

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL BAIL APPLICATION NO.698 OF 2020
WITH
INTERIM APPLICATION NO.1653 OF 2021**

Lalit Purushottam Shewale ... Applicant

V/s.

The State of Maharashtra ... Respondent

Mr. Satyavrat Joshi, Advocate for the Applicant.

Mr. A.A. Palkar, APP for the Respondent – State.

CORAM : SMT. SADHANA S. JADHAV, J.

DATE : 8th APRIL 2022.

PC. :

1. Applicant herein is arrested on 17th February 2016 in Crime No.33 of 2016 registered at Malegaon Chhavani Police Station, Nashik Rural for the offence punishable under sections 419, 420, 463, 465, 467, 468, 470, 471, 472, 473, 475, 170, 177, 182, 211, 120-B r/w 34 of Indian Penal Code and under sections 3 and 4 of The Maharashtra Protection of Interest of Depositors (in Financial Establishments) Act, 1999 (for short “M.P.I.D.”) and under section 66(C)(D) of the Information Technology Act, 2000. The applicant had approached this Court by filing Criminal Appeal No.141 of 2017 which was withdrawn

on 31st January 2018. The subsequent application being Bail Application No.684 of 2019 was filed before this Court. The said application was filed mainly on the ground that there was a delay in commencement of the trial and the proceedings were being adjourned on one or the other ground. By order dated 3rd April 2019, the said application was disposed of with a direction to the Sessions Judge, Malegaon **to complete the recording of evidence on or before 31st January 2020 without granting unwarranted adjournments to the prosecution.**

2. This is the third bail application filed by the accused/applicant.

3. The application seeking enlargement on bail was rejected by order dated 18th October 2019.

4. On 7th April 2021, the application was heard. The learned counsel has placed on record the roznama of the said proceedings which prima facie revealed that the accused was not being presented before the trial Court on every scheduled date. The application seeking enlargement on bail was rejected by order dated 18th October 2019. The learned Sessions Judge has observed as follows :-

- “1. This is third bail application filed u/sec. 439 of Cr.P.C. in crime No. 145/2012 for the offence punishable u/sec. 420, 419, 463, 465, 467, 470, 471, 472, 473, 475, 170, 177, 182, 211, 120-B, 34 of IPC registered with Chhavani Police Station, Malegaon.
2. Heard Shri. Wasif advocate for the applicant. It has been argued that the accused is falsely implicated in the crime in question. He has no nexus either with the co-accused or with the crime in question. It is further argued that the accused is languishing in jail since last more than 3 years. It is submitted that the trial would take long time to conclude. Therefore, it is requested that the applicant may be released on bail.
3. As against this APP Shri. Pagare for State submitted that he is not notified to conduct case under M.P.I.D. He further argued that A.P.P. Shri. Rankawat is notified to conduct the cases under M.P.I.D. He is out of station. Therefore, it is requested to grant certain time.
4. The bail application is came to be filed on 17.09.2019. On 17.09.2019 and on 04.10.2019 A.P.P. of this Court Mr. Pagare submitted that he is not notified to conduct the cases under MPID. Accordingly the adjournment was granted. Today is also the same position. It would not be out of place to mention here that the Prosecutor, the police, investigating officer are not co-operating in the present matter though it was and is brought to their notice that the Honourable High Court has directed this Court to decide the trial on or before January, 2010. However, the prosecution did nothing.
5. It is record that the bail applications filed by applicant before and after filing of charge-sheet came to be rejected on merit. The applicant had also filed Bail Petition before Honourable High Court vide Bail Application No.684/2019. Said bail application came to be rejected on 3rd April, 2019. Therefore, the bail application filed by applicant before this Court is not tenable.
6. On going through the entire file, it reveals to me that the applicant and co-accused duped number of unemployed persons. Applicant extracted crores of rupees from the unemployed persons under assurance that, they will provide Government job to them. Thus, there is prima facie case against

the applicant. This Court has framed the charge and matter is ready for evidence. It is true that the evidence of PW-1 is yet incomplete. The Honourable High Court directed this Court to decide the trial till January, 2010. Therefore, it can not be said that, the trial would take long time to conclude. In view of the aforesaid discussion and the fact of the case, I am of view that applicant is not entitled for bail. Hence, I pass the following order.”

ORDER

The application Exh.155 is hereby rejected.”

5. This Court had directed the Commissioner of Police and Superintendent of Police that every under-trial prisoner including accused shall be produced before the trial Court on the scheduled date.

6. The matter was heard on 2nd July 2021 and this Court had requested the Special Judge not to give any unwarranted adjournments. This Court had also called for report for the progress in trial.

7. On 9th February 2022 a report was received from the Additional Sessions Judge wherein it was stated that complainant had filed an application seeking appointment of Special Public Prosecutor to conduct the trial and till that date the Special Public Prosecutor was not appointed.

8. This Court, in the order dated 9th February 2022, has

observed as follows :-

“It is alleged that 120 unemployed people have been cheated. It is necessary to ascertain as to whether property of the accused is attached or not.”

9. On 9th March 2022, the application was heard. The facts of the case were perused. It is a matter of record that the allegations against the applicant in the present case are to the extent that the applicants, in collusion with his cousin Bhushan Shewale has cheated several unemployed candidates by offering jobs in the public departments and had obtained money from them. He had also fabricated false appointment letters in favour of the unemployed and had showed them the said appointment letters in order to gain their confidence and it makes a huge amounts. It was in this context that this Court had called upon prosecution to explain as to how the provisions under the M.P.I.D. are attracted in the present case. No affidavit is filed to that effect till today. In the order dated 9th March 2022 this Court had observed as to how trial is proceeding at snail's pace and in fact, it is being protracted at the behest of the complainant. In fact, there was no positive reply from the Director of Prosecution, Law and Judiciary Department as to the appointment of Special Prosecutor in the present case and therefore, the learned

Prosecutor in the trial Court was conducting the trial. Mr. Ashok Pagare has filed an affidavit today and has demonstrated before this Court as follows :-

- “4. Thereafter, the said sessions case no.66/2016 was transferred to the court of Ld. Additional District and Session Judge-3, Malegaon and till 17/02/2021 Mr. S.K. Sonawane, the Ld. APP was looking after the said Session Case. But since the complainant, in the said case made a grievance against Shri. S.K. Sonawane, APP, therefore, as per office order dated 23/03/2021 the Ld. District Government Pleader & Public Prosecutor, Nashik was pleased to direct me to look after the said Sessions Case. The said order was received by me on 26/03/2021, thereafter lockdown was started. Copy of the office order dated 23/03/2021 issued by the Ld. District Govt. Pleader & Public Prosecutor, Nashik is hereto annexed and marked as **Exh. “B”**.
5. I say that after the lockdown when the court was functioning then, on 22/09/2021, the complainant namely Praveen Dinkar Suryawanshi informed to the Hon’ble trial court that, he has submitted an application to the Law and judiciary department, Mantralaya, Mumbai and thereby requested to make a separate appointment of Special Public Prosecutor in the said matter and sought an adjournment for the said case. Copy of the Application dated 22/09/2021 submitted by the Complainant in the trial court is hereto annexed and marked as **Exh. “C”**. Again on 29/10/2021, the complainant gave an application for appointment of Special Public Prosecutor for the said Sessions Case. Accordingly, on 17/02/2022, I inform this fact, in writing to the Ld. Deputy Director and Government Prosecutor, Nashik and the said fact was also brought to the notice of Hon’ble Court by submitting an application. Since the Complainant wanted to appoint another Special Public Prosecutor, therefore, it was not proper on my part to conduct the said case. Copy of the letter dated 17/02/2022 issued by me to

the Asstt. Director for prosecution is hereto annexed and marked as Exh. "D".

10. It appears that by office order of the District Government Pleader and Public Prosecutor, Nashik dated 23rd March 2021, Shri Ashok N. Pagare, Assistant Government Pleader and Additional Prosecutor, Malegaon was appointed to conduct trial in Sessions Case No.66 of 2016. The said sessions case was transferred to the Additional District and Sessions Judge, Malegaon and till 17th February 2021 Mr. S.K. Sonawane was looking after the said Special Case. The complainant had in fact entered into the witness box however, once again on 22nd September 2021, the complainant Praveen Suryawanshi had informed the trial Court that he had submitted an application to the Law and Judiciary Department to request the said department to make an appointment of the Special Public Prosecutor in the said matter and sought adjournment. On 17th February 2022, Mr. Pagare had brought this fact to the notice of the Deputy Director and Prosecutor, Nashik and since the appointment of Special Prosecutor was awaited, the matter was once again adjourned.

11. On 21st March 2022, the accused were produced through video conferencing when the examination-in-chief of the complainant

was recorded partly. On 28th March 2022, the accused were produced through video conferencing. Investigating officer was directed to remain present.

12. Roznama dated 4th April 2022 shows that the accused nos.1, 2 and 4 were not produced from the jail. The evidence is kept part-heard. The matter is adjourned to 19th April 2022.

13. In the facts of the case, prima facie, this Court is of the opinion that only relevant sections which would be attracted in the present case are 420, 467, 471, 463, 465, 470, 472, 473, 475, 120-B r/w 34 of Indian Penal Code would be applicable. All the offences are triable by Magistrate. The learned counsel for the applicant has submitted that he has undergone maximum punishment for the offences punishable under the provisions of M.P.I.D. Act. He has undergone more than half of the sentence contemplated for the offence under section 419 and 420 of IPC. Section 436-A of Cr.P.C. contemplates as follows :-

“436-A. Maximum period for which an undertrial prisoner can be detained. -

Where a person has, during the period of investigation, inquiry or trial under this Code of an offence under any law (not being an offence for which the punishment of death has been specified as one of the punishments under that law) undergone

detention for a period extending up to one-half of the maximum period of imprisonment specified for that offence under that law, he shall be released by the Court on his personal bond with or without sureties;

Provided that the Court may, after hearing the Public Prosecutor and for reasons to be recorded by it in writing, order the continued detention of such person for a period longer than one-half of the said period or release him on bail instead of the personal bond with or without sureties;

Provided further that no such person shall in any case be detained during the period of investigation inquiry or trial for more than the maximum period of imprisonment provided for the said offence under that law.”

14. Charge-sheet shows that the prosecution in the present case has filed a list of proposed 178 witnesses in the present case. As of today, the complainant has insisted upon appointment of Special Public Prosecutor and has protracted the trial by not letting the prosecution to proceed and examine witnesses. As of today, the miniscule evidence is adduced by the complainant. The properties of the applicant are attached since he is being prosecuted under the provisions of M.P.I.D. This Court is of the opinion that further incarceration of the applicant will amount to punitive detention of the applicant on unwarranted grounds. The complainant has stalled the proceedings and the prosecution has fallen a prey to the sin.

15. In view of the above, this Court is inclined to grant bail.

However, it is made clear that observations made hereinabove are prima facie in nature and restricted to application under section 439 of Cr.P.C. and the learned Sessions Court shall not influence upon the same. Hence, the following order is passed:-

ORDER

- (i) Application is allowed;
- (ii) Applicant be enlarged on bail on furnishing P.R. Bond in the sum of Rs.1,00,000/- (Rupees One Lakh Only) and one or more sureties in the like amount;
- (iii) Applicant shall attend each and every date of the trial in the Sessions Court;
- (iv) Upon failure to attend any two consecutive dates before the trial court, the prosecution would be at liberty to seek cancellation of bail;
- (v) Application is allowed and disposed of accordingly.

(SMT. SADHANA S. JADHAV, J)