Crime. A perusal of charge-sheet would indicate that, there is more than sufficient material to show the clear complicity of the applicants in the present crime. The prosecution in its say filed before the Trial Court has categorically stated that, if the applicants are released on bail, they may abscond and will not be available for trial. As noted earlier, trial of the present case has already begun. In view of the above, this Court is of the considered view that, the applicants do not deserve to be released on bail.

10] Since the applicants are in jail from 19th December 2017, the learned Judicial Magistrate 9th Court, Pune, seized of RCC No. 1281 of 2018 arising out of CR. No. 595 of 2017 registered with Chaturshrungi Police Station, Pune (City) is hereby directed to expedite the said trial and as far as possible to conduct it on day-to-day basis.

11] Application is rejected with the aforesaid directions.

[A.S. GADKARI, J.]

Omkar S.
Kumbhakarn
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