

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

BAIL APPLICATION NO.1712 OF 2021

Suraj Sunil Zawar Applicant

Vs.

The State of Maharashtra Respondent

Mr. Abad Ponda, Sr. Advocate a/w Adv. Neeraj Jain, Adv. Yash Prashant Sonavane, Adv Yogesh Ramesh Joshi, Adv. Sidheshwar Namdev Biradar, Adv. Jaiprakash Babasaheb Chavan for the Applicant.
Mr. Pravin Chavan, Spl. P.P. a/w Mrs. P.P. Shinde, APP for the State.
PI Suchita Khokale, EOW, Pune City, present.

Coram : NITIN W. SAMBRE, J.

Date : 28TH MAY, 2021
(VACATION COURT)

P.C.:

1] Applicant is seeking regular bail under Section 439 of the Criminal Procedure Code in Crime No. 673 of 2020 registered with Deccan Police Station, Pune City for the offence punishable under Sections 406, 409, 420, 464, 465, 468, 471, 477, 120-B read with Section 34 of the Indian Penal Code.

2] The case of the prosecution is Bhaichand Hirachcand Raison Multi-State Co-operative Credit Society Ltd went into liquidation. Accused Jitendra Kandare manning the post of Liquidator claimed to have hatched criminal conspiracy with the Applicant, his father Sunil and other co-accused persons, formed a syndicate and rigged the auction of the properties of the said Society in liquidation proceedings. It is claimed by the prosecution that the Applicant through his Firms in the capacity of partner, proprietor and director facilitated logistic and financial support for submitting bids through various parties and out of 14 auction properties, successfully purchased three; two in the name of M/s Sai Marketing and Trading Company and one in the name of Yogesh Laddha.

3] According to the prosecution story, the bid is supported by the Applicant by facilitating finance and logistic support by forming cartel and syndicate . Applicant as such, came to be arrested for the aforesaid crime on 22/1/2021. The applicant thereafter came to be chargesheeted on 20/4/2021.

4] Mr. Ponda, the learned Senior Counsel assisted by learned Counsel Mr. Sonavane would urge that the Firm which has purchased the property i.e. M/s Sai Marketing & Trading Company is a Proprietary Concern of which father of the Applicant viz Sunil is a Proprietor and the Applicant has no connection whatsoever with the said Firm. Mr. Ponda would claim that the firm M/s Sai Marketing and Trading Company has having independent Shops and Establishment License as well as Tax Entitlement Certificate and having independent Current Account with the Union Bank of India as is certified by the said Bank on 30/4/2021. According to Mr. Ponda, purchase of the property in the name of the said Firm is in no way directly benefited the Applicant so as to make out a case of prima facie involvement of the Applicant in rigging out the tender process of auction. He would further claim that under the provisions of Section 97 of the Maharashtra State Co-operative Societies Act the Liquidator has a status of Civil Court. Auction process in which alleged property is claimed to have been auctioned which is found to be basis of registration of offence is not at

all questioned. He would further claim that the Applicant is neither named in the FIR nor there is any material on record to claim that he would be directly benefited or has involvement in the commission of the offence. He would further invite attention of this Court to the order passed by the Apex Court in Special Leave to Appeal (Crl.) No. 2906 of 2021 so as to claim that observations made by the Division Bench while deciding the issue of lawful remand of the Applicant to police custody is ordered, not to prejudice case of the Applicant for grant of bail and that being so, according to him, Court needs to assess the case of the Applicant on its individual merit and not by influenced by the observations made by the Division Bench. According to Mr. Ponda, Applicant can be put to various condititions.

5] The learned Special Public Prosecutor Mr. Chavan while strenuously opposing the bail was assisted by the Officer P.I. Sucheta Khokale, EOW, Pune City. He would urge that even if chargesheet in the matter is filed against the Applicant, the main accused i.e. father of the Applicant and other accused are still absconding. He would further

urge that investigation in the matter is still going on. During the search hard-disc is seized from the office of the Applicant which contains sufficient material to demonstrate rigging of E-auction process. The learned Spl. P.P. as such urged that since the investigation is still in process and there are circumstances wherein witnesses were threatened either to give statement in support of the accused persons or not to cooperate in the investigation process in the light of influence of Applicant and his father, Applicant may not be ordered to be released.

6] Mr Chavan, learned Spl. P.P. would rely on statement of Mr. Anupam Kulkarni and one Mr. Umale recorded under Section 161 of the Cr.P.C. He would further urge that investigation is at a very crucial stage and if the Applicant is released, same might hamper merits of the investigation and as such, Application needs to be rejected.

7] I have considered rival submissions.

8] At the outset, it is required to be noted that the Applicant came to be arrested on 22/1/2021 and after completing investigation to the extent of custodial interrogation and such other relevant issue, the first chargesheet came to be filed on 20/4/2021.

9] Apart from above, it is required to be noted that the office premises of the Applicant were already searched and relevant documents and material is seized. Such other adverse evidence against the Applicant as was found is already sent for Forensic Audit and that being so, it appears that for the purpose of investigation further detention of the Applicant cannot be said to be warranted. Apart from above, it can be inferred from the record that properties were purchased in the name of M/s Sai Marketing & Trading Company which is a Proprietary Firm of the father of the Applicant i.e. Sunil who is claimed to be main culprit/kingpin in the investigation in question. Since the Applicant is a partner of M/s Sai Marketing & Trading Company alongwith his father who is absconding i.e. Sunil, to some extent, it can be inferred that there is certain overlapping of the interest with the

main accused Sunil in operation of the Firm viz. M/s Sai Marketing & Trading Company, Applicant being partner to the extent of 5%. However, that by itself will not preclude the Applicant from claiming bail, particularly when he has already suffered detention for four months and chargesheet against the Applicant is already filed. This Court is required to be sensitive to the order passed by the Apex Court in the above SLP wherein issue canvassed by the Applicant as regards police remand was dealt with. The Apex Court has held that prayer for bail of the Applicant is required to be decided without being prejudiced by the observations made by the Division Bench in the matter of deciding the issue of remand as observations therein are restricted to the extent of police custody remand only.

10] The rigging of the auction process of the properties of the Society which is under liquidation primarily appears to be at the behest of the Firm, of which father of the Applicant, viz. Sunil is a Proprietor as is demonstrated by Mr. Ponda, the learned Senior Counsel. As such, there is sufficient material to infer that the Firm of which the Applicant

is shown to be a partner prima facie cannot be said to be involved in the commission of crime, whereas the Firm of which father of the Applicant is a Proprietor appears to be involved in the offence. Even if the father of the Applicant is a co-accused and is absconding alongwith other accused persons that by itself will not disentitle the Applicant to claim bail. This Court is sensitive to the issue of taking out proceedings under Section 83 of the Cr.P.C. for attachment of the properties of the father of the Applicant viz. Sunil.

11] In the aforesaid backdrop, in my opinion, case for grant of bail is made out.

12] As such, following order is passed.

ORDER

(i) Applicant is directed to be released on bail in Crime No. 673 of 2020 registered with Deccan Police Station, Pune City on executing P.R. Bond of Rs. 1 lakhs with one or more sureties in the like amount.

(ii) Considering the nature of offence, investigation carried out, statement of witnesses, request of the learned Spl. P.P. that the Applicant be ordered to be kept out of State of Maharashtra is accepted. Since the father of the Applicant i.e. the main accused is absconding the prayer of the Spl. P.P. to keep the Applicant out of State of Maharashtra is very much justified. Accordingly, Applicant is ordered to stay out of Maharashtra. However, it is clarified that it shall be open for the Applicant to move for modification once his father is arrested or surrendered in the crime in question.

(iii) Applicant shall furnish his address of his residence alongwith contact numbers including landline number to the Investigating Officer within 24 hours of his release.

(iv) Applicant shall directly or indirectly not influence any witness or tamper with the evidence. If so noticed, it is open for the prosecution to move for cancellation of bail straightaway before the High Court. Applicant shall

also not contact any of his staff directly or indirectly as the investigation in the crime is still going on.

(v) Applicant shall attend the Investigating Officer as and when called in the matter of cooperation in the further investigation process. The learned Spl. P.P. fairly concedes that Applicant will be given 24 hours notice before his presence is required in the matter of investigation.

(vi) The Applicant is permitted to furnish provisional cash bail security in the sum of Rs 1 lakhs for a period of four weeks only in lieu of surety.

(NITIN W. SAMBRE, J.)