

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

**BAIL APPLICATION NO. 1101 OF 2021
WITH
CRIMINAL APPLICATION NO. 2274 OF 2021**

Saurabh @ Bajirao Sunil Kakade
Age : 35 years, Occupation : - Service,
R/o. Near Surajban Society,
Junawane School, Pune City Pune. ... APPLICANT

VERSUS

The State of Maharashtra
Through Police Inspector
Dhule Taluka Police Station, Dhule ... RESPONDENT

Shri. Gaurav L. Deshpande, Advocate for the applicant
Shri. S. D. Ghayal, APP for the respondent/State
Shri. S. J. Salunke, Advocate for respondent in Criminal
Application No. 2274 of 2021

CORAM	: M. G. SEWLIKAR, J.
RESERVED ON	: 04 th December, 2021
PRONOUNCED ON	: 17 th December, 2021

ORDER :

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. 100 of 2021 registered with Dhule Taluka Police Station, Dist. Dhule for the

offences punishable under Sections 406, 420, 464, 476, 468, 471, 506, 120-B of the Indian Penal Code.

2. Facts in brief are that the informant is an engineer and a reputed builder in District Dhule. He runs a business named and styled Padmashree Builders.

3. Rajendra Yashwant Bhamre is an Estate Agent. Informant has cordial relations with the said Rajendra Yashwant Bhamre. Saif Alim Aaga, Archana Umesh Kale, Samil Jakir Shaikh are the directors of Samrudhi Pathshala Pvt. Ltd. These directors along with applicant Saurabh @ Bajirao Sunil Kakade, Mithilesh Harish Kanojiya, Sunny Nanasaheb Waghchaure @ Nana, Sanjay Gujar @ Buntty, Priti Soni, Dinesh Arjun Kamble, Anamika Deore and Durgesh Pawar had been to Dhule on 5th August, 2020 for inspection of Block No. 11/7 situated at Dhule. These persons inspected Block No. 11/7 and approved it for construction.

4. On 7th August, 2020 Rajendra Yashwant

Bhamre approached the informant and asked the informant to prepare a project report along with plans as the applicant and above named persons wanted to make construction for starting courses of ICSE and CBSE on Block No. 11/7. Informant prepared the project and the plans and give it to Rajendra Yashwant Bhamre. Rajendra Yashwant Bhamre showed this project and plans to applicant Saurabh @ Bajirao Sunil Kakade. But applicant Saurabh @ Bajirao Sunil Kakade refused to give contract of construction to Rajendra Yashwant Bhamre as Rajendra Yashwant Bhamre did not have requisite license. Rajendra Yashwant Bhamre approached the informant and asked him to undertake this project as informant had requisite license for construction. Rajendra Yashwant Bhamre also mentioned to the informant that for getting this project Rs.1,50,00,000/- will have to be given to the above named people of Samrudhi Pathshala. On 20th August, 2020 a big ceremony of Bhumi Pujan was held at Raver, Tal. Dist. Dhule by these people of Samrudhi Pathshala. At that time informant was introduced to the above named persons by Rajendra

Yashwant Bhamre. The above named persons lured the informant demonstrating the said project to be very attractive.

5. On 21st August, 2020 Rajendra Yashwant Bhamre mentioned to the informant that for getting this project in partnership amount of Rs.1,50,00000/- will have to be paid to Saurabh Kakade-applicant. Informant collected Rs.50,00,000/- and at the instance of Saurbh Kakade- informant and Rajendra Yashwant Bhamre went to Pune in the office of Samrudhi Pathshala Pvt. Ltd.

6. On 24th August, 2020 informant along with cash of Rs.50,00,000/- accompanied by Rajendra Yashwant Bhamre, Bhura Rajaram Hake and Chetan Bhura Hake went to Pune. Applicant called Rajendra Yashwant Bhamre and the informant to his office at 11.00 a.m. When informant and Rajendra Yashwant Bhamre reached the office of Saurabh Kakade an amount of Rs.50,00,000/- was paid to the applicant by the informant. At that time the above named persons were

present there. An agreement for construction was entered into. Thereafter cheque of Rs.17,50,00,000/- was given to the applicant in the presence of Rajendra Yashwant Bhamre, Bhura Rajaram Hake, Chetan Bhura Hake and Rahul Ravindra Suryawanshi. Informant deposited this cheque in his account. This cheque was dishonoured on the ground of stoppage of payment. Informant demanded Rs.17,50,00,000/- from the above named persons but the informant was told that Durgesh Pawar the financier had not paid the amount till date. The informant contacted Durgesh Pawar but to no avail. Thereafter, informant demanded Rs.50,00,000/- from the applicant and above named persons and cash of Rs.3,00,000/- deposited in the account of Dinesh Arjun Kamble for development of the plot. Rs.10,00,000/- spent by Rajendra Yashwant Bhamre on the day of Bhumi Pujan and for lodging and boarding charges of these above named persons. Thus, the total amount demanded was Rs.1,14,62,750/-. The applicant and other persons refused to give the amount. Therefore, the informant lodged this complaint against the applicant.

7. Heard Shri. Deshpande for the applicant, learned APP Shri. Ghayal for the respondent State and learned counsel Shri. Salunke for the informant.

8. Learned counsel Shri. Deshpande submitted that the applicant has no concern with Samrudhi Pathshala Pvt. Ltd. He is neither director nor office bearer of the said Samrudhi Pathshala Pvt. Ltd. He submitted that the directors are Saif Alim Aaga, Archana Umesh Kale, Samil Jakir Shaikh. There is no evidence to show that informant had paid Rs.50,00,000/- to the applicant. Statements of interested witnesses are recorded to show that amount was paid to applicant. He further submitted that cheque book, project report and other documents were not recovered from the applicant. The record shows that the Dhule Police approached Police Station, Pune and sought permission of investigation. This application was filed on 12th May, 2021 at 5.14 p.m. and the seizure panchnama was prepared on 12th May, 2021 between 4.15 p.m. and 5.15 p.m. He submitted that the record shows that application for permission was filed at 5.14

p.m. and panchnama was over at 5.15 p.m. He submitted that this shows that the entire record is fabricated. He submitted that this shows that panchnama was over when application before permission could be filed. He submitted that from this record it is clear that the panchnama was prepared without visiting the spot. He submitted that one of the criminal complaints is a private complaint under Section 323 of the Indian Penal Code. In CR No. 410 of 2019 he has been released on bail. In CR No. 530 of 2019 Sinhgad Police Station applicant has already been released on default bail under Section 167(2) of the Code of Criminal Procedure. He submitted that applicant has been framed in this offence despite having no concern with Samrudhi Pathshala Pvt. Ltd. He submitted that the agreement does not bear his signature. Agreement shows that contract will not be given to the applicant for the reasons mentioned in the application. He has, therefore, prayed for releasing the applicant on bail.

9. Learned counsel Shri. Deshpande for the

applicant placed reliance on following authorities.

(i) Kushalbhai Ratanbhai Rohit & Ors. Versus The State of Gujarat in Special Leave Petition (Cri.) No. 453 of 2014 decided on 6th May, 2014.

(ii) P. Chidambaram Versus Central Bureau of Investigation, (2020)13 Supreme Court Cases 337.

(iii) Sheila Sebastian Versus R. Jawaharaj and Another (2018) 7 Supreme Court Cases 581.

(iv) Prabhakar Tewari Versus State of Uttar Pradesh and Another (2020) 11 Supreme Court Cases 648.

(v) Mitesh Kumar J. Sha Versus The State of Karnataka & Ors in Criminal Appeal No. 1285 of 2021 decided on 26th October, 2021.

10. Learned APP Shri. Ghayal submitted that applicant may not be a director but he is the mastermind behind this offence. He submitted that there is evidence against the applicant indicating that applicant is the whole and sole of Samrudhi Pathshala Pvt. Ltd. If applicant had no concern with Samrudhi Pathshala Pvt. Ltd., there was no reason to remain present for Bhumi Pujan held on 20th August, 2020. He further submitted that there are statements of witnesses who had accompanied the informant indicating that amount of

Rs.50,00,000/- was paid by the informant to the applicant. According to him cheque book has been seized from the applicant. Similarly gift deed, correction in gift deed, agreement, project report were seized from the applicant from his office in Viman Nagar, Sakore Nagar, Pune. These documents have been seized from the applicant. He submitted that applicant was arrested from West Bengal. He further submitted that applicant has duped to informant on the pretext of giving contract of building. He, therefore, submitted that application is devoid of any merit.

11. Perused the papers annexed with the application and copy of the charge-sheet. From the perusal of the papers and copy of the charge-sheet it appears that applicant is nowhere named as director or as an office bearer. But according to the witnesses and the informant he was present with other directors and the other office bearers. From the statement of Rajendra Yashwant Bhamre it is evident that applicant along with other directors had been to Dhule to inspect land Block

No. 11/7. He was present at the time of Bhumi Pujan. Statement of witness Rajendra Yashwant Bhamre shows that applicant had said that Bhumi Pujan would be done by financier Durgesh Pawar. His statement further shows that project report prepared by the informant was tendered by Rajendra Yashwant Bhamre to the applicant in the office of Samrudhi Pathshala Pvt. Ltd. This shows that on record he may not be a director or any office bearer but he is the one who is at the helm of affairs.

12. It is the prosecution case that informant had paid Rs.50,00,000/- to the applicant for getting contract of construction of project of IBSE, CBSE, ICSE. Informant has alleged that the said amount was paid to the applicant. Statement of Rajendra Yashwant Bhamre shows that on 24th August, 2020 informant, Bhura Rajaram Hake, Rahul Ravindra Suryawanshi and he went to Pune. On 25th August, 2020 witness Rajendra Yashwant Bhamre telephonically contacted the applicant. They asked them to meet at 11 a.m. The informant paid Rs.50,00,000/- to the applicant. The statements of Bhura

Rajaram Hake, Chetan Hake, Rahul Ravindra Suryawanshi show that amount of Rs.50,00,000/- was paid by the informant to the applicant.

13. Statement of witness Rajendra Yashwant Bhamre shows that at the time of Bhumi Pujan he had spent Rs.10,00,000/- from his own pocket. He had paid the lodging and boarding charges of the applicant and other accused for their stay on 19th August, 2020 and 20th August, 2020. When this amount was demanded by the informant applicant refused to pay the amount. In this manner applicant has deceived the informant.

14. Applicant has given memorandum on 11th May, 2021 that he would produce original gift deed, corrected gift deed, construction agreement, project paper, cheque book were kept in the cabin of his office and he would produce it. Accordingly he led the police to his office in Sakore Nagar and produced a cheque book of Samrudhi Pathshala Pvt. Ltd, gift deed, amended gift deed, agreement, project report and other documents. Learned

counsel Shri. Deshpande submits that letter dated 12th May, 2021 was produced before the Vimantal Police Station for providing police constables for taking search of the office of the applicant. This letter was received by the Vimantal Police Station, Pune on 12th May, 2021 at 17.14 means 5.14 p.m. The said letter bears an endorsement about a station diary entry. Only on perusing the station diary entry, it will be clear whether this letter was produced at 5.14 p.m.

15. In the case of ***P. Chidambaram Versus Central Bureau of Investigation*** (Cited Supra) it has been held as under :-

"21. The jurisdiction to grant bail has to be exercised on the basis of the well-settled principles having regard to the facts and circumstances to 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."

16. In the case of ***Prabhakar Tewari Versus State of Uttar Pradesh and Another*** (Cited Supra) it has been held as under :

"7. On considering the submissions of the learned counsel for the parties, having regard to the circumstances of this case, in our opinion, there has been no wrong or improper exercise of discretion on the part of the High Court in granting bail to the accused. The factors outlined in *Mahipal* for testing the legality of an order granting bail are absent in the order impugned. The materials available do not justify arriving at the conclusion that the order impugned suffers from non-application of mind or the reason for granting bail is not borne out from a prima facie view of the evidence on record. The offence alleged no doubt is grave and serious and there are several criminal cases pending against the accused. These factors by themselves cannot be the basis for refusal of prayer for bail. The High Court has exercised its discretion in granting bail to the accused Vikram Singh upon considering relevant materials. No ex facie error in the order

has been shown by the appellant which would establish exercise of such discretion to be improper. We accordingly sustain the order of the High Court granting bail. This appeal is dismissed.”

. This authority has no application to the facts of the instant case as in this decision there was no incriminating evidence against the accused. No recovery was made against the accused. There was no case against the accused. When there is no evidence against the accused, his past criminal history cannot be a hindrance for granting bail.

17. In the case of **Mitesh Kumar J. Sha Versus The State of Karnataka & Ors.** (Cited Supra) also no evidence was adduced to show that the accused/appellant had practiced deception. Having regard to the evidence collected by the prosecution there is prima facie case against the accused.

18. Learned counsel Shri. Deshapnde placed reliance on the case of **Kushalbhai Ratanbhai Rohit &**

Ors. Versus The State of Gujarat (Cited Supra) it has been held as under:-

"But one cannot assume that he would not have changed his mind if he is no longer in a position to do so. A Judge's responsibility is heavy and when a man's life and liberty hang upon his decision nothing can be left to chance or doubt or conjecture; also, a question of public policy is involved. As we have indicated, it is frequently the practice to send a draft, sometimes a signed draft, to a brother Judge who also heard the case. This may be merely for his information, or for consideration and criticism. The mere signing of the draft does not necessarily indicate a closed mind. We feel it would be against public policy to leave the door open for an investigation whether a draft sent by a Judge was intended to embody his final and unalterable opinion or was only intended to be a tentative draft sent with an unwritten understanding that he is free to change his mind should fresh light drawn upon him before the delivery of judgment."

19. This authority has no application to the facts of the instant case as in that case judgment was dictated in open Court and it was recalled. This is not a factual situation in the case at hand. There is prima facie case against the accused. Considering the gravity of the

offence, I am not inclined to release the applicant on bail.
Application is dismissed.

20. Pending application, if any, stands disposed of.

[M. G. SEWLIKAR, J.]

ssp