

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

BAIL APPLICATION NO. 1030 OF 2022

Santosh @ Sachin Namdeo Rathod ..APPLICANT

VERSUS

State of Maharashtra ..RESPONDENT

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Mr. V.D. Sapkal, Senior Advocate i/b Mr. S.R. Sapkal, Advocate for applicant
Mr. D.R. Kale, In-charge Public Prosecutor for respondent - State

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CORAM : R.G. AVACHAT, J.
RESERVED ON : 17th AUGUST, 2022
PRONOUNCED ON : 23rd AUGUST, 2022

ORDER :

1. This is an application for bail under Section 439 of Code of Criminal Procedure. The applicant has been arrested in connection with Crime No. 26 of 2022 registered with Bidkin Police Station, Dist. Aurangabad for the offences punishable under Sections 420 and 406 read with Section 34 of the Indian Penal Code and under Section 3 of the Maharashtra Protection of Interest of Depositors (In Financial Establishments) Act, 1999.

2. Heard. Perused the First Information Report ("F.I.R.") and related police papers.

3. The applicant has asked for bail mainly relying on the Apex Court's judgment in case of *Satender Kumar Antil Vs. CBI and Another in*

Miscellaneous Application No. 1849 of 2021 in Special Leave Petition (Crl.) No. 5191 of 2021 dated 11th July, 2022. Learned senior counsel took this Court through the entire judgment and ultimately urged for grant of bail. The submissions made by learned senior counsel are none other than the observations of the Apex Court in the case of Satender Kumar Antil (supra).

4. Learned A.P.P. would, on the other hand, submit that it is an economic offence involving more than Rs.300 crores. According to him, jurisdiction to grant bail is discretionary. The same has to be exercised in the light of facts and circumstances of the case. He, therefore, urged for rejection of the application.

5. The Hon'ble Supreme Court in case of Satender Kumar Antil (supra) has given guidelines for grant of bail. The offences have been categorised in following four categories :-

(A) Offences punishable with imprisonment of 7 years or less not falling in category B & D.

(B) Offences punishable with death, imprisonment for life, or imprisonment for more than 7 years.

(C) Offences punishable under Special Acts containing stringent provisions for bail like NDPS (S.37), PMLA (S.45), UAPA (S.43D(5), Companies Act, 212(6), etc.

(D) Economic offences not covered by Special Acts.

6. According to learned senior counsel, the punishment provided for the offence in question is not more than seven years of imprisonment. The investigating officer has not complied with the mandate of Section 41A of the Code of Criminal Procedure ('Cr.P.C.') and directions given by the Apex Court in the case of ***Arnesh Kumar Vs. State of Bihar*** reported in ***(2014) 8 SCC 273***. According to him, severity of punishment has to be taken into consideration for grant of bail. Non-compliance of mandate of Section 41A of the Cr.P.C. and directions given in the case of Arnesh Kumar (supra) would entitle the accused for grant of bail.

7. In view of this Court, the present crime falls in the category of – “economic offences” not covered by Special Act. The Apex Court in Satinder Kumar Antil’s case (supra) has stated as under :-

“The suggestions of learned ASG which we have adopted have categorized a separate set of offences as “economic offences” not covered by the special Acts. In this behalf, suffice to say on the submission of Mr. Luthra that this Court in [Sanjay Chandra vs. CBI](#), (2012) 1 SCC 40 has observed in para 39 that in determining whether to grant bail both aspects have to be taken into account:

- a) seriousness of the charge and*
- b) severity of punishment.*

Thus, it is not as if economic offences are completely taken out of the aforesaid guidelines but do form a different nature of offences and thus the seriousness of the charge has to be taken

into account but simultaneously, the severity of the punishment imposed by the statute would also be a factor.”

8. It has also been observed in paragraph no.11 thereof that the principle that bail is the rule and jail is an exception has been well recognised through the repetitive pronouncements of the Apex Court. In paragraph no. 12 it has been observed as under :-

“12. Further this Court in Sanjay Chandra (supra), has observed that :

21. In bail applications, generally, it has been laid down from the earliest times that the object of bail is to secure the appearance of the accused person at his trial by reasonable amount of bail. The object of bail is neither punitive nor preventative. Deprivation of liberty must be considered a punishment, unless it is required to ensure that an accused person will stand his trial when call upon. The Courts owe more than verbal respect to the principle that punishment begins after conviction, and that every man is deemed to be innocent until duly tried and duly found guilty.

22. From the earliest times, it was appreciated that detention in custody pending completion of trial could be a cause of great hardship. From time to time, necessity demands that some unconvicted persons should be held in custody pending trial to secure their attendance at the trial but in such cases, “necessity” is the operative test. In this country, it would be quite contrary to the concept of personal liberty enshrined in the Constitution that any person should be punished in respect of any matter, upon

which, he has not been convicted or that in any circumstances, he should be deprived of his liberty upon only the belief that he will tamper with the witnesses if left at liberty, save in the most extraordinary circumstances.

23. Apart from the question of prevention being the object of refusal of bail, one must not lose sight of the fact that any imprisonment before conviction has a substantial punitive content and it would be improper for any court to refuse bail as a mark of disapproval of former conduct whether the accused has been convicted for it or not or to refuse bail to an unconvicted person for the purpose of giving him a taste of imprisonment as a lesson.”

9. This Court has carefully perused the judgments of the Apex Court in the cases of Satender Kumar Antil (supra) and Sanjay Chandra (supra). The Apex Court has observed that the directions given in Satender Kumar Antil’s case are in the nature of guidelines. The Apex Court has specifically observed as under :-

“Summary/Conclusion

73. In conclusion, we would like to issue certain directions. These directions are meant for the investigating agencies and also for the courts. Accordingly, we deem it appropriate to issue the following directions, which may be subject to State amendments.:

a) The Government of India may consider the introduction of a separate enactment in the nature of a Bail Act so as to streamline the grant of bails.

- b) The investigating agencies and their officers are duty-bound to comply with the mandate of [Section 41](#) and [41A](#) of the Code and the directions issued by this Court in Arnesh Kumar (supra). Any dereliction on their part has to be brought to the notice of the higher authorities by the court followed by appropriate action.*
- c) The courts will have to satisfy themselves on the compliance of [Section 41](#) and [41A](#) of the Code. Any non-compliance would entitle the accused for grant of bail.*
- d) All the State Governments and the Union Territories are directed to facilitate standing orders for the procedure to be followed under [Section 41](#) and [41A](#) of the Code while taking note of the order of the High Court of Delhi dated 07.02.2018 in Writ Petition (C) No. 7608 of 2018 and the standing order issued by the Delhi Police i.e. Standing Order No. 109 of 2020, to comply with the mandate of [Section 41A](#) of the Code.*
- e) There need not be any insistence of a bail application while considering the application under [Section 88](#), [170](#), [204](#) and [209](#) of the Code.*
- f) There needs to be a strict compliance of the mandate laid down in the judgment of this court in Siddharth (supra).*
- g) The State and Central Governments will have to comply with the directions issued by this Court from time to time with respect to constitution of special courts. The High Court in consultation with the State Governments will have to undertake an exercise on the need for the special courts. The vacancies in the position of Presiding Officers of the special courts will have to be filled up expeditiously.*

h) The High Courts are directed to undertake the exercise of finding out the undertrial prisoners who are not able to comply with the bail conditions. After doing so, appropriate action will have to be taken in light of [Section 440](#) of the Code, facilitating the release.

i) While insisting upon sureties the mandate of [Section 440](#) of the Code has to be kept in mind.

*j) An exercise will have to be done in a similar manner to comply with the mandate of [Section 436A](#) of the Code both at the district judiciary level and the High Court as earlier directed by this Court in *Bhim Singh (supra)*, followed by appropriate orders.*

k) Bail applications ought to be disposed of within a period of two weeks except if the provisions mandate otherwise, with the exception being an intervening application. Applications for anticipatory bail are expected to be disposed of within a period of six weeks with the exception of any intervening application.

l) All State Governments, Union Territories and High Courts are directed to file affidavits/ status reports within a period of four months.”

The Apex Court has specifically observed that this is the only purpose for which we have issued these guidelines, **but they are not fettered on the powers of the Courts.”**

10. Learned counsel for the applicant did not advert to the merits of the case. Undisputedly, there is involvement of the applicant in the economic

offence of the magnitude of rupees little over 300 crores. He has been arrested on 22nd January, 2022. Some of the co-accused are at large. Considering the applicant's involvement in the crime in economic offence of high magnitude, this Court is not inclined to grant him bail at this stage.

11. In view of above, bail application is rejected.

(R.G. AVACHAT, J.)

SSD