

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

BAIL APPLICATION NO.998 OF 2020
WITH
CRIMINAL APPLICATION NO. 2378 OF 2021

Samir @ Navneet
s/o Govindlal @ Govindnarayan Kakani,
Age 45 years, Occu. Business MD of
M/s Vaishnavdevi Food Products Pvt. Ltd.,
Babhalgaon, At Post Etkal,
Taluka Naldurg, District Osmanabad,
E-89, Padmawati Society,
Dhankawadi, Pune 42 .. Applicant

Versus

The State of Maharashtra,
A. Through Police Station, Naldurg,
B. The Central Prison, Osmanabad,
District Osmanabad .. Respondents

Mr G.K. Thigale (Naik), Advocate for applicant
Mr D.R. Kale, Incharge P.P. for respondent/State

- AND -

BAIL APPLICATION NO.597 OF 2020
WITH
CRIMINAL APPLICATION NO. 2978 OF 2021

Shrikant Haribhau Joshi,
Age 51 years, Occu. Service,
R/o Flat No.501, Nisarga Society,
Near Flying Bird School,
S.No.33/1/7 to 9 Ambegaon (Bk),
Pune - 46 .. Applicant

Versus

The State of Maharashtra,
Through Police Inspector,
Naldurga Police Station,
District Osmanabad .. Respondent

Mr S.R. Andhale, Advocate for applicant
Mr D.R. Kale, Incharge P.P. for respondent/State

- AND -

BAIL APPLICATION NO.641 OF 2020
WITH
CRIMINAL APPLICATION NO. 2979 OF 2021

Vijay Vishwanath Muley,
Age 44 years, Occu. Service,
R/o Vishwa Geeta, Plot No.13,
Manewada, Nagpur

.. Applicant

Versus

The State of Maharashtra,
Through Police Inspector,
Naldurga Police Station,
District Osmanabad

.. Respondent

Mr S.R. Andhale, Advocate for applicant
Mr D.R. Kale, Incharge P.P. for respondent/State

CORAM : SHRIKANT D. KULKARNI, J.

ORDER RESERVED ON : 8th February, 2022
ORDER PRONOUNCED ON : 14th February 2022

ORDER

1. These are the bail applications moved by the applicants under Section 439 of Cr.P.C. in connection with Crime No.288/2019 registered at Naldurg Police Station for the offences punishable under Sections 420, 406, 407 read with Section 34 of the Indian Penal Code.
2. The details of the Bail Applications and Criminal Applications moved by the respective applicants/accused in brief are as under :

Bail Application No.998 of 2020 - For bail - Samir Govindlal Kakani with Criminal Application No.2378 of 2021 - Confirmation of interim bail and relaxation of Clause (C) of the order dated 29.9.2020

Bail Application No.597 of 2020 - For bail - Shrikant Haribhau Joshi with Criminal Application No.2978 of 2021 - Confirmation of interim bail order dated 29.9.2020
Bail Application No.641 of 2020 - For bail - Vijay Vishawanath Muley with Criminal Application No.2979 of 2021 - Confirmation of interim bail order dated 29.9.2020

3. One Mr Prashant Prabhakar Mohod, Regional Dairy Development Officer, Aurangabad lodged complaint against the applicants at Naldurg Police Station, District Osmanabad for having committed offences under Sections 420, 406, 407 read with Section 34 of the Indian Penal Code. According the allegations made in the complaint, the applicant's company entered into contract with the complainant/Dairy Development Department for supply of milk powder and country cooking butter to the extent of quantity as detailed in the agreement, on supply of quantity of milk by the complainant. It is alleged that the applicants have cheated the Dairy Development Department of the Government and committed criminal breach of trust by violating the terms of the contract. On that basis, C.R. No.288/2019 came to be registered at Naldurg Police Station against the applicants for the offences punishable under Sections 420, 406, 407 read with Section 34 of the Indian Penal Code.

4. Heard Mr Girish Thigale (Naik), Mr S.R. Andhale, learned Counsel appearing for the respective applicants and Mr D.R. Kale, In-charge Public Prosecutor for respondent/State.

**SUBMISSIONS OF MR. GIRISH THIGALE (NAIK) FOR THE APPLICANT
SAMIR @ NAVNEET GOVINDLAL @ GOVINDNARAYAN KAKANI:**

5. Mr Girish Thigale, learned Counsel appearing for the applicant submitted that this Court was pleased to grant interim bail to the applicant vide order dated 29.9.2020 with certain conditions. The interim bail granted by this Court is continued from time to time. He submitted that the applicant has complied with all the conditions enumerated in the operative part of the interim order dated 29.9.2020 except condition (c). He submitted that even though dairy department has granted permission to start the factory, meanwhile, one Lokvikas Dairy Pvt. Ltd. has filed proceedings before NCLT and other secured and unsecured creditors including Dairy Development Department have also filed their respective claims with NCLT. He submitted that in view of civil claim/insolvency claim filed by the Dairy Development Department, Resolution Professional came to be appointed by NCLT. The applicant had sought permission to operate the plant with a view to comply with condition clause (c) of the interim bail order passed by this Court, but the Resolution Professional rejected the request made by the applicant in view of statutory mandate of Sections 17 and 14 of the Insolvency and Bankruptcy Code 2016. He submitted that now, the proceedings are before the NCLT. As such, the applicant is unable to comply condition clause (c) of the interim bail order.

6. Mr Thigale, learned Counsel submitted that the interim bail granted by this Court is also confirmed by the Honourable Supreme Court in SLP (Cri.) No.1003 of 2021. It is observed by the Honourable Supreme Court that after the IBC proceedings are initiated against the company, it

will be open for the respective applicants to submit an appropriate application before the High Court and point out the subsequent developments and pray for appropriate relief. As and when such applications are made, the same be considered in accordance with law and on its own merits.

7. Mr Thigale invited my attention to the interim bail order passed by this Court dated 29.9.2020, more particularly, the observations made by this Court (Coram : V.K. Jadhav, J.) in paragraphs 2 and 3. He pointed out that prima facie there was no intention on the part of the applicant to cheat the Dairy Development Department of the State Government right from the inception. The applicant's company is not a fake company. It is further observed by this Court that the allegations about criminal breach of trust are concerned, the same have arisen out of contractual liability. Mr Thigale pointed out that the applicant has complied with the conditions imposed by this Court while granting interim bail and amount of Rs.7.05 Crore is deposited with Dairy Development Department. Though Dairy Development Department has disputed Rs.1.13 Crore as unbilled amount. Approximately more than Rs.8.18 Crore is deposited with dairy department. The applicant has demonstrated his *bona fides* by depositing substantial amount by complying the conditions imposed by this Court while granting interim bail. He submitted that it is necessary to confirm the interim bail granted by this Court dated 29.9.2020 by relaxing condition clause (c). He submitted that the charge-sheet has been filed. The criminal prosecution is unnecessarily lodged against the applicant for recovery of money. The dispute is of purely civil nature arising out of

contractual liability. There are no extra-ordinary circumstances to reject the prayer of bail. He submitted that applicant is a Managing Director of Vaishnodevi Food Products Pvt. Ltd., Babhalgaon, Taluka Tuljapur, District Osmanabad. The decision of NCLT, Mumbai would be binding on the applicant and others.

SUBMISSIONS OF LEARNED COUNSEL MR S.R. ANDHALE

8. Mr Andhale, learned Counsel for the applicants in Bail Applications No.597 of 2020 and 641 of 2020 submitted that there is no iota of evidence against the applicants in respect of alleged offences. Applicant Shrikant Haribhau Joshi was working with Vaishnodevi Food Products Pvt. Ltd., Babhalgaon in the capacity as a General Manager (Administration). Whereas, applicant Vijay Vishwanath Muley was working in the capacity as a Plant Production General Manager of the said company. They had no role to play in decision making. They were discharging their duties assigned by the Managing Director of the Company and not beyond that. They cannot be said to be accomplice and part of criminal breach of trust and cheating. The interim bail granted by this Court to abovesaid two applicants need to be confirmed.

SUBMISSIONS OF MR D.R. KALE, IN-CHARGE PUBLIC PROSECUTOR

9. Mr Kale, learned In-charge Public Prosecutor for the respondent/State strongly opposed to confirm the interim bail granted earlier by this Court to the applicants. However, Mr Kale admitted that the applicant/Samir Kakani has complied with all the conditions of the interim bail order except condition clause (c). He has even not disputed about the

substantial amount deposited by the applicant Samir Kakani with the Dairy Development Department. Mr Kale admitted that in view of order passed by the Resolution Professional, the applicant/Samir Kakani cannot operate the plant. Now, the proceedings are before NCLT.

10. Having regard to the submissions of learned Counsel for the applicants and learned In-charge Public Prosecutor, I have gone through the orders passed by the Court including interim bail order as well as the order passed by the Honourable Supreme Court in SLP (Cri.) No.1003/2021 dated 4.10.2021.

11. This Court (Coram : V.K. Jadhav, J.), by order dated 29.9.2020 was pleased to grant interim bail on certain conditions to the applicants. The operative part of the order is reproduced below :

"I. The applications are hereby allowed.

II. The applicant in Bail Application No. 597 of 2020, namely, SHRIKANT S/O HARIBHAU JOSHI, the applicant in Bail Application No. 641 of 2020, namely, VIJAY VISHWANATH MULEY and the applicant in Bail Application No. 998 of 2020, namely, SAMIR @ NAVNEET S/O GOVINDLAL @ GOVINDNARAYAN, in connection with Crime No. 288 of 2019 registered with Naldurg police station District Osmanabad for the offence punishable under Sections 420, 406, 407 and 34 of IPC, be released on temporary bail for a period of 60 days from the date of this order on furnishing P.B. of Rs.15,000/- each with one surety each of the like amount on the following conditions :-

a] The applicant SAMIR @ NAVNEET S/O GOVINDLAL @ GOVINDNARAYAN KAKANI in Bail Application No. 998 of 2020 shall execute an undertaking as per the assurances given by the applicant before this Court and recorded in today's order, so also in the orders dated 14.09.2020 and 28.09.2020, before the Superintendent of Central Jail, Osmanabad and the said undertaking shall be submitted before the trial court.

b] The amount of Rs.1,00,00,000/- (Rupees One Crore) deposited before this Court shall be transferred to the Deputy Dairy Manager, Government Milk Scheme, Udgir as per the details to be furnished by learned APP in the office forthwith. The transfer of the said amount is without prejudice to the contentions raised by the applicants in all the proceedings, including the arbitration proceedings

c] The applicants shall supply the deficit quantity of milk powder of the prescribed standard within two months as assured and agreed, by executing an undertaking to that effect to the dairy development department of the Government, on supply of the Aarey packaging by the Dairy Development Department of the Government..

d] So far as the disputed deficit supply of country cooking butter is concerned, the amount so deposited to the extent of Rs.4,78,00,000/- and Rs.1,00,00,000/- would also be without prejudice to the contentions raised by the dairy development department of the Government, so also the contentions raised by the applicants to the extent of their counter claim in respect of the said country cooking butter.

e] The applicants, after expiry of the said period of 60 days, shall surrender themselves before the trial court, who shall remand them in jail in connection with the present crime in accordance with law.

f] Needless to say that the applications filed by the applicants would be taken up for hearing on merits or for extension of the said period of temporary bail, as the case may be, by considering the compliance made by the applicants in terms of the undertakings submitted to the Court.

g] In terms of the undertaking, the dairy development department of the Government shall co-operate the applicant to run the plant and to produce the said quantity of milk powder as assured, so also extend co-operation to the applicant in Bail Application No. 998 of 2020 to operate his bank accounts to run the plant.

h] The applicants in Bail Application No. 597 of 2020 and Bail Application No. 641 of 2020 would assist and render their services to the company to comply with the assurances and the undertakings given by the applicant in Bail Application No. 998 of 2020".

12. It is an admitted position that the applicants have complied with all the conditions imposed by this Court while granting interim bail except condition (c). It is pointed out by Mr Thigale, learned Counsel for the applicant Samir Kakani that the applicant Samir Kakani could not start the plant in view of rejection of his prayer by the Resolution Professional. The copy of order is also placed on record (Page No.13 dated 17.12.2020). On going through the same, it is noticed that the applicant Samir Kakani

had applied for permission to start the plant for compliance of condition clause (c). In view of order dated 27.10.2020 passed by the NCLT, all plants, machinery, accounts and all belongings are handed over to Resolution Professional in view of Section 14 (1) and 31 of Insolvency and Bankruptcy Code 2016. In view of that, the applicant Samir has no more control over all assets and belongings required for compliance of condition clause (c) of interim bail order dated 29.9.2020. In that background, applicant cannot be said to be at fault for non-compliance of condition clause (c) of the interim bail order. It was beyond control of the applicant to comply condition clause (c). The applicant Samir has shown *bona fides* by depositing approximately more than Rs.8.18 Crore with Dairy Development Department.

13. The dispute seems to be of civil nature arising out of contract. The interim bail granted by this Court to the applicants has been continued till today. The Honourable Supreme Court has also upheld the order of interim bail in SLP (Cri.) No.1003/2021 vide order dated 4.10.2021.

14. In case of **Dattaram Singh Vs. State of Uttar Pradesh and anr.**, reported in **(2018) 3 SCC 22**, it is held by the Honourable Supreme Court that there is overcrowding in jails due to non-adherence to basic principles of criminal jurisprudence regarding grant of bail and presumption of innocence. Even if grant or refusal of bail is entirely upon discretion of Judge, it must be exercised in a judicious manner and in a humane way as such remanding hampers dignity of accused howsoever poor he might be.

15. In case of **Dilip Singh Vs. State of Madhya Pradesh and anr.** reported in **(2021) 2 SCC 779**, it is held by the Honourable Supreme Court that while exercising jurisdiction of Criminal Procedure Code under Section 437, 438 and 439 of Cr.P.C., Criminal Court is not expected to act as a recovery agent to realise the dues of the complainant, and that too without any trial.

16. Having regard to the legal position made clear by the Honourable Supreme Court in above referred two citations and in view of facts and circumstances of the case in hand and the *bona fides* shown by the applicants by complying almost all the conditions except condition clause (c), which is beyond their control, I do not see any reason to refuse the bail applications. The investigation is completed. Charge-sheet is filed.

17. So far as relaxation of condition clause (c) is concerned, as discussed hereinbefore, the applicant Samir Kakani, Managing Director of the company cannot be blamed. He has sought permission from the Dairy Development Department and the Resolution Professional to start the plant. The Dairy Development Department granted permission after causing considerable delay, but Resolution Professional appointed by NCLT has rejected the prayer of applicant Samir Kakani to start the plant. Now, it is beyond control of the applicant Samir Kakani to start the plant. He cannot be blamed for that. The proceedings are seized with the NCLT, Mumbai. The assets, plants and belongings of the company are taken over by the Resolution Professional. The decision of the NCLT would be binding on the applicant Samir Kakani. The condition clause (c) of the

interim bail order needs to be relaxed since it is impossible for the applicant Samir to start the plant by complying condition clause (c) in view of the above factual and legal hurdles and the decision of Resolution Professional.

18. Having regard to the above reasons and discussion, all the Bail Applications with respective Criminal Applications need to be allowed as under :

ORDER

(i) Bail Application No.998 of 2020 and Criminal Application No.2378 of 2021 filed by applicant Samir @ Navneet s/o Govindlal @ Govindnarayan Kakani are hereby allowed by confirming the interim bail order granted by this Court dated 29.9.2020 on same terms and conditions except clause (c). The condition Clause (c) of the interim bail stands relaxed.

(ii) Bail Application No.597 of 2020 and Criminal Application No.2978 of 2021 moved by the applicant Shrikant Haribhau Joshi are allowed by confirming the interim bail order dated 29.9.2020, on same terms and conditions.

(iii) Bail Application No.641 of 2020 and Criminal Application No.2979 of 2021 moved by the applicant Vijay Vishwanath Muley are allowed by confirming the interim bail order dated 29.9.2020, on same terms and conditions.

(iv) All the applicants shall co-operate the trial Court for expeditious disposal of the case. They shall furnish their in detail address and mobile numbers with trial Court.

(v) The Bail Applications and Criminal Applications are accordingly disposed of.

- (vi) Inform the concerned Court accordingly.

(SHRIKANT D. KULKARNI, J.)

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