

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

CRIMINAL BAIL APPLICATION NO.4038 OF 2021

....

WITH

INTERIM APPLICATION NO.380 OF 2022

IN

CRIMINAL BAIL APPLICATION NO.4038 OF 2021

Madhukar Meghshyam Rupji

.... Applicant

Versus

The State of Maharashtra

.... Respondent

Mr. Harshad Bhadbhade, Advocate a/w. Mangesh Deshmukh,
for the Applicant.

Mr. P.H. Gaikwad, APP for the Respondent-State.

CORAM : SARANG V. KOTWAL, J.

DATE : 3rd FEBRUARY, 2022

[Through Video Conferencing]

P.C. :

1. The applicant is seeking his release on bail in connection with C.R.No.19/2020 dated 27.1.2020 registered at R.A.K. Marg police station, Mumbai under Sections 420, 406 read with 34 of the Indian Penal Code.

2. Heard Shri Harshad Bhadbhade, learned counsel for the applicant and Shri P.H. Gaikwad, learned APP for the State.

3. The prosecution case is that the applicant and his son were having construction business by the name 'Rupji Construction'. The story in the charge-sheet mentions that they had taken Rs.26 Lakhs from the first informant Ashwinikumar Lonkar, Rs.1,31,88,000/- from Aparna Naik, Rs.12 Lakhs from Nitin Joshi, Rs.10 Lakhs from Pradhan Paigankar, and Rs.7,74,000/- from Gajanan Naikm, for sale of flats. Thus, the accused had taken in all Rs.1,87,72,000/- from these persons and did not hand over the flats as promised, did not return the amount and on this basis the charge-sheet is filed.

4. The FIR in the present case is lodged by one Ashwinikumar Lonkar. He has stated that in January, 2017 the applicant's son Tejal Rupji called the informant to his office. He appointed him for looking after labour issues. After a few days, Tejal Rupji told the informant that their construction company was selling flats and a flat for Rs.55 Lakhs was available at 'Rupji Signature' project. The informant showed his interest. He paid Rs.26 Lakhs. The

applicant's son did not give him allotment letter and the agreement copy. He avoided to give those documents. The informant came to know that the applicant's son was arrested by EOW and, therefore, he made further enquiries. He came to know that similar to him, others were also cheated for different amounts. On this basis, the FIR is lodged.

5. The applicant was arrested on 28.6.2021 and since then he is in custody. The investigation is over and the charge-sheet is already filed.

6. Learned counsel for the applicant has also filed interim application in this main application on the ground that the applicant is suffering from serious ailments. He has mentioned that the applicant had undergone hip replacement surgery. It is stated in the application that he was infected with COVID-19, and, therefore, his condition is critical.

7. On the last occasion, a report was called for from the jail officers. An affidavit-in-reply based on that report is filed by learned APP.

8. Shri Bhadbhade submitted that the applicant was having construction business and his different projects at different cities were going on. However, due to some difficulty in some of the projects in obtaining permissions, one by one, as a chain, entire business was affected and as the money was locked in those projects, the amounts could not be returned to the victims.

9. He further submitted that the applicant is in custody since June, 2021. The maximum punishment in this case under Section 420 of IPC is for seven years. Considering that the applicant is sick and is unable to attend to his duties without proper attendant, bail may be granted to him. The applicant is also entitled to be released on bail under the provisions of Section 437 of Cr.P.C.

10. Learned APP opposed this application. He submitted that there are similar antecedents against the present applicant. The amount involved is big and, therefore, bail should not be granted to him.

11. I have considered these submissions. As far as the merits of the matter is concerned, there are statements of the complainant and other victims. Their common story is that the victims had paid different amounts demanded by the applicant and his son. The amounts were not returned to them and were thus misappropriated. The flats were also not handed over to them. Therefore, purely on merits the victims have suffered monetary losses. The applicant's role is clearly stated by some of these victims. However besides the merits, there are medical grounds, which I need to seriously consider.

12. The applicant is admittedly 83 years of age. It is mentioned so in the affidavit-in-reply filed by the respondent-State. The relevant paragraph in the affidavit-in-reply mentions that the applicant was suffering from hyper tension and was on medication. He was suffering from cough on 19.1.2022. He did not respond to medical treatment and was referred to J.J. Hospital. On investigation, he was found COVID-19 positive. Therefore, he was transferred to

Patanwala Covid Center. He was referred to St. George Hospital on 24.1.2022. Since then, he is under medical treatment there. Significantly, it is mentioned in the affidavit-in-reply thus “He is 83 years old and bed ridden. He cannot maintain himself without attendant.”

13. The interim application on medical grounds preferred by the applicant states that in view of his hip surgery and the medical problems he is unable to perform his day to day activities. This averment is supported by the medical opinion. In this view of the matter, keeping the applicant in custody in his old age and in his bad state of condition, will not serve any purpose. The applicant is not likely to abscond. The investigation is over and the trial will take very long time to commence. Considering these aspects and his old age and health in particular, I am inclined to grant bail to the present applicant.

14. Hence, the following order :

ORDER

- (i) In connection with C.R.No.19/2020 registered with R.A.K. Marg police station, Mumbai, the applicant is directed to be released on bail on his furnishing a PR bond in the sum of Rs.50,000/- (Rupees Fifty Thousand Only) with one or two sureties in the like amount.
- (ii) Considering the applicant's health condition and looking at the prevailing COVID-19 pandemic, it may not be possible to the applicant to furnish sureties immediately. Therefore, initially the applicant is permitted to furnish cash bail for the same amount. The applicant will have to furnish the sureties, as directed, within eight weeks from today.
- (iii) The applicant shall deposit his passport, if any, if not deposited earlier, with the investigating officer before being released on bail.
- (iv) Bail Application stands disposed of accordingly. With disposal of the application, interim application also stands disposed of.

PRADIPKUMAR
PRAKASHRAO
DESHMANE

Digitally signed by
PRADIPKUMAR
PRAKASHRAO
DESHMANE
Date: 2022.02.03
18:52:59 +0530

(SARANG V. KOTWAL, J.)

Deshmane (PS)