

BDP-SPS-TAC

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO.914 OF 2021
WITH
INTERIM APPLICATION NO.2724 OF 2021
IN
CRIMINAL APPLICATION NO.914 OF 2021**

Gurunath Sadashiv PhondekarApplicant.
V/s
The State of MaharashtraRespondent

**WITH
CRIMINAL APPLICATION NO.282 OF 2018**

Bhushan Wadhwani & Others Applicants.
V/s
State of Maharashtra and Anr. Respondents.

Mr. Rajeev Patil, Senior Advocate i/b Rajeev Sawant & Associates for
for the Applicant.

Mr. Ameet Mehta a/w Mr. Ashok Kumar Mishra, Ms. Madhuri Amare-
Machado, Ms. Arundhati Korale i/b Solicis Lex for the original
complainant.

Mr. Sumit Khanna a/w Mr. Gopal Tripathi, Mr. Arjun Dev i/b Dwani
Associates for the Interveners/Applicants in Criminal Application
No.282 of 2018.

Mr. Datta Mane for the Intervener.

Mr. Ajay Patil, APP for the Respondent/State.

Sr. PI Pradeep Warang, PI Atul Nikam, EOW, Mumbai, present.

CORAM: NITIN W. SAMBRE, J.

DATE: NOVEMBER 15, 2021

P. C.:-

1] Impugned in the Petition is an order dated October 01, 2021 passed in Criminal Misc. Application No.2817/Misc/2018 by the learned Additional Chief Metropolitan Magistrate, 47th Court, Esplanade Mumbai, canceling bail granted in favour of the Applicant. Applicant vide order dated August 14, 2017 so also vide orders dated January 11, 2018 and March 20, 2018 was granted bail on certain terms and conditions which Applicant has failed to comply with.

2] The facts necessary for deciding present Application are as under:-

3] Prosecution case against the Applicant is, in SRA re-development project, Applicant, without commencement certificate, sold flats and shops to prospective buyers, thereby cheating them to the tune of Rs. 7,07,00,000/-. It is further alleged that the total amount misappropriated by the Applicant is to the tune of Rs. 172,91,26,025/-. As a consequence of above, Crime No. 26 of 2015 for the offence punishable under Sections 379, 406, 420, 34 of the Indian Penal Code and Section 4 and 5 of the MOFA came to be

registered. Applicant was arrested in the said offence and after having been chargesheeted, the Court of Additional Chief Metropolitan Magistrate on August 14, 2017 directed his release on following conditions:-

- “1. The applicant Shri Gurunath Sadashiv Phondekar be released on P. B. of Rs 10,00,000/- (Rs Ten Lakhs) with solvent surety of like amount in addition to cash security of Rs 5,00,000/- (Rs Five Lakhs) and on depositing the amount of Rs 174,49,00,000/- (Rs One Hundred Seventy Four Crores fourty nine lakhs).
2. He should not tamper with the evidence.
3. The applicant should not leave India without permission of the Court.
4. The applicant to provide two contact numbers of his relatives and provide proof of his permanent resident in Mumbai.
5. The applicant to deposit his passport if any, to the investigating officer.
6. The applicant shall attend each and every date of trial.”

4] It appears that Applicant sought modification of the aforesaid order dated August 14, 2017 as he has undertaken to deposit Rs

174,49,00,000/-. The Court of Additional Chief Metropolitan Magistrate vide order dated October 10, 2017 noticed that as the Applicant had undertaken to deposit the amount of Rs 174,49,00,000/- and he has sufficient liquidity as he holds FSI at various places which he intends to sell so as to satisfy the amount due and payable to the complainant, granted him one month's time to deposit the same.

5] Applicant, thereafter, again moved an application for modification of both the aforesaid orders dated August 14, 2017 and October 10, 2017 as according to him, the amount of Rs 174,49,00,000/- as mentioned in the unilateral consent terms is Rs 85,90,85,642/- and not 174,49,00,000/-. Accordingly, Trial Court vide order dated January 11, 2018 modified the said figure. As a consequence of aforesaid modified order dated January 11, 2018, Applicant was directed to deposit an amount of Rs 85,90,85,642/-. The operative part of the said order reads thus:-

ORDER

In the bail application no. 85/BA/2017
dated 14/08/2017 in serial no.1 of the

order, Instead of “ The applicant Shri Gurunath Sadashiv Phondekar be released on P.B. of Rs 10,00,000/- (Rs. Ten Lakhs) with solvent surety of like amount in addition to cash security of Rs 5,00,000/- (Rs five lakhs) and on depositing the amount of Rs 174,49,00,000/- (Rs One Hundred Seventy Four Crores fourty nine lakhs)”, it be modified as the applicant Shri Gurunath Sadashiv Phondekar be released on P. B. of Rs 10,00,000/- (Rs. Ten Lakhs) with solvent surety of like amount in addition to cash security of Rs 5,00,000/- (Rs five lakhs) and on depositing the amount of Rs 85,90,85,642/- (Rs. Eighty Five Crores Ninety Lakhs Eighty Five Thousand Six hundred Fourty Two).

2. The Application is disposed off accordingly.”

6] It appears that the Investigating Officer made report to the Additional Chief Metropolitan Magistrate, alleging that the Applicant has not complied with the bail conditions and as such the bail granted to him be cancelled. The learned Court of Additional Chief Metropolitan Magistrate vider order impugned dated October 01, 2021 was pleased to cancel the bail granted to the Applicant. As such, this Application.

7] Heard Mr Rajeev Patil, learned Senior Counsel appearing for the Applicant/Accused and Mr. Ajay Patil learned APP appearing on behalf of the Respondent/State.

8] Submissions of Mr. Rajeev Patil are, Applicant has enough liquidity to satisfy the debt as has been reflected in the consent terms even if said consent terms are not signed by the complainant. According to him, Applicant be granted breathing period of one year so as to satisfy the debt or to deposit an amount of Rs 85,90,85,642/-. It is further claimed by Mr. Patil that cancellation of bail results in termination of freedom and such a drastic step ought not to have been ordered by the court below and that being so, this Court by showing indulgence should grant breathing period of one year to the Applicant to deposit the amount.

9] Mr. Ajay Patil, learned APP assisted by various Counsels for Interveners opposed the prayer. According to learned APP, Applicant is enjoying protection of bail since August 14, 2017 as initially Applicant has undertaken to deposit an amount of Rs 174,49,00,000/-, which

was subsequently modified pursuant to the prayer of the Applicant to Rs 85,90,85,642/-. The learned APP would further urge that illegality committed by the Applicant, thereby not honouring commitment/undertaking is apparent as the Applicant has tried to play tricks with the Court thereby time and again seeking extension of bail by giving frivolous excuses. It is claimed that for last about more than four years, Applicant has not complied with the bail condition and as such, court below was justified in passing the order impugned.

10] Considered submissions.

11] It appears that Applicant initially entered into agreement of development with the Society and in turn further agreement of handing over development project to a Firm Rustomjee Realty Private Limited.

12] In the aforesaid backdrop, Applicant appears to have accepted booking amount. A Memorandum of Understanding was entered into between the Applicant and the Society and between Applicant and Rustomji Realty Pvt. Ltd. It appears that the Society having realized

that Applicant is not honouring the commitment, cancelled the memorandum with the Applicant and entered into memorandum with Rustomjee Realty Private Limited.

13] The memorandum was placed before the Court of Magistrate depicting settlement between the Applicant and investors. However, such settlement was not signed by the investors. Considering the amount mentioned in one side settlement, initially Applicant undertook before the Court of Magistrate to deposit an amount of Rs 174,49,00,000/-. The said amount of Rs 174,49,00,000/- was subsequently modified pursuant to the prayer for modification and brought to the tune of Rs 85,90,85,642/-.

14] It appears that, till this date, Applicant has not honoured the said bail condition of deposit of amount of Rs 85,90,85,642/-.

15] Pursuant to the prayer made by the Applicant, the Court of Magistrate on March 20, 2018 created charge for the aforesaid amount of Rs 85,90,85,642/- on the properties mentioned in Exhibit-A. It appears that the charge as was directed to be created to the tune of Rs

85,90,85,642/-on the properties mentioned in Exhibit-A produced by the Applicant was based on false representation made by Applicant to the Court of Magistrate as the Applicant had no such title to the FSI over the properties mentioned in Exhibit-A.

16] The entire default on the part of the Applicant from the date of granting of bail i.e. August 14, 2017 is in detail dealt with by the Court of Magistrate while ordering cancellation of the bail of the Applicant. Even during the course of hearing of the present Application, this Court has given a chance to the Applicant to deposit the amount as was undertaken by him before the Trial Court, which he has failed to. As such, in my opinion, the order of cancellation of bail on the ground of non-compliance of bail condition is quite justified.

17] No error could be noticed in the order impugned. That being so, present Application fails and same stands rejected. As a consequence of rejection of the Application, Interim Application taken out therein as also Criminal Application No.282 of 2018 stand disposed of.

(NITIN W. SAMBRE, J.)