

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

**BAIL APPLICATION NO. 1101 OF 2023**

Hemant Babulal Soni

...Applicant

vs.

The State of Maharashtra

...Respondent

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Ms. Swarali Joglekar - Advocate for the Applicant

Mr. H. J. Dedhia - APP for the Respondent-State

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**CORAM : S. M. MODAK, J.**

**DATE : 18<sup>th</sup> AUGUST, 2023**

**P. C. :-**

1. Heard learned Advocate for the Applicant and learned APP.
2. Read the Order dated 21/07/2023. In pursuance to the direction, the present Applicant-Hemant and his brother-Kamlesh have filed an affidavit duly executed before the Superintendent Thane Central Prison. Though earlier it was stated that mother is also one of the co-owner of the flat, today it is submitted that she is not the co-owner but only these two brothers are the co-owners.
3. By way of these affidavits, both brothers have shown willingness to sell the flat no. 102 situated at Krishna Palace Tembhode Road, Palghar, District Thane and deposit the sale proceeds before the trial Court. This is for the purpose of showing

that the Applicants do not want to run away and for protecting the interest of the various customers to certain extent.

4. The first informant-Sunny is one of the customers, who has not returned with the new ornaments. The deal was that he has deposited his old gold and further paid certain amounts. The amount was towards purchase of new gold and the charges, in turn both these Applicants have agreed to prepare new ornaments and hand over to the first informant.

5. When the F.I.R. is registered with Satpati Police Station on 06/08/2022, under Sections 420, 406, 409 read with 34 of the Indian Penal Code. Whereas during investigation it was disclosed that there are in all 134 such customers and value of their transaction comes to Rs. 99,00,410/-.

6. The contention is raised that due to covid the business had come to standstill and in fact total valuation is not correct because all these customers have not fulfilled their promises.

7. Be that it may, this Applicant is behind bar since September, 2021 and there is no assurance that trial will start in near future. No purpose will be served by detaining them behind bar. When they are giving an undertaking to deposit the sale proceeds of the flat, it can be accepted.

8. There are certain practical difficulties. The co-accused Kamlesh has yet to apply for bail and he intends to apply before the Court of the Additional Sessions Judge. Para no. 5 of the affidavit mentions that they assure to sell the flat within four months from the release both of them.

9. Yet the Applicant-Kamlesh has to apply for bail, one does not know when the bail application will be decided and whether he can be granted bail by the Sessions Court or not. Certainly the accused-Kamlesh can rely upon by order passed by this Court thereby granting bail to Applicant-Hemant. I hope that the Sessions Court will consider it in proper spirit.

10. By way of affidavit, there is assurance that sale proceeds will be deposited before the trial Court. Both of them have purchased the flat in the year 2015 and as per market valuation produced on the last date, the valuation comes to Rs. 37,00,000/-. So subject to condition, the Applicant can be granted bail. Hence the Order:-

### **ORDER**

- (i) Applicant-Hemant to furnish an undertaking before the trial Court that he will deposit part of the sale proceeds of the flat coming to his share before the trial court immediately after receiving the consideration from the

purchaser.

- (ii) His undertaking to sell the flat within four months is accepted. According to him the period of four months will start after his release on bail and release of his brother-Kamlesh, whichever is later.
- (iii) Let the Applicant-Hemant to file an undertaking before the trial Court that if his brother-Kamlesh will not get bail or if his bail is refused within a period of two months from today then he will obtain power of attorney of his brother from jail for selling the flat.
- (iv) Subject to above condition, the Applicant-Hemant Soni arrested in connection with C.R. No. I-52 of 2022 registered with Satpati Police Station for the offence punishable under Sections 420, 406 and 409 read with 34 of the Indian Penal Code, be released on bail on furnishing Personal bond and surety bond in sum of Rs. 25,000/-.
- (v) Applicant is directed to give attendance to the Satpati Police Station on first and third Wednesday from 10.00 a.m. to 12.00 noon for one year.
- (vi) Request to furnish cash bail of Rs. 25000 for two months is accepted. Then he has to furnish bail.

11. Application is disposed of in the aforesaid terms.

12. All the parties to act on an authenticated copy of this order.

**[S. M. MODAK, J.]**