

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

BAIL APPLICATION NO. 130 OF 2023

Ashok Kedarmal Sharma

..Applicant

v/s.

The State of Maharashtra .

..Respondents

Mrs. Pushpa Ganediwal i/b. Mr. Himat Bhayani for the Applicant.
Mr. Shriram Deshmukh a/w. Priya Maurya for the Complainant.
Mr. S.V.Gavand, APP for the State.

**CORAM : ANUJA PRABHUDESSAI, J.
DATED : 28th MARCH, 2023.**

P.C.

1. This is an application under Section 439 Cr.P.C. filed by the aforesaid Applicant, who is facing trial in Police Case No. PW/4403586/2022, pending before the Metropolitan Magistrate, Andheri, Mumbai, arising from C.R. No. 459 of 2022 registered at Versova Police Station, Mumbai, for offences under Section 406, 420, 465, 467, 471 r/w. 34 of the Indian Penal Code.

2. Heard learned Counsel for the Applicant and learned APP for the State. I have perused the records and considered the submissions advanced by the learned Counsels for the respective parties.

3. The records prima facie reveal that the aforesaid crime was

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registered pursuant to the FIR lodged by Milind Sapre. A perusal of the FIR prima facie reveals that the co-accused Manish Khobragade had lured the complainant in investing an amount of Rs. 1,50,00,000/- in M/s. Cure Magic Pvt. Ltd., on an assurance that he would get 24% profit in the said business. It is stated that the co-accused neither gave the returns, nor returned the principal amount. The first informant therefore lodged an FIR against the co-accused for cheating and other offences. Based on the said allegations, the crime came to be registered.

4. The name of the present Applicant is not disclosed in the FIR. The only material against the Applicant is the statement of the co-accused, wherein he has stated that he and his wife had transferred an amount of Rs. 5,50,000/- in the account of the Applicant. There is no further investigation on this aspect. It is not the case of the prosecution that the Applicant was in any manner associated with the Cure Magic Pvt. Ltd. Company, or that he was involved in inducing the first informant in investing the money. In such circumstances, the mere fact that the co-accused and his wife had transferred an amount of Rs.5,50,000/- in the account of the Applicant would not per se attract the provisions of Section 420 or 406 of IPC.

5. Considering the nature of accusations leveled against the Applicant and the material in support thereof, in my considered view, this is a fit case to exercise discretion under Section 439 of Cr.P.C. Hence, the Order:-

- (i) The application is allowed;
- (ii) The Applicant Ashok Kedarmal Sharma, who is facing trial in Police Case No. PW/4403586/2022, pending before the Metropolitan Magistrate, Andheri, Mumbai, be released on bail on furnishing bail bond of Rs.30,000/- (Rupees Thirty Thousand Only) with one or two solvent sureties in the like amount;
- (iii) The Applicant shall report to the Versova Police Station on the first day of every month till framing of the charge;
- (iv) The Applicant shall not interfere with the complainant or the other witnesses, or tamper with the evidence in any manner;
- (v) The Applicant shall keep the Investigating Officer informed of his permanent as well as temporary address, if any, and his contact details, and/or change of residence or mobile details from time to time.

(ANUJA PRABHUDESSAI, J.)