

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

BAIL APPLICATION NO. 282 OF 2021

Nitin s/o Rayabhan Bhavar

Applicant

Versus

The State of Maharashtra

Respondent

Mr. V.D. Sapkal, Senior Counsel instructed by Mr. S.R. Sapkal,
Advocate for the applicant.

Mr. S.P. Sonpawale, APP for respondent/State.

Mr. M.D. Shinde, Advocate for the informant.

CORAM : M.G. Sewlikar, J.

RESERVED ON : 25th August, 2021.

PRONOUNCED ON : 8th September, 2021.

PER COURT :

1. This is an application under Section 439 of the Code of Criminal Procedure for releasing the applicant on bail in connection with Crime No. 18/2020 registered with CIDCO Police Station, Dist. Aurangabad, for the offences punishable under Sections 406, 420, 467, 468, 471, 120(B), read with Section 34 of the Indian Penal Code and Sections 3 and 4 of Maharashtra Protection of Interest of Depositors (in Financial Establishment) Act, 1999.

2. Prosecution case in nutshell is that informant Sharad Kisanrao Gawali is an Architect having his office at 103, E Wing, Kailas Arcade, Cannaught Place, Aurangabad. Applicant is an Advocate by profession and has his office adjacent to the office of the informant. Informant and applicant are friends for last 8 to 9 years. Accused Abhijeet Pansare, resident of Nasik, is the relative of the applicant. Accused Abhijeet Pansare claims himself to be a Scientist. In the month of July 2016, applicant represented the informant that accused Abhijeet Pansare had undertaken a big project and applicant had invested some amount in the said project and got good returns from accused Abhijeet Pansare. It is also the case of the prosecution that in the month of September 2016, applicant, accused Abhijeet, mother and sister of accused Abhijeet, met the informant in his office at Aurangabad. That day, accused Abhijeet represented informant that accused Abhijeet is running a business of electric products and work of manufacturing Radium Radioactive Coil Reactor is in progress. Accused Abhijeet made representation that there was an agreement between him and NASA (Nuclear & Atomic Science Laboratory). Accused Abhijeet also showed him some documents such as purchase order No. NAL/08/16/25526 dated 25th August, 2016, in favour of M/s Science Kudos for supply of Radium

Radioactive Coil Reactor for an amount of Rs. 75 Million Dollars i.e. Rs. 4,81,12,51,400/- in Indian currency. Accused Abhijeet also represented that huge amount was required for completion of the said project but accused Abhijeet did not have the required finance. Several persons have invested in the said project but that amount was not sufficient to meet the expenditure of the said project. Accused Abhijeet also promised informant that in case the informant invests an amount of Rs. 2,50,00,000/-, he would pay Rs.25,00,00,000/- within a year. Informant was not having so much amount but considering the scheme, he thought of investing the amount.

3. Accordingly, on 20th October, 2016, informant, his friends and relatives, 14 in number, paid Rs. 30,00,000/- in cash to accused Abhijeet at Aurangabad. On 21st November, 2016, again informant and his friends and relatives, 16 in number, paid an amount of Rs. 40,00,000/- to accused Abhijeet at Aurangabad. Again on 5th March, 2017, Abhishek Gujrathi and his nine friends paid Rs.20,00,000/- to accused Abhijeet at Aurangabad. On 6th April, 2017, informant and 14 others paid an amount of Rs.30,00,000/- in cash to accused Abhijeet. On 18th June, 2017, informant and 22 others paid an

amount of Rs. 50,00,000/- to accused Abhijeet at Aurangabad. On 10th August, 2017, informant and 17 others paid Rs. 40,00,000/- to accused Abhijeet at Aurangabad. On 12th October, 2017, informant and 17 others paid Rs. 40,00,000/- in cash to the accused at Aurangabad. While making all these payments, it is alleged that applicant was with accused Abhijeet Pansare.

4. It is also prosecution case that after expiry of one year of initial investment, informant demanded returns of his investment on 20th October, 2017. Despite making repeated demand, neither the accused nor applicant paid any amount with regard to the investment made by the informant, his friends and relatives. Lastly, accused Abhijeet on 14th November, 2017, issued five cheques of Rs.50,00,000/- each drawn on HDFC Bank, Nasik, in favour of the informant. Those cheques were dishonoured. Again on 31st March, 2018, accused Abhijeet issued six cheques of Rs. 50,00,000/- each in favour of the informant but those were also dishonoured. Therefore, on 23rd July, 2018, informant issued legal notice for demand of money to accused Abhijeet. On 31st August, 2018, notarised agreement was executed between accused Abhijeet and the informant wherein accused Abhijeet admitted responsibility to pay the amount. On 21st

September, 2018, accused Abhijeet again issued four cheques of Rs.80,00,000/- each in favour of the informant. Those cheques were also dishonoured. Thereafter again on 28th December, 2018, accused Abhijeet issued cheque of Rs. 50,00,000/- in favour of the informant but the same was also dishonoured. Again on 26th February, 2019, notarised document was executed between accused Abhijeet and the informant wherein accused Abhijeet admitted his responsibility to pay the amount. On 26th February, 2019, accused Abhijeet issued three cheques of Rs. 3,20,00,000/- in favour of the informant but those were also dishonoured. Informant realised that accused Abhijeet had cheated him and others and the applicant was also involved in the same. On these allegations, First Information Report was lodged in CIDCO Police Station, Aurangabad, on 9th January, 2020, on the basis of which, offence came to be registered under the aforesaid sections.

5. Heard Shri V.D. Sapkal, learned Senior Counsel for the applicant, Shri Sonpawale, learned APP for the State and Shri M.D. Shinde, learned counsel for the informant.

6. Shri Sapkal submitted that the applicant is an Advocate.

He submitted that applicant has no concern with Science Kudos partnership firm. The tenor of the First Information Report shows that dispute is between the informant and accused Abhijeet Pansare. According to Shri Sapkal, First Information Report came to be lodged after inordinate delay of three years. In terms of the First Information Report, amount was paid to accused Abhijeet during the period from 20th October, 2016 to 12th October, 2017. After 12th October, 2017, informant and the alleged investors started demanding refund of the amount. He submitted that from the entire First Information Report, the role of the applicant cannot be discerned. From the First Information Report, the only role which the applicant has played is that the amount was paid in his presence. Nothing is brought on record by the prosecution to indicate that applicant had promised the informant or other investors. Entire investigation does not show that applicant is the beneficiary of any amount. Informant did not pay any amount to the applicant. Applicant has no connection with the business of accused Abhijeet. At the instance of the informant, various agreements were executed by accused Abhijeet for return of amount, to which, applicant is not a party. He further submitted that Reserve Bank of India had issued Notification dated 8th November, 2016, stating that because of demonitisation, currency

notes of Rs. 500/- and Rs. 1000/- were withdrawn from circulation. In that case, it is not made clear, as to how such a huge amount was raised by the informant and other investors. He submitted that there was an agreement dated 31st August, 2018 between accused Abhijeet and informant for repayment of amount by accused Abhijeet to informant. However, applicant is not a party to this agreement. He further submitted that another agreement dated 26th February, 2019 was executed between accused Abhijeet and informant to which also applicant was not a party. This agreement shows that applicant is not a beneficiary nor applicant is a signatory to this agreement. He further stated that accused Abhijeet had given memorandum in which he has specifically stated that he himself had prepared forged document indicating that he had entered into an agreement with NASA. Applicant has no concern with Science Kudos. He further stated that accused Abhijeet had made online application to get licence under Maharashtra Shops and Establishment Act, 1948. It shows that applicant was not a partner of Science Kudos. Earlier to that, registration certificate under Maharashtra Shops and Establishment Act shows that applicant and Roshan Rajendra Karpe are shown as partners of Science Kudos. This document has an endorsement "validity unknown". He submitted that this clearly

shows that there is a remark on this certificate that validity of the signature is not known. Shri Sapkal further argued that this shows that this document was not a valid document. He further submitted that no document is produced on record to show that applicant was the partner of Science Kudos. As per prosecution case, one Roshan Rajendra Karpe is also a partner of Science Kudos but he is not an accused. If really the transaction had been for and on behalf of the firm, said Roshan Rajendra Karpe would also have been an accused. This clearly shows that the entire transaction was done not in the name of partnership firm but in the name of accused Abhijeet individually. He submitted that applicant himself had paid Rs. 3,00,000/- to accused Abhijeet. This clearly shows that applicant is also a victim. Applicant is in custody since November 2020. Applicant does not have criminal antecedents. He submitted that the documents are voluminous and the trial is not likely to commence in near future. Applicant cannot be detained for an indefinite period of time. He, therefore, prayed for release of the applicant.

7. He placed reliance on judgments in the matter of Sanjay Chandra Vs. Central Bureau of Investigation reported in AIR 2012 Supreme Court 830, P. Chidambaram Vs. Central Bureau of

Investigation reported in AIR 2019 Supreme Court 5272 and Manoranjana Sinh alias Gupta Vs. Central Bureau of Investigation reported in AIR 2017 Supreme Court 769.

8. Learned APP and Shri Shinde, learned counsel for the informant submitted that the applicant is equally involved in this offence. They submitted that accused Abhijeet Pansare had misrepresented one of the investors that he was a Deputy Commissioner of Police and the applicant remained silent. Applicant is the relative of accused Abhijeet. Entire amount was paid in the presence of the applicant. They further submitted that applicant is the partner of Science Kudos. It is an unregistered partnership firm. In the house search panchanama of accused Abhijeet, document of dissolution of partnership firm of applicant, Roshan Rajendra Karpe and accused Abhijeet was seized. This clearly indicates that accused Abhijeet, Roshan Karpe and the applicant had formed partnership firm. They further submitted that there are statements of witnesses indicating that applicant represented that accused Abhijeet is a Scientist and he has got project of NASA. They further submitted that statement of Advocate Godsay, resident of Nasik, has been recorded which shows that Advocate Godsay had notarised

partnership deed of Science Kudos between accused Abhijeet, applicant and Roshan Rajendra Karpe. They submitted that applicant claims that he is also a victim as he had deposited amount of Rs. 3,00,000/- with accused Abhijeet. However, income tax returns of applicant do not show that this much amount was invested by applicant with accused Abhijeet. They submitted that applicant is equally guilty as is accused Abhijeet. Therefore, applicant does not deserve to be enlarged on bail.

9. Charge-sheet has been filed. Applicant claims that he has no concern with Science Kudos. It is true that partnership deed has not been seized. However, there is evidence to show that applicant was the partner of Science Kudos. Prosecution has recorded statement of Advocate Godsay. As per his statement, it appears that this partnership deed was presented before him for notarisation. He notarised the said document. He made entry in the register on 12th September, 2016, at serial No. 953. Description of deed is shown to be partnership. Name of partners are shown to be Abhijeet Vijay Pansare, Nitin Bhawar i.e. applicant and Roshan Rajendra Karpe. This shows that there was a partnership between accused Abhijeet, applicant and Roshan Rajendra Karpe. Therefore,

evidence collected by prosecution shows that there was a partnership firm between applicant, Roshan Karpe and accused Abhijeet.

10. Culpability of applicant is evident from statement of Rajesh Thadani, owner of a flat in Surat Bahar Cooperative Housing Society, Kulaba, Mumbai. Applicant and accused Abhijeet had been to witness Rajesh Thadani. Accused Abhijeet represented himself to be an IPS officer and was posted at Nasik as DCP and applicant represented himself to be an Advocate practising at Aurangabad High Court and Legal Advisor of Shirdi Saibaba Sansthan. Allegations in the First Information Report show that accused Abhijeet is a Scientist and applicant had also represented that accused Abhijeet is a Scientist. Applicant was aware that accused Abhijeet was misrepresenting himself to be an IPS Officer. Still the applicant did not disassociated himself from accused Abhijeet Pansare. Had applicant and accused Abhijeet not ill-intentions, applicant would have disassociated with accused Abhijeet then and there only. This clearly shows culpability of applicant in the offence alleged against him.

11. Statements of witnesses I.e.Dilip Shinde, Pawan Bairagi,

Mahesh Jadhav, Mangesh Dev and others show that informant had taken these persons and other witnesses to the applicant. Applicant stated that accused Abhijeet is his relative and is a Scientist and he had got a project from NASA and that if investment is made in this project, the witnesses would get good returns. On his representation, informant and other witnesses paid an amount of more than Two Crores. If applicant had no concern with Science Kudos or if applicant had no concern with the project which accused Abhijeet had allegedly undertaken, he would not have canvassed the scheme before the informant and these witnesses.

12. Now, coming to the argument of applicant being a victim. According to applicant he had paid Rs. 3,00,000/- to accused Abhijeet. Applicant has produced account statement of accused Abhijeet. It shows that amount of Rs. 3,00,000/- was paid on 22nd February, 2017, amount of Rs. 2,00,000/- was paid on 3rd September, 2017 and amount of Rs. 1,00,000/- was paid on 7th September, 2017. However, these are not the only transactions which the applicant and accused Abhijeet had. Account statement shows that amount of Rs. 1,00,000/- was paid by applicant to Accused Abhijeet on 8th October, 2017, as handloan. An amount of Rs. 8,00,000/- was paid on 11th

May, 2018 by applicant to accused Abhijeet. Again, an amount of Rs.1,00,000/- was aid by applicant to accused Abhijeet on 20th October, 2018. This clearly shows that these were not only two transactions between applicant and accused Abhijeet. There are other transactions also. Therefore, it is difficult to accept that applicant himself had deposited amount of Rs. 3,00,000/- with accused Abhijeet.

13. In the case of P Chidambaram (supra) the Honourable Supreme Court has observed as under :-

“22. The jurisdiction to grant bail has to be exercised on the basis of well-settled principles having regard to the facts and circumstances of each case. The following factors are to be taken into consideration while considering an application for bail : (i) the nature of accusation and the severity of the punishment in the case of conviction and the nature of the materials relied upon by the prosecution; (ii) reasonable apprehension of tampering with the witnesses or apprehension of threat to the complainant or the witnesses; (iii) reasonable possibility of securing the presence of the accused at the time of trial or the likelihood of his abscondence; (iv) character behaviour and standing of the accused and the circumstances which are peculiar to the accused; (v) larger interest of the public or the State and similar other considerations (vide Pralhad Singh Bhati v. NCT, Delhi and another (2001) 4 SCC 280) : (AIR 2001 SC 1444). There is no hard and fast rule regarding grant or refusal to grant bail.

Each case has to be considered on the facts and circumstances of each case and on its own merits. The discretion of the court has to be exercised judiciously and not in an arbitrary manner. At this stage itself, it is necessary for us to indicate that we are unable to accept the contention of the learned Solicitor General that “flight risk” of economic offenders should be looked at as a national phenomenon and be dealt with in that manner merely because certain other offenders have flown out of the country. The same cannot, in our view, be put in a straight-jacket formula so as to deny bail to the one who is before the Court, due to the conduct of other offenders, if the person under consideration is otherwise entitled to bail on the merits of his own case. Hence, in our view, such consideration including as to “flight risk” is to be made on individual basis being uninfluenced by the unconnected cases, more so, when the personal liberty is involved.

14. Having regard to this, there is prima facie evidence against the applicant. Applicant induced informant and other investors to deposit amount in the alleged NASA project. Because of inducement of applicant, informant and others parted a huge amount of more than 2 Crores. In view of this, I am not inclined to release the applicant on bail. Hence application is rejected.

(M. G. SEWLIKAR)
Judge

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO. 843 OF 2021 IN
BAIL APPLICATION NO. 282 OF 2021

Sharad Kisanrao Gawali

Applicant

Versus

The State of Maharashtra & another

Respondents

Mr. M.D. Shinde, Advocate for the applicant.

Mr. S.P. Sonpawale, APP for respondent/State.

Mr. V.D. Sapkal, Senior Counsel instructed by Mr. S.R. Sapkal,
Advocate for the informant.

CORAM : M.G. Sewlikar, J.

DATE : 25th August, 2021.

PER COURT :

Application is allowed.

(M. G. SEWLIKAR)
Judge

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