

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

CRI. BAIL APPLICATION NO. 3590 OF 2021

SHALIKRAM
PRALHADRAO
BOREY
Digitally signed
by SHALIKRAM
PRALHADRAO
BOREY
Date:
2022.03.30
18:19:21 +0530

Suresh Tukaram Chavan

... Appellant/
Accused.

Vs.

The State of Maharashtra

... Respondent.

Mr. Aniket Vagal, Advocate a/w. Mr. Kunal Pednekar, for the
Appellant.

Mr. Arfan Sait, APP for the State.

API – D.N. Dhole, MFC Police Station, present.

CORAM : PRAKASH D. NAIK, J.

DATED : MARCH 29, 2022.

P.C. :

1. The Applicant is seeking bail in connection with Crime No. I-456 of 2017, registered with Mahatma Phule Chowk Police Station, Kalyan on 18.12.2017 for offences punishable under sections 420, 406 read with section 34 of the Indian Penal Code. The Applicant was arrested on 19th August, 2018.

2. The case of the prosecution is that in 2014 the complainant read advertisement, about construction of premises at Kalyan in Marathi News Paper. The complainant visited the office of builder, to make enquiry about the construction. The name of builders was displayed as Shree Villa Builders and Developers. Three persons were available in Office. They gave their names as Umesh Chavan, Suresh Chavan and Vinod Chowdhary. They told the complainant that

for booking the premises, 80% amount will have to be deposited. Possession of room would be provided after one month. The consideration for room is Rs. 5,50,000/-. The complainant deposited Rs.2,30,000/-. Acknowledgment was issued by Umesh Chavan. The accused thereafter, gave evasive reply about construction and possession of premises. Subsequently, the complainant noticed that office of builder was closed. The inmates of Chavan informed complainant that they have purchased premises from another builder. The complainant was cheated for an amount of Rs. 2,30,000/-. Investigation was conducted. Other persons were also deceived by the accused. Their statements were recorded. The total amount misappropriated by accused is Rs. 51,98,561/-.

3. The Applicant preferred application for bail before Sessions Court at Kalyan, which has been rejected by order dated 02.11.2020. The co-accused Umesh Chavan had preferred application for bail on the ground that parties have compromised. The victims had supported application. The said application was allowed by order dated 14.02.2020.

4. The Applicant had preferred an application for bail before this court. The said application was disposed of by order dated 2nd March, 2021. Without adjudicating the merits of the case, application was allowed to be withdrawn. Trial was expedited, considering the fact that applicant is in custody from 19.08.2019. In the event trial is not concluded within 6 months, liberty was granted to prefer fresh application for bail.

5. Learned Advocate for the Applicant submitted that the Applicant is in custody from last three years. The offences are triable by the Magistrate. The co-accused has been granted bail. The Applicant is not beneficiary of the transaction. No specific role has been attributed to the Applicant. The Applicant has undergone half the sentence and in accordance with section 436-A of Criminal Procedure Code, the Applicant is entitled for bail. There is no progress in the trial. Although the trial was expedited, it has not commenced. He relied upon the order dated 2nd March 2022 passed by the Apex Court in the case of **Deepak Shrikant Aggarwal vs. State of Maharashtra** - (Criminal Appeal No. 302 of 2022); wherein the bail was granted to the accused, who was in the custody for more than six years in a case where for the offence in question, the maximum sentence was seven years. The Apex Court had referred to section 436-A of the Code of Criminal Procedure.

6. The learned APP submitted that the co-accused -Umesh Chavan is brother of the Applicant-accused. He was granted bail on the ground that he has promised to settle the claims of aggrieved persons. However, the assurance of the settlement has not been fulfilled by him. The application for cancellation of bail granted him is pending before the lower court. The said co-accused had misled the court that the dispute would be settled. It is further submitted that another case has been registered against the Applicant with Mahatma Phule Chowk Police Station, Kalyan vide CR No. 867 of 2015 under sections 420, 406 read with 34 of the Indian Penal Code. Investigation reveals that a loss of Rs. 51,98,561/- was caused to the victims,

who were induced to part with the said amount in the present case. On account of several impediments, the trial could not proceed. The Applicant was involved in cheating the victims alongwith the co-accused. The trial could not proceed due to several reasons. The accused are delaying trial.

7. It is pertinent to note that the offences were registered under sections 420 and 406 of the IPC. Both the offences are triable by the Magistrate. Maximum punishment under section 420 of IPC is 7 years and under section 406 of the IPC is 3 years. The Applicant is in custody for a period of about 3 years. It is true that the co-accused was granted bail on the ground that he was to settle the dispute with the aggrieved persons. However, the promises were not fulfilled. Although the Applicant may not be entitled for bail on the ground of parity, the fact remains that he is in custody since last three years. The previous application preferred by the Applicant was disposed of by expediting the trial and granting liberty to prefer a fresh application for bail in the event the trial is not concluded within six months.

8. The trial Court has forwarded report dated 24th March, 2022, wherein it is submitted that the charge was framed on 27th September, 2019 and on 21.11.2019 witness was present but the case was adjourned as both accused were not produced and their Advocate was absent. Co-accused – Umesh Chavan preferred an application for bail on the ground of mutual settlement with the victim and in view of the settlement, bail was granted to him with the condition that breach of undertaking/mutual settlement by the accused, bail granted

will be cancelled. Thereafter, the accused no. 1 had continuously remained absent. The complainant had moved an application for cancellation of bail and reply has been filed on behalf of the co-accused - Umesh Chavan. The application is pending before the trial court.

9. It is urged that the Applicant is in custody from the date of arrest. The report indicates that the Applicant was not produced on 21.11.2019. The Applicant is in continuous custody for a period of about three years. Considering the period of custody and the imprisonment provided for the offences charged against the Applicant, case for grant of bail is made out. Hence, the following order :

ORDER

- (i) Bail Application No. 3590 of 2021 is allowed.
- (ii) The Applicant is directed to be released on bail on executing P.R. Bond in the sum of Rs. 50,000/- with one or more sureties in the like amount.
- (iii) The Applicant is permitted to furnish cash bail in sum of Rs. 50,000/- for a period of eight weeks from the date of his release.
- (iv) The Applicant shall report Mahatma Phule Chowk Police Station, Kalyan once in 15 days, i.e. on 15th and 30th of every month, between 11 a.m. to 1 p.m. for a period of three months and thereafter, the Applicant shall report the

said police station once in a month, on first Saturday of every month till further orders.

(v) The Applicant shall attend the trial court on every date of hearing unless he is exempted by the trial Court.

(vi) The applicant shall not tamper with the evidence.

10. Bail Application is disposed of.

(PRAKASH D. NAIK, J.)

.....