

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO.207 OF 2019**

Imamul Jainul Shaikh & Anr. .. Applicants

Versus

The State of Maharashtra .. Respondent

**WITH
CRIMINAL SUO-MOTU APPLICATION NO.1 OF 2019**

High Court on its own Motion .. Applicant

Versus

Inamul Jainul Shaikh & Anr. .. Respondents

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Mr.Niranjan Mundargi with Mr.Kunal Ambulkar for the Applicants.

Mr.S.V.Gavand, A.P.P. for the State/Respondent.

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**CORAM: BHARATI DANGRE, J.
DATED : 03rd AUGUST, 2022**

P.C:-

1. Heard learned counsel for the applicants and the learned A.P.P.

2. The present applicants are aggrieved by imposition of an onerous condition while releasing them on bail, being deposit of an amount of Rs.1,06,00,000/- before the trial Court as a pre-condition for their release.

3. With the assistance of the respective counsel, I have perused the said order.

Pertinent to note that the applicants are accused of Section 420 read with Section 34 of the IPC and Section 3 of the MPID Act. The learned Judge has recorded that accused No.1 to 3 have represented the witnesses that accused Nos.1 and 2 are builders and have shown the building, which was under construction. It is recorded that they have induced the witnesses to part with money towards purchase of flats and shops respectively and even executed documents fraudulently in order to deceive the said witnesses. Since, the witnesses have paid the consideration of Rs.1,05,74,000/-, the Court arrived at the conclusion that the accused had wrongfully gained that amount under the pretext of selling flats and shops to them. That is why, the Court imposed a condition of deposit of amount as a condition precedent to their release.

4. Being aggrieved by imposition of this condition and since the applicants despite their release on bail by order dated

19/05/2018 were not able to avail the same, they approached this Court for relaxation of the said condition, upon which they were directed to approach the Sessions Court. The learned Additional Sessions Judge, Vasai, however, again reiterated the said condition in the order dated 04/07/2018.

The net result being, despite their release on bail by order dated 19/05/2019, because of the onerous condition imposed, they are still languishing in jail.

5. It is settled position of law that while considering the application for bail, the Court should refrain itself from imposing onerous condition. Learned counsel Mr.Mundargi has placed reliance upon the decision of the Hon'ble Apex Court in the case of *Sumit Mehta Vs. State of N.C.T. of Delhi (Criminal Appeal No.1436 of 2013, arising out of Special Leave Petition (Crl) No.2 of 213)*, where Their Lordships of the Apex Court have culled out the parameters upon which, the application under Section 438 shall be considered. It is held that the Court is duty bound to strike a balance between the individual's right to personal freedom and the right of investigation of the police. Considering the object of Section 438, direction issued to invest an amount of Rs.1,00,00,000/- in the fixed deposit for a period of six months in the name of

the complainant and to keep the FDR with the Investigating Officer as a condition precedent for grant of anticipatory bail, was held to be evidently onerous and unreasonable. In paragraph 16, Their Lordships have observed as under :-

“16. The words “any condition” used in the provision should not be regarded as conferring absolute power on a Court of law to impose any condition that it chooses to impose. Any condition has to be interpreted as a reasonable condition acceptable in the facts permissible in the circumstance and effective in the pragmatic sense and should not defeat the order of grant of bail. We are of the view that the present facts and circumstances of the case do not warrant such extreme condition to be imposed.”

6. In the present case, when the applicants are facing accusations under the MPID Act, which is a self contained code and which permits the appropriate steps to be taken for attachment of the property of the accused persons through the designated authority/competent Court in order to secure the interest of the investors, the Sessions Court has completely erred in imposing condition of deposit of Rs.1,06,00,000/- as a condition precedent for their release.

7. In the light of the aforesaid observations, the condition of deposit as a condition precedent for release of the applicants on bail, cannot be sustained and stands relaxed.

8. My attention is invited to an order passed on 20/06/2019 in Criminal Application No.207 of 2019 whereby suo-motu notice for cancellation of bail was issued by this Court, in the wake of the observations made by the Sessions Court in paragraph 11 of the order dated 19/05/2018 to the effect that the applicants had fabricated the documents with an intention to defraud the investors.

Learned counsel Mr.Mundargi would submit that after completion of investigation, the charge-sheet has been filed and the applicants are the accused of only Section 420 read with Section 34 of the IPC alongwith Section 3 of the MPID Act.

9. In the wake of the above, Criminal Application No.207 of 2019 stands disposed off.

Needless to state that the applicants shall adhere to the other conditions, subject to which they are released on bail.

10. In view of the disposal of Criminal Application No.207 of 2019, criminal suo-motu application No.1 of 2019 does not survive and stands disposed off.

(SMT. BHARATI DANGRE, J.)