

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

CRIMINAL BAIL APPLICATION NO.4190 OF 2021

....

WITH

INTERIM APPLICATION NO.379 OF 2022

IN

CRIMINAL BAIL APPLICATION NO.4190 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.232/2019 dated 5.9.2019 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 allegations against the present applicant are that the first informant Vikas Bagadiya was shown a flat by the sales manager Vijay Bhosale of Rupji Construction in August, 2013. That flat was at Rupji Castle, Parel, Mumbai. The informant was shown a flat on the 13th floor being flat No.1301. The informant decided to purchase that flat. The price was fixed at Rs.3.5 Crores. The applicant's son Tejal Rupji had a discussion with the informant. That day, some token amount was paid by the informant. According to the first informant in all Rs.52,50,000/- were paid, but, no further steps were taken and no agreements were entered into. The informant has lost this money. The applicant and his son are looking after this construction business. On this basis, the FIR is lodged. The FIR is lodged vide C.R. No.232/2019 dated 5.9.2019 registered at RAK Marg Police Station, Mumbai under Sections 420, 406 read with 34 of the Indian Penal Code.

4. 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.

5. 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 he was infected with COVID-19, and, therefore, his condition is critical.

6. 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.

7. 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.

8. 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.

9. 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.

10. I have considered these submissions. The informant has suffered monetary loss. Therefore, on merits, the offence is attributed to the applicant. However, besides the merits, there are medical grounds, which I need to seriously consider.

11. 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.”

12. 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.

13. Hence, the following order :

ORDER

- (i) In connection with C.R.No.232/2019 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
18:53:12 +0530

(SARANG V. KOTWAL, J.)

Deshmane (PS)