

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

BAIL APPLICATION NO. 318 OF 2022

Arvind Mohanlal Jain	..Applicant
VS.	
The State of Maharashtra	..Respondent

**WITH
INTERIM APPLICATION NO. 2113 OF 2022**

Raju Sachanand Chandwani	..Applicant
VS.	
The State of Maharashtra and Anr.	..Respondents

Mr. Apoorv V. Singh for the Applicant.

Mr. Sameer Mangaonkar for the intervener.

Ms. A. A. Takalkar, APP for the State.

PI Rathod, EOW Thane, is present.

CORAM : M. S. KARNIK, J.

DATE : JANUARY 11, 2023

P.C. :

- 1.** Heard learned counsel for the applicant, learned counsel for the intervener and learned APP for the state.
- 2.** This is an application for bail filed by the applicant - Arvind Mohanlal Jain, in connection with C.R. No. I-202 of 2018 registered with Economic Offence Wing Thane City, for the offence punishable under sections 420, 406, 465, 467,

468, 471 read with 34 of the Indian Penal Code, 1860.

3. The applicant was arrested on 08/07/2019. By the order dated 19/06/2020, this court directed the applicant to be released on bail subject to fulfilling certain conditions which are mentioned therein. The relevant portion of the order dated 19/06/2020 is reflected in the order dated 08/10/2021 passed by this court cancelling the bail of the applicant for refusing to comply with the undertaking recorded by the order dated 19/06/2020. The order dated 08/10/2021 passed by this Court reads thus :

“1. In Crime No. 237 of 2018, this Court (Coram : Prakash D.Naik, J.) vide order dated 19th June, 2020 directed release of the applicant on following conditions :

“(i) The applicant is directed to be released on bail in connection with C.R. No. 237 of 2018, registered with Mahatma Phule Police Station, EOW Thane City on furnishing PR bond in the sum of Rs.50,000/- (Fifty Thousand) with one or more sureties in the like amount for a period of six months from date of actual release;

(ii) The applicant shall abide by the undertaking of depositing the amount of Rs.4.00 Crores within six months from date of actual release. The amount be deposited before the trial Court;

(iii) The applicant is permitted to furnish cash bail security of Rs.50,000/- (Fifty Thousand) for the period of 12 weeks in lieu of surety;

(iv) Stand over to 7th January, 2021.”

2. After aforesaid order was passed, it appears that the

applicant has not honoured the condition of deposit of Rs.4.00 Crores as was undertaken before this Court and as such flouted the undertaking.

3. The said act of flouting of undertaking at its face value can be termed as the contempt on the part of the applicant.

4. The applicant took out Interim Application seeking extension of time fixed by the aforesaid order for grant of bail dated 19th June, 2020 for depositing amount of Rs.4.00 Crores. The extension was sought for a period of six months from filing of said application i.e. 4th January, 2021. Subsequent thereto, the applicant has approached this Court vide Interim Application No. 2464 of 2021 seeking extension of time of six months to deposit an amount of Rs.20.00 Lakhs.

5. It appears that the applicant, out of the aforesaid amount of Rs.4.00 Crores as was undertaken to be deposited vide undertaking reflected in the order of bail dated 19th June, 2020, claimed to have deposited total Rs.50.00 Lakhs i.e. on 5th April, 2021 Rs.30.00 Lakhs and Rs.20.00 Lakhs on 30th April, 2021.

6. The fact remains that till this date, the amount as was undertaken i.e. balance amount of Rs.3.50 Crores is not deposited. An extension is sought before this court on the ground that in view of pandemic, the applicant was unable to take the undertaking to its logical end by depositing the amount.

7. As far as the aforesaid facts are concerned, the order granting bail was passed on 19th June, 2020 thereby permitting release of the applicant during pandemic situation. Applicant was well aware about the situation existed at that time, as such knowing fully well, he has given undertaking to this Court. Even after a lapse of almost 10 months of period after six months time to deposit Rs.4.00 Crores i.e. the period given in undertaking, the applicant has not honoured the undertaking given to this Court. Even today also, no firm commitment is made about deposit. As such, it is inferred from the record that the applicant wants to enjoy bail without fulfilling the conditions on which he was ordered to be released.

That being so, the protection ordered in favour of the applicant vide order dated 19th June, 2020 stands vacated.

8. As a consequences of above, the application for grant of bail moved by the applicant stands rejected.

9. The applicant is directed to surrender his bail bonds forthwith.

10. Pending applications which are not on board i.e. Interim Applications No. 2464 of 2021, 58 of 2021 and 682 of 2020 also stand disposed of.”

4. The applicant is thereafter in custody since 08/10/2021. The applicant has suffered the consequence for breaching the undertaking by the order of this court cancelling the earlier bail granted. Since 08/10/2021, now the applicant is in custody for more than 1 year and 3 months. The trial has not progressed as I am informed that even the charge has not been framed. There is no likelihood of a trial proceeding any time soon.

5. Learned counsel for the applicant has filed an affidavit of the applicant stating that he is an absolute owner, occupier and possessor in relation to the agricultural property mentioned therein, the value of which is around Rs.4,39,25,000/- which is recorded, certified and valued in the valuation report dated 09/06/2020 issued by the office of the concerned Sub-Registrar. In the affidavit, it is stated

that the property is free from all encumbrances. Further, in paragraphs no. 5 and 6 following statements are made:

“5. Without prejudice to my lawful rights and contentions, and without admitting any allegations made by the complainant against me in the original complaint/FIR and/or without waiving my lawful right to defence in any manner whatsoever, in the adjudication of the case pending before the Ld. Trial Court or till further Orders, I am ready and willing to keep said property as security/surety/charge under the order of this Hon’ble Court to show my bonafide intention.

6. I further say that I undertake that in the interregnum I or my legal heirs or any of my representative will not deal or dispose the said property and/or create any third party right thereon without leave of this Hon’ble Court or as may be permitted/directed by this Hon’ble Court.”

6. Statements made in the affidavit are accepted as an undertaking to this Court. It is stated that during the pendency of the trial, the applicant shall not alienate or dispose of the said property. Learned counsel for the complainant has some apprehension about the status of the property as according to him the very existence of the property appears to be in doubt.

7. Learned counsel for the applicant has filed affidavit and also enclosed 7/12 extracts to the affidavit. There is no reason not to accept the statement so made. However, if at a later stage, it is realised that the applicant has in fact filed

an affidavit only to secure his release and that statements made therein are false, it is always open for the complainant to apply for the cancellation of bail. It is made clear that the applicant is put to notice that if the statements made in the affidavit are found to be false, not only the applicant will make himself liable for cancellation of bail but also face action under the law of contempt of Court.

8. Considering that the trial will take a long time to conclude, no purpose will now be served by keeping the applicant in custody. Further incarceration will only be by way of punishment pending the trial. Hence, the following order.

ORDER

(a) The applicant - Arvind Mohanlal Jain, in connection with C.R. No. I-202 of 2018 registered with Economic Offence Wing Thane City, shall be released on bail on furnishing P.R. bond in the sum of Rs.25,000/- with one or more sureties of the like amount.

(b) The applicant shall report to the Economic Offence Wing Thane City once in a month i.e. on first Monday of every month between 11.00 a.m. and 01.00 p.m. and thereafter as and when called.

(c) On being released on bail, the applicant shall furnish his contact number and residential address to the Investigating Officer and shall keep him updated, if there is any change.

(d) The applicant shall not directly or indirectly make any inducement, threat or promise to any person acquainted with facts of case so as to dissuade him from disclosing the facts to Court or any Police Officer. The applicant should not tamper with evidence.

(e) The applicant, shall abide by the affidavit-cum-undertaking filed in this Court.

9. The application is disposed of.

(M. S. KARNIK, J.)