

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CRIMINAL APPELLATE JURISDICTION****CRIMINAL APPEAL NO. 1188 Of 2023**

Rashid Kasim @ Kashid Tamboli and anr .. Appellants

Versus

The State of Maharashtra .. Respondent

...

Mr. Gaurav Parkar for the appellants

Ms.M.R. Tidke, APP for the State.

CORAM: BHARATI DANGRE, J.

DATED : 1st NOVEMBER, 2023

P.C:-

1 The two appellants are arraigned as accused in FIR bearing No. 222/2015 registered with Sadar Bazar police station, and in Sections 409, 420, 467, 468, 471, 120B r/w Section 34 of the IPC, under sections 3(2)(5), 3(2)(7) of the Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act, 1989 and Section 3(1)(c) of the Prevention of Corruption Act, is invoked, are seeking their release on bail on two counts; the first being that their incarceration will not yield any result, as on completion of investigation, charge-sheet is filed on 23/7/2019 and secondly, on the ground that the main accused Sarika Kale is already released on bail, by the Hon'ble Supreme Court as early as on 19/11/2019 and several other co-accused are also released on bail.

My attention is invited to a bunch of orders passed by the Sessions Court, the High Court as well as the Apex Court.

Recording the case of the prosecution, that the amount due and payable to the backward class students by way of Scholarship from the Social Welfare Department, was misappropriated by opening fictitious accounts and the amount was credited in these accounts, the C.R invoked Section 13(1)(c) of the Prevention of Corruption Act, since it involved the public servants. Provisions of Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act, 1989 was invoked since the amount was meant for backward class students and it is the case of the prosecution that an amount of Rs.7,15,05,907/- has been misappropriated.

2 On completion of investigation, charge-sheet is filed against 121 persons and as far as appellants are concerned, appellant no.2 Maryappa Gajendra Gavali came to be arrested on 4/9/2023, whereas Rashid Tamboli is arrested on 19/9/2023.

As per the learned APP, Rashid Tamboli has received an amount of Rs.11,57,810/- from January 2013 to February 2014 and the amount was credited in his account 17 times, and the amount is not yet recovered. As far as appellant no.2 is concerned, it is alleged that he has received an amount of Rs.8,61,000/- and the amount was received in his account on 15 occasions, and this amount was in fact meant for disbursement of scholarship to the backward class students.

3 There can be no doubt about the seriousness and gravity of the offence, as the accused persons having conspired

with one another have misappropriated the huge amount which was in fact, meant for the backward class students and was released by the Social Welfare Department by way of scholarship. The magnitude of the fraud has surfaced through the charge-sheet, and no doubt the offence has to be viewed with all its seriousness.

However, when the charge-sheet is filed on completion of investigation and the role assigned to each of the accused person has now clearly discerned in the said charge-sheet, and when largely the co-accused who have been attributed a similar role to the present appellants are already released on bail, I see no reason why the benefit shall not be extended to the present appellants.

4 Pertinent to note that in Criminal Appeal No. 873/2022 filed by Jayshri @ Baida Dattatray Kale, one of the co-accused, the Division Bench of this Court, while considering the application for grant of bail has observed thus :-

“5 Today the situation is that charge-sheet in the present crime has already been filed quite long ago and the case is pending at the stage of framing of charge with the next date being 01.04.2023. Since, the registration of the crime and later on after rejection of the anticipatory bail application of the appellants on 21.07.2016, the appellants have never been arrested by Sadarbazar police. The question therefore, would be as to what purpose would be achieved if this appeal is rejected and the appellants are directed to be arrested by the police. We, therefore, put a specific query to the Officer of the Economic Offences Wing of Solapur police, Ms. Pranjali Sonawane, Dy. Commissioner of Police, Crime, who is personally present before this Court. It was whether or not Solapur police would require

custody of the appellants and the answer given by the said officer was in the negative. She stated that it would be enough if the Appellants are directed to regularly attend the dates that are and that would be fixed for conducting of trial in the present case by the trial Court at Solapur and they they co-operate with the Trial Court in speedy disposal of the case.”

5 Apart from this, the request of the learned APP, that the amount which has come to the account of the appellants, shall directed to be deposited, cannot be considered as the Apex Court, time and again, has frowned upon such a direction to deposit the amount, as a condition precedent of grant of bail and this is the specific reasoning recorded in the order passed by the Division Bench of this Court in case co-accused Annasaheb Kalidas Dadhe, who had approached the Court, challenging the condition imposed upon him by the trial Judge, when he was alleged to be involved in an offence which involve huge money and the condition was imposed to deposit the said amount.

 In paragraph no.8, the Division Bench has observed as under :-

“8 However, the learned counsel appearing for the appellant before us brought to our notice an order dated 20th November, 2017 passed by this Court in Criminal Appeal No. 933 of 2017 deleting similar condition imposed on accused Balaji Shivaji Devkar and others, who are the applicants/accused in the same crime. This court, after referring to a landmark decision of the Hon’ble Supreme Court held that a direction to deposit an amount as condition precedent at the time of bail is not warranted. In any event, the condition imposed in this case is ex-facie unreasonable. It is onerous and excessive and incapable of being complied with by the appellant given his financial condition.”

In wake of the above, the request of the learned APP cannot be considered.

6 The appellants deserve their release on bail subject to the following stipulation :-

ORDER

- (a) Appeal is allowed. Orders dated 26/9/2023 and 10/10/2023 are set aside.
- (b) The appellants Rashid Kasim @ Kashid Tamboli and Maryappa Gajendra Gavali, shall be released on bail in FIR NO. 222/2015 registered with Sadar Bazar police station, on furnishing P.R. Bond to the extent of Rs.25,000/- each with one or two sureties in the like amount.
- (c) The appellants shall mark their attendance on first Monday of every alternate month between 5.00 p.m. to 6.00 p.m, and thereafter as and required by the Investigating Officer.
- (d) The Appellants shall attend the trial on regular basis.
- (e) On being released on bail, the appellants shall furnish their contact number and residential address to the Investigating Officer and shall keep him updated, if there is any change.
- (f) The appellants 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.

(SMT. BHARATI DANGRE, J.)