

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

BAIL APPLICATION NO.672 OF 2021

RIZWAN MOHAMMAD CHAMAN

VERSUS

THE STATE OF MAHARASHTRA

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Mr. Satej S. Jadhav, Advocate h/f Mr. Chaitanya C. Deshpande, Advocate for
the applicant

Mr. A.M. Phule, APP for the respondent

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CORAM : SMT. VIBHA KANKANWADI, J.

DATE : 29th OCTOBER, 2021.

PER COURT :

1 Present applicant came to be arrested in connection with Crime No.434/2019 registered with Jinsi Police Station, for the offence punishable under Section 420, 406, 120-B of the Indian Penal Code, 1860 and under Section 3 and 4 of the Maharashtra Protection of Interest of Depositors (in Financial Establishments) Act, 1999. Present application has been filed under Section 439 of the Code of Criminal Procedure, 1973.

2 Heard learned Advocate Mr. Satej S. Jadhav holding for learned Advocate Mr. Chaitanya C. Deshpande for the applicant and learned APP Mr.

A.M. Phule for the respondent.

3 It has been vehemently submitted by learned Advocate Mr. Satej S. Jadhav holding for learned Advocate Mr. Chaitanya C. Deshpande for the applicant that one Pathan Anwar Khan Ismail Khan had lodged said report on 22.11.2019 contending that he was induced by the present applicant to invest his amount in Evergreen Business Solution (OPC) Pvt. Ltd. and had promised to double the amount within a certain period. Perusal of the First Information Report would show that he contends that time and again he has made transfers of funds/amounts in the account of the said company through net banking. He also says that he had received certain amount from the applicant. He then says that he had transferred certain amount in the account of the present applicant kept with Axis Bank, in the name of the wife of present applicant in various banks, of which account number was provided by them. It has been stated in the FIR that till 13.11.2018 he had received amount of Rs.3,00,000/-. However, thereafter when he did not receive any amount, he had made inquiry and came to know that he has been cheated. Therefore, for establishing an offence under Section 420 of the Indian Penal Code when cheating since inception is the main criterion or ingredient that itself is absent. Now, the investigation is over and charge sheet is filed before the Special Judge vide Special Case No.161/2020. Therefore, further physical custody of the applicant is no longer required. There is another

offence registered against the present applicant with Jaipur Police Station in the State of Rajasthan, however, he has been released on bail. Photo copy of the order dated 01.06.2020 passed by the Special Judge (fake currency cases) and Additional District and Sessions Judge, Jaipur city has been produced and made available. It has been alleged that the present applicant has received the amount of Rs.1,43,69,500/-. Ingredients of Section 406 of the Indian Penal Code have not been made out. Now, there is settlement between the informant and the applicant as well as other investors. Affidavit in support of the prayer for regular bail filed by them was produced before learned Special Judge, Aurangabad. The wife of the present applicant was made as an accused No.2 and she has also been released on bail, in view of the said settlement. Under such circumstance, the applicant deserves to be released on bail. Further, if we see the chronology of transactions those have been given, it says that the transactions took place in the month of August, 2018 to December, 2018. But still for about a year there was no grievance made by the informant stating that he has been cheated. All the necessary documents are with the police and in the form of charge sheet they have been produced on record.

4 This is the second bail application before this Court. His earlier Bail Application No.544 of 2020 was rejected by this Court on 19.03.2021. It has been then contended that even after the decision by this Court the

compromise has taken place and certain payments have been made. There was an application for withdrawal of the amount, which was seized by the Investigating Officer by the present informant before the Sessions Judge, however, it has not been allowed. Today, the applicant has given Demand Drafts, four in number, of Rs.5,00,000/- each, to the informant and the informant has passed receipt about the receipt of the same. It has been contended by the applicant that due to financial constraints he could not repay the amount. The applicant is praying for bail with additional ground of medical ground, on account of the ill health of his wife. The original medical papers are shown. It appears that the applicant's wife, who is a co-accused, got herself checked on 06.10.2021 and her reports give following impression.

IMPRESSION :

- * Few phleboliths noted on the right side of the pelvis.
- * No hydronephrosis. No nephrolithiasis or ureterolithiasis noted.
- * Along the lateral margin of the right rectus abdominis muscle in the right iliac fossa, there is suggestion of herniation of the omental fat into the subcutaneous plane-Spligellian hernia

There is minimal fat stranding of omentum noted in the Spigelian hernia indicative of recent inflammation.

She has undergone operation for hernia on 07.10.2021 and it is

stated that she is required to undergo dialysis. Taking into consideration the said fact and being the husband the applicant should be with her, the applicant prays for bail.

5 Per contra, the learned APP Mr. A.M. Phule strongly opposed the application and relied on the reasons given for rejection of the application given by this Court in the earlier order. He also relied on the observations made in para No.4 of the earlier order which contained the contents of the affidavit-in-reply by the Police Inspector attached to Jinsi Police Station, Aurangabad. It was further submitted that the applicant was absconding for a considerable time after the registration of the crime till his arrest on 11.01.2020 and if he is released on bail, then the possibility of he getting abscond once again cannot be ruled out. The settlement will not be a ground for bail. Though the original informant has received the amount of Rs.20,00,000/- by way of Demand Drafts today, that cannot be the ground for releasing the applicant on bail.

6 This Court in the earlier order dated 19.03.2021 has taken a note of the legal position as well as the facts. In the First Information Report the informant had stated that he had parted with amount of Rs.1,43,69,500/- and it was also stated that his friend Ahmed Khan Yakub Khan was cheated for Rs.2,70,000/-. It appears that after the statement of witnesses were

recorded, the said amount had gone up to Rs.1,49,17,750/-. Though it was tried to be submitted on behalf of the applicant that Section 3 and 4 of the M.P.I.D. Act will not be admitted, this Court was of the opinion that the prima facie case is required to be considered, taking into consideration the contents of the First Information Report and the statements of the witnesses. Definitely, the settlement between the parties, that is, return of amount by the applicant to the persons from whom that amount was taken cannot be taken as a mitigating circumstance, as such, per se. But, at the same time, we cannot forget that in such cases since the hard earned money of the people would get stuck up and they will not be able to utilize their own amount and in certain cases the situation would be that the daily needs of the people will not be mitigated if such amount is not returned and, therefore, that fact can be taken in addition to the other circumstances. Therefore, when it has come on record that the other witnesses have received their amount and now the informant is getting amount of Rs.20,00,000/- by way of Demand Drafts and also the fact that the investigating agency has seized amount of Rs.30,00,000/-, which would still be pending with the Special Court for its disposal till the decision of the case, it is one of the factors, that is, taken into consideration, apart from the medical ground.

7 The medical papers of the wife of the present applicant, who is co-accused in the matter, show that she is suffering from various diseases.

She is required to undergo dialysis. She has already undergone the operation in the hernia. Under such circumstance, being the husband, the applicant has to take care of the wife. Therefore, this change in the circumstances would prompt grant of bail to the applicant. However, stringent conditions are required to be imposed on him. Hence, following order.

ORDER

1 Application stands allowed.

2 Applicant Rizwan Mohammad Chaman, who has been arrested in connection with Crime No.434/2019 registered with Jinsi Police Station, for the offence punishable under Section 420, 406, 120-B of the Indian Penal Code, 1860 and under Section 3 and 4 of the Maharashtra Protection of Interest of Depositors (in Financial Establishments) Act, 1999, be released on P.R. of Rs.25,00,000/- (Rupees Twenty Five Lacs only) with two solvent sureties of Rs.50,000/- (Rupees Fifty Thousand).

3 It is stated that the applicant would be residing at Chitradurg in Karnataka State. He should attend the office of Police Commissioner/District Superintendent of Police, Chitradurg, on every Monday between 11.00 a.m. to 02.00 p.m.

4 Applicant is not permitted to leave the city limits of Chitradurg

(Karnataka State) except for attending Court proceedings in Aurangabad as well as in Jaipur (Rajasthan).

5 He shall not try to influence the witnesses in any manner or tamper with the evidence of the prosecution in any other manner.

6 He shall not indulge in any criminal activity.

7 If he commits any breach of above terms of bail, the prosecution is at liberty to move the Trial Court under Section 439(2) of the Code of Criminal Procedure for cancellation of bail.

8 Bail before Special Court.

9 Parties to act on authenticated copy.

(Smt. Vibha Kankanwadi, J.)

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