

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

CRIMINAL BAIL APPLICATION NO.168 OF 2021

Mohammadali Jamaluddin Saiyyad @ Raunak Suresh Madhiwal	 Applicant
Versus	
The State of Maharashtra	 Respondent

**.....
WITH
INTERIM APPLICATION NO.1182 OF 2021
IN
CRIMINAL BAIL APPLICATION NO.168 OF 2021**

Prashant Damodar Katkade	...Applicant/Intervenor
<u>IN THE MATTER BETWEEN:</u>	
Mohammadali Jamaluddin Saiyyad @ Raunak Suresh Madhiwal	 Applicant
Versus	
The State of Maharashtra	 Respondent

Dr. Abhinav Chandrachud, Advocate i/b. R.V. Gupta, for the Applicant.
Mr. Chetan S. Damre, Advocate for the Intervenor.
Mr. Ajay Patil, APP for the Respondent-State.

CORAM : SARANG V. KOTWAL, J.

**DATE : 05th MAY, 2021
[Through Video Conferencing]**

P.C. :

1. This is an application for setting aside the condition of depositing Rs.22 Lakhs as a condition precedent for being released on bail. The second prayer is for the Applicant's release on bail in connection with C.R.No.I-101/2018 registered at Manmad City Police Station, District-Nashik.

2. Heard Dr. Abhinav Chandrachud, learned Counsel for the Applicant, Shri Chetan Damre, learned Counsel for the Intervenor and Shri Ajay Patil, learned APP for the State.

3. The Applicant was arrested in connection with the above offence on 9.3.2019. The offence was registered under Sections 420, 120-B read with 34 of the Indian Penal Code.

4. The FIR was lodged by one Prashant Katkade on 31.5.2018. He has stated that he was in the business of construction and development. He wanted a project loan for his business. He came in contact with one of the accused Prakash Jadhav. The informant met him at Manmad. The accused Prakash Jadhav represented to the informant that he

was representative of M/s. Cobra Financial Solution, Branch Walsad, Gujarat. He told the informant that through the Chief Officer of the said financial company he could get the loan of Rs.5 Crores @ 6% per annum for the informant's project at Nashik. The loan was to be repaid within five years. The FIR mentions that Prakash Jadhav represented to the informant that the present Applicant was the Chief Officer of the Financial Company. Thereafter the present Applicant, Prakash Jadhav, Prakash Parmar and Sajid Ajmeri met him at Manmad and decided to go ahead with their transaction. They inspected the documents and showed willingness to give loan. The informant was told by Prakash Parmar that he should meet the Applicant at hotel Fountain on Thane by-pass road. The informant paid in all Rs.22 Lakhs in cash by way of commission to obtain loan of Rs.5 Crores. However, no loan was sanctioned in his favour and he has lost that amount of Rs.22 Lakhs. On this basis, the FIR is lodged.

5. The Applicant was arrested as mentioned earlier. From the record it appears that the charge-sheet was not filed

within time after the Applicant's arrest and at the first instance the Judicial Magistrate, First Class, Manmad City vide his order dated 10.5.2019 granted bail to the Applicant under the provisions of Section 167(2) of Cr.PC. in the sum of Rs.50,000/- with one or two solvent sureties in the like amount. Vide the same order, notice was issued to the investigating officer to explain within seven days as to why the charge-sheet was not filed within prescribed time.

6. Dr. Chandrachud appearing for the Applicant submitted that after this order was passed on 10.5.2019; within four days i.e. on 14.5.2019, charge-sheet was filed and, therefore, the Applicant could not be released on bail. Thereafter the Applicant preferred another application for bail under Section 439 of Cr.PC., which was allowed by the Additional Sessions Judge, Malegaon vide his order dated 21.8.2020 in Criminal Bail Application No.98/2020. In the operative part of the order, the Applicant was directed to deposit Rs.22 Lakhs before the Magistrate as a condition precedent for his release on bail.

7. The Applicant was unable to comply with this condition and, therefore, moved Criminal Misc. Application No.25/2020 for relaxation of that particular condition and also for relaxation of condition of reporting to the police station. This Application was rejected and, therefore, the Applicant has preferred the present Application before this Court.

8. Dr. Chandrachud submitted that the Applicant deserves to be released on bail pursuant to the order passed by the J.M.F.C., Manmad City under Section 167(2) of Cr.P.C.. That order was passed on 10.5.2019 and the charge-sheet was filed shortly thereafter on 14.5.2019. It cannot be termed as reasonable time enabling the Applicant to comply with the directions of learned Magistrate for his release on bail. He submitted that even under Section 167(2) of Cr.P.C., the Applicant is entitled to be released on bail as it is his statutory right.

9. Dr. Chandrachud further submitted that even otherwise, on merits, the Applicant deserves to be released on

bail. He relied on the fact that all the three other accused are released on bail. Co-accused Prakash Jadhav was granted bail by this Court (Coram: A.S. Gadkari, J.) vide order dated 21.12.2018 passed in Bail Application No.2942/2018. Co-accused Sadiq Bhai was granted bail by Additional Sessions Judge, Malegaon vide his order dated 28.2.2019 passed in Bail Application No.111/2019. Another co-accused Prakash Parmar was granted bail by this Court (Coram: A.S. Gadkari, J.) vide order dated 26.6.2020 passed in LD/VC/IA/93/20 in BA/2389/2019. Dr. Chandrachud, therefore, submitted that on either of these grounds, the Applicant deserves to be released on bail.

10. Learned Counsel for the intervenor Shri Damre strongly opposed this Application. He submitted that at the first instance when the Applicant was granted bail under Section 167(2) of Cr.P.C. he had not complied with the directions and, therefore, his right to be released on bail under those conditions stood extinguished. He further submitted that, on merits, the Applicant does not deserve to

be released on bail as he was the master-mind behind this offence. He submitted that, the Applicant has two passports and, therefore, possibility that the Applicant may abscond, if granted bail, cannot be ruled out.

11. Shri Damre justified the order passed by the Sessions Court by imposing pre-condition of depositing Rs.22 Lakhs. He further submitted that the role of the present Applicant is different from those of the co-accused who have been granted bail. Shri Damre submitted that there are nine antecedents against the present Applicant in the States of Maharashtra and Gujarat.

12. Shri Ajay Patil, learned A.P.P. fairly submitted that the condition asking the Applicant to deposit Rs.22 Lakhs as a pre-condition is onerous and the Hon'ble Supreme Court in many judgments has criticized such approach. He further submitted that, on merits, the Applicant does not deserve to be released on bail.

13. I have considered all these submissions. As rightly

submitted by Dr. Chandrachud, the Applicant was granted bail under the provisions of Section 167(2) of Cr.PC. on 10.5.2019. Within four days the charge-sheet was filed and it is presumed that the Applicant's right to be released on bail stood extinguished. This may not be correct position in law. The Applicant was not given sufficient and reasonable opportunity to furnish sureties as was directed. Therefore, it would not be proper to observe that the Applicant had not complied with the directions and, therefore, had forfeited his right to be released on bail under Section 167(2) of Cr.PC.. However, the Applicant has not taken any further steps by approaching any higher forum in that behalf, and, instead preferred an Application under Section 439 of Cr.PC.

14. In that behalf it is necessary to refer to the FIR. The FIR clearly sets out the manner in which the offence was committed. Though the FIR does indicate that the Applicant was shown to be the Chief Officer of the concerned Financial Firm, the earliest representation was made by co-accused Prakash Jadhav. The other accused had played their

respective parts and it cannot be said that the offence was committed by the present Applicant single handedly on his own.

15. The orders passed by this Court and Sessions Court granting bail to the co-accused do bear some importance in the context of the case. Therefore, on the parity also the Applicant deserves to be released on bail in the present case, albeit with some conditions to ensure his presence during trial. This is particularly necessary in view of the submissions made by Shri Damre that there are antecedents against the Applicant and he has two passports.

16. The crucial aspect in this case is about imposition of onerous condition directing the Applicant to deposit Rs.22 Lakhs as a condition precedent for bail. In this context, the observations of learned Additional Sessions Judge, Malegaon are interesting. His reasoning is encapsulated only in one paragraph i.e. Paragraph No.5, which reads thus :

“05] Perused the documents on record. It appears from the Say that investigation is completed,

charge-sheet is filed. Accused is charged for the offence punishable under section 420, 120(B) r/w. S. 34 of I.P.C. The maximum sentence provided is of seven years imprisonment. Under such circumstance, as per mandate of the Hon'ble Supreme Court in Covid-19 Pandemic situation, applicant is entitled for the bail. It is also reflected from the documents that applicant is habitual to change his name. There is a every possibility that he may abscond and will not available for the trial. Under such circumstance, I am of the opinion that stringent conditions be imposed on him while enlarging him on bail. In result, I pass the following order.”

17. There is absolutely no indication of learned Judge's inclination to impose such a heavy condition. There is no discussion in that respect at all. Obviously the condition is onerous and it is prejudging the issues between the parties without trial. This condition proceeds on the footing that the FIR is the complete truth without necessity of any further proof. This approach obviously is not permissible. As far as imposing onerous condition is concerned, the Hon'ble Supreme Court in many judgments has held that such an approach is not permissible.

18. In the case of **Dataram Singh Vs. State of Uttar Pradesh and another**, as reported in (2018) 3 SCC 22, the Hon'ble Supreme Court has observed that the conditions for the grant of bail ought not be so strict as to be incapable of compliance, thereby making the grant of bail illusory.

19. In the case of **M.D. Dhanapal Vs. State represented by the Inspector of Police**, as reported in (2019) 6 SCC 743, the Hon'ble Supreme Court in Paragraph-6 has observed that it is well settled that bail cannot be made conditional upon heavy deposits beyond the financial capacity of an Applicant for bail.

. In the present case, though the order of bail was passed on 21.8.2020; the Applicant is still in custody as he was unable to comply with the directions of depositing Rs.22 Lakhs. This obviously means that such condition is beyond his financial capacity; thereby practically denying him relief of bail.

20. In another case of **Dilip Singh Vs. State of Madhya**

Pradesh and another, as reported in **(2021) 2 SCC 779**, the Hon'ble Supreme Court in Paragraph-4 has held that a Criminal Court, exercising jurisdiction to grant bail/anticipatory bail, is not expected to act as a recovery agent to realise the dues of the complainant, and that too, without any trial.

21. Thus, it can be seen that in the present case the condition directing the Applicant to deposit Rs.22 Lakhs as a condition precedent, for release on bail cannot be sustained. Learned Judge has not given any reasoning whatsoever for arriving at that particular figure. It is assumed that since the FIR mentions that the amount involved was Rs.22 Lakhs, therefore, such an amount appeared in the operative part. But, there is no other discussion in the body of the order. The entire approach of learned Judge is erroneous.

22. As mentioned earlier, considering merits of the case and also the fact that the Applicant was entitled to be released on bail under Section 167(2) of Cr.P.C., I am inclined to grant bail to the Applicant on certain conditions, but, not

on the condition of directing him to deposit Rs.22 Lakhs. The antecedents of the Applicant and the fact that he could not be immediately arrested will also have to be taken into account. Dr. Chandrachud stated, on instructions, that the Applicant is ready and willing to furnish local solvent sureties. Hence, the following order :

ORDER

- (i) The operative part of the order dated 21.8.2020 passed by the Additional Sessions Judge, Malegaon in Criminal Bail Application No.98/2020 is set aside. However, the Applicant is granted bail on following conditions.
- (ii) The Applicant is directed to be released on bail in connection with C.R.No.I-101/2018 registered with Manmad City Police Station, District-Nashik. on his furnishing a PR bond in the sum of Rs.50,000/- (Rupees Fifty Thousand Only) with one or two local solvent sureties in the like amount.
- (iii) The Applicant shall deposit his passport, if any, with the

investigating officer before being released on bail.

- (iv) The Applicant shall furnish his residential address and contact number before being released on bail.
- (v) The Applicant shall attend the concerned police station on first Monday of every month till framing of the charges.
- (vi) The Applicant shall attend the trial Court on every single date except when prevented by a reasonable cause.
- (vii) The Application is disposed of accordingly. With disposal of this Application, Interim Application No.1182/2021 is also disposed of.

(SARANG V. KOTWAL, J.)

Deshmane (PS)