

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
BAIL APPLICATION NO.1553 OF 2022**

Nitin Balkrushna Kadam ... Applicant
versus
The State of Maharashtra ... Respondent

Mr. Balwant V. Salunkhe, for Applicant.
Mr. P.H.Gaikwad, APP, for State.

CORAM: N.J.JAMADAR, J.

DATE : 18th JULY, 2022

P.C.

1. This is an application for bail. The Applicant is arraigned in C.R.No.50 of 2022 registered with Loni Kalbhor Police Station, Pune for an offence punishable under Section 420 read with Section 34 of the Indian Penal Code.

2. The indictment against the Applicant is that the first informant was associated with 'Regalia Informatics Training Institute'. The said trust was in need of funds. The first informant approached Amar Shinde, the co-accused, who referred the first informant to Applicant and Bharat Bhatia, another co-accused, as the latter were professedly working for Pan Atlantic, Netherlands, a NGO. The Applicant demanded the first informant to pay a sum of Rs.5 Lakhs upfront to secure the donation. The first informant claimed to have paid a sum of Rs.3 Lakhs to the Applicant. The latter issued a cheque drawn on Chinchwad Branch of Kotak Mahindra Bank Ltd., for an amount of Rs.3 Lakhs, by way of security. Later on, the

Applicant met co-accused Bharat Bhatia. He also induced the first informant to part with a sum of Rs.11 Lakhs, which was paid, over a period of time, in cash and through banking channel. The co-accused Bharat Bhatia also drew a cheque for Rs.10 Lakhs on Kalyan Branch of State Bank of Hyderabad, by way of security. The Applicant and the co-accused Bharat Bhatia did not secure the donation as promised. The cheques drawn by the Applicant and Bharat Bhatia were dishonoured on presentment. The Applicant and the co-accused gave evasive replies. Further inquiry revealed that there was no NGO styled as 'Pan Atlantic'. Having realized that the first informant was deceived, a report came to be lodged on 10th February, 2022.

3. The Applicant and the co-accused came to be arrested. Post completion of investigation, charge sheet has been lodged. As the learned Additional Sessions Judge declined to exercise the discretion in favour of the Applicant, this application is preferred.

4. I have heard Mr. Salunkhe, learned Advocate for the Applicant and the Mr. Gaikwad, learned APP for the State. With the assistance of the learned Advocates, I have perused the FIR and the documents annexed with it.

5. Mr. Salunkhe, learned Advocate for the Applicant would urge that the Application has been falsely roped in. The allegations are primarily against the co-accused Bharat Bhatia. Infact, both the co-accused Amar Shinde and Bharat Bhatia have been enlarged on bail. As the investigation is complete for all intent and

purpose, there is no reason to further detain the Applicant as an under-trial prisoner. Hence, the Applicant deserves to be enlarged on bail, urged Mr. Salunkhe.

6. In opposition, Mr. Gaikwad, learned APP submitted that there are documents to show that the amounts were credited in the account of the Applicant. The first informant was duped to the tune of Rs.14 Lakhs. There is adequate material to make out the complicity of the Applicant. Hence, the Applicant may not be released on bail.

7. At the outset, it is pertinent to note that the learned Sessions Judge was persuaded to exercise the discretion in favour of co-accused Amar Shinde, who had allegedly introduced the Applicant to the first informant as there were no allegations of any amount having been paid to Amar Shinde. The co-accused Bharat Bhatia came to be released on bail by the learned Additional Sessions Judge, Pune by an order dated 31st May, 2022 after noting that the first informant appeared before the learned Sessions Judge and stated that the co-accused Bharat Bhatia had agreed to pay the balance amount.

8. The order of the learned Additional Sessions Judge releasing the co-accused Bharat Bhatia on bail, indicates that the first informant has entered into some sort of composition with the co-accused Bharat Bhatia. The amount allegedly paid to the Applicant is relatively less. The first informant claimed to have paid a sum of Rs.1,80,000/- to the Applicant through the banking channels and a sum of

Rs.1,20,000/- in cash.

9. The learned Advocate for the Applicant, on instructions of the mother of the Applicant, made a statement that the Applicant would deposit a sum of Rs.1,80,000/- in the Court of the learned Magistrate within a period of four weeks of his release from prison.

10. I have carefully considered the aforesaid submissions. It is imperative to note that the co-accused Bharat Bhatia who allegedly defrauded the first informant for an amount of Rs.11 Lakhs, has been released on bail on the ground that the first informant was satisfied with the assurance of payment. Even otherwise, the investigation seems to be practically complete. In the backdrop of the nature of the accusation, the possibility of tampering with evidence seems to be remote. The offence is triable by the Magistrate. The Applicant has been in custody for almost six months. All the aforesaid factors, if considered in conjunction with an offer of deposit of a sum of Rs.1,80,000/- in the trial Court, persuade the Court to exercise the discretion in favour of the Applicant. Hence, the following order :

ORDER

(i) The Application stands allowed.

(ii) The Applicant - Nitin Balkrushna Kadam be released on bail in C.R.No.50 of 2022 registered with Loni Kalbhor Police Station, Pune, on executing a PR bond in the sum of Rs.25,000/- with one or two sureties in the like amount to the

satisfaction of the learned Magistrate, subject to the condition of deposit of Rs.1,80,000/- in the Court of jurisdictional Magistrate within a period of four weeks from the date of release of the Applicant.

(iii) The Applicant shall not tamper with the prosecution evidence and/or give threat or inducement to any of the prosecution witnesses.

(iv) The Applicant shall regularly attend the proceedings before the jurisdictional Court.

(v) In the event of breach of any of the aforesaid conditions, the bail shall liable to be cancelled.

(N.J.JAMADAR,J.)