

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

BAIL APPLICATION NO.2527 OF 2022

Vishal Vinay Tamotiya

...Applicant

Versus

The State of Maharashtra

...Respondent

...

Mr. Ashok Mundargi, senior Advocate with Mr. Abhishek Yende, Mr. Harshwardhan Akolkar and Ms Surbhi Agarwal for the Applicant.

Ms P.N. Dabholkar, APP for the Respondent -State.

Mr. Gaurav Rana with Mr. Rakesh Umarani, Mr. Amey Karmudi and Mr. Rushikesh Kale for the Intervenor.

Ms Swapna Gore, DCP, Crime Branch, Pimpri-Chinchwad, present.

Mr. Madhukar Sawant, Sr. PI, Pimpri-Chinchwad Police Station and Mr. Sameer Dabhale, PSI, present.

CORAM: G.A. SANAP, J.

DATED: 22nd DECEMBER, 2023.

P. C. :-

1. Learned APP has placed on record the letter dated 22/12/2023 received from Ms Swapna Gore, DCP, Crime Branch, Pimpri-Chinchwad. Ms Swapna Gore is personally present in the Court with the Investigating Officer. She states that within the next 15 days accused Sunil Kumar Garg would be arrested in this crime.

2. It is accordingly directed that all the reasonable steps be taken to arrest the accused No.1. Letter dated 22/12/2023 is marked

as Exhibit-'A' for identification.

3. The Applicant, who is arrayed as accused No.1 in Crime No.380 of 2022 registered with Chakan Police Station, District-Pune, for the offences punishable under Sections 420, 406, 409, 467, 468 and 471 r/w 34 of the Indian Penal Code, 1860, has made this application for bail.

4. I have heard Mr. Ashok Mundargi, learned senior counsel for the Applicant-accused No.1, Ms P.N. Dabholkar, learned APP for the Respondent -State and Mr. Gaurav Rana, learned counsel for the Intervenor. Perused the record and proceedings.

5. Learned senior Advocate submitted that the accused-Nikhil Agarwal, attributed with more serious role being Finance Head of the Company, has been granted bail by the learned Trial Court vide order dated 23/05/2023 and as such on the ground of parity accused No.1 is entitled to get bail. The learned senior Advocate pointed out that the misappropriated amount has been traced to the bank accounts of the accused -Sunil Kumar Garg and Nikhil Agarwal and their family members. The learned senior Advocate submitted that during the

course of the investigation ample material has been collected but there is no iota of evidence to show that a single pair of the misappropriated amount was traced to the account of the Applicant-accused No.1. The learned senior Advocate submitted that the accused No.1 at the relevant time was head of the IT Department. Learned senior Advocate submitted that computerised administrative system, SAP was used for commission of the crime, which was directly as per the case of the prosecution, under control of accused No.1. Learned senior Advocate pointed out that he was arrested in this crime on 14/03/2022 and since then he has been languishing in jail. Learned senior Advocate pointed out that the Investigating Officer has not so far arrested the main accused -Sunil Kumar Garg without assigning any satisfactory reason. It is submitted that on account of failure of the police to arrest accused-Sunil Kumar Garg, who is the kingpin in the crime, accused No.1 cannot be kept behind bars for indefinite period. The learned senior Advocate submitted that considering the material compiled in the charge-sheet, his further incarceration may amount to pre-trial conviction. The learned senior Advocate pointed out that in the absence of the arrest of the co-accused Sunil Kumar Garg, the possibility of completion of trial in near future is very bleak. The learned senior Advocate submitted that the Applicant is ready to abide

by the conditions that may be imposed by the Court.

6. The learned APP submitted that SAP system, which was used for the purpose of preparation of bogus purchase orders, invoice payment receipts, record of the keys, etc. was used for commission of the crime and more particularly for preparing the false record. The learned APP submitted that without involvement of the accused No.1, it was not possible to use this SAP system for the purpose of preparing false and fabricating documents. Learned APP submitted that the economic offence committed is very serious. Learned APP submitted that the Company was duped by the accused and the amount of misappropriation is Rs.139 crores. The learned APP submitted that therefore, the accused No.1 is not entitled to get bail.

7. Learned Advocate appearing for the Intervenor (Informant) submitted that bail of one accused Sandip Wani has been rejected by the Trial Court. Learned Advocate for the Informant submitted that the bail order granted in favour of Nikhil Agarwal has been challenged by the Informant. The learned Advocate for the Informant submitted that no case has been made out for bail on the ground of parity. Learned Advocate further pointed out that the Company has filed civil suits

against Nikhil Agarwal and Sunil Kumar Garg for recovery of money. Learned Advocate submitted that considering the amount of misappropriation i.e. 139 crores, the indulgence of the nature sought for by the accused No.1 cannot be granted in his favour. The learned Advocate submitted that the very purpose of filing of the charge-sheet with such voluminous documentary evidence would be frustrated, if he is enlarged on bail.

8. First and foremost, I will deal with the submissions made touching the ground of parity. It is undisputed that the accused No.1 was the IT Head. The computerised administration system i.e. SAP was under the direct control of accused No.1. It is the case of the prosecution that the amount of misappropriation involved in the crime was traced to the accounts of the co-accused Sunil Kumar Garg and his family members as well as to the bank accounts of Nikhil Agarwal and his family members. The accused-Nikhil Agarwal has been granted bail by the Trial Court. The order of bail is part of the record. It is seen that compared to the role of the accused No.1, role of Nikhil Agarwal is more serious. It is undisputed that the misappropriated amount was neither traced to the bank accounts of the accused No.1 or his family members as well as no amount was recovered during the

course of the investigation. A perusal of the record would indicate that Sunil Kumar Garg was the Managing Director of the Company. Sandip Wani was the General Manager of the Company. The accused-Nikhil Agarwal was the Finance Head of the Company. A perusal of the FIR would show that the accused No.1 -Applicant was roped in by the remaining co-accused by utilising the SAP system for creation of the false documents. The plan and conspiracy was hatched, as can be seen from the FIR, by these three accused. It is further pertinent to note that accused No.1 is the distant relative of Sunil Kumar Garg, who was the Managing Director of the Company. In the facts and circumstances therefore, the role played by Nikhil Agarwal by applying any standard would have to be termed as more serious than the role played by the Applicant. In my view therefore, the ground of parity with Nikhil Agarwal is available to the accused No.1-Applciant. In my view he is therefore entitled to place this ground in service to justify his prayer for bail.

9. In this case the DCP, Crime Branch, Pimpri-Chichwad, was summoned to apprise the Court about the steps taken to arrest accused-Sunil Kumar Garg. The DCP has placed on record the letter, which is marked as Exhibit -A. The DCP, Crime Branch, Pimpri-

Chinchwad has made a statement across the Bar that within the next 15 days accused-Sunil Kumar Garg would be arrested. She has stated that he had not left India. She has further pointed out that he is suffering from kidney ailment and he is on dialysis. The DCP has assured this Court that within the next 15 days he will be arrested.

10. The FIR was registered on 14/03/2022. The Applicant-accused No.1 was arrested on the very same day i.e. 14/03/2022. The investigation as far as the Applicant is concerned, is complete in all respect. His detention as per the case of the prosecution is not warranted for the purpose of further investigation or interrogation. The offences in this case are triable by the Magistrate. The accused No.1-Applicant cannot be held responsible for not effecting the arrest of accused-Sunil Kumar Garg. In this case since the accused Sunil Kumar Garg is the principal offender, without his arrest, it would not be possible to commence the trial. In my view considering the nature of allegations against the accused No.1 and the evidence compiled in the charge-sheet he cannot be kept behind bars for indefinite period. It is true that the crime is serious. The amount of misappropriation is 139 crores. However, the material collected during the course of investigation has not revealed the trace of misappropriated amount to

the bank accounts of the Applicant -accused No.1 or his family members. In the facts and circumstances, in my view the Applicant has made out a case to enlarge him on bail. The apprehension put-forth by the learned APP can be taken care of by imposing appropriate conditions. Hence, following order:-

ORDER

- (i) The application is allowed;
- (ii) The Applicant-Vishal Vinay Tamotiya be released on bail in Crime No.380 of 2022 registered with Chakan Police Station, District-Pune, for the offences punishable under Sections 420, 406, 409, 467, 468 and 471 r/w 34 of the Indian Penal Code, 1860, on his furnishing P.R. Bonds in the sum of Rs.1,00,000/- with one or two solvent sureties in the like amount;
- (iii) The Applicant shall not leave the State of Maharashtra without prior permission of the learned Trial Court.
- (iv) The Applicant shall not directly or indirectly tamper with the prosecution evidence;

- (v) The Applicant shall not pressurise, threaten or induce the prosecution witnesses directly or indirectly.
- (vi) The Applicant shall intimate to the learned Trial Court about the future transaction regarding movable and immovable property which is more than Rs.1,00,000/- with necessary details and documents.
- (vii) The Applicant shall produce his local and permanent address with its authenticate proofs.
- (viii) The Applicant shall attend Chakan Police Station as and when summoned by the Investigating Officer for the purpose of investigation.

11. It is made clear that observations made in this order are for the limited purpose of deciding the bail application. The learned Trial Judge shall not get influenced by the same in any manner while deciding the case.

12. The application stands disposed of in above terms.

(G.A. SANAP, J.)