



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

BAIL APPLICATION NO. 3664 OF 2023

DNYANESHWAR LAXMAN GHADGE

..APPLICANT

VS.

THE STATE OF MAHARASHTRA

..RESPONDENT

Mr. Vinod S. Chate a/w Ms. Kalpana V. Chate, Mr. Sumitkumar S. Nimbalkar i/b Chate & Associates, for the Applicant.
Ms. Veera Shinde, APP for the State.

CORAM : M. S. KARNIK, J.

DATE : DECEMBER 13, 2023

P.C. :

- 1.** Heard learned counsel for the applicant and learned APP for the State.
- 2.** This is an application for bail in respect of the offence punishable under sections 406, 420 of the Indian Penal Code, 1860 ("IPC", for short) and under section 3 of the Maharashtra Protection of Interest of Depositors (In Financial Establishments) Act, 1999 ("MPID", for short) registered on 19/04/2023 vide C.R. No.104 of 2023 with Shrinagar police station, Thane.
- 3.** The FIR was registered on 19/04/2023 initially under sections 406 and 420 of IPC. Subsequently, section 409 was

added to the FIR on 10/06/2023. The applicant was arrested on 18/08/2023 on which date he was remanded by the trial Court. The period of 60 days from the date of the first remand expired on 17/10/2023. It is the contention of the learned counsel for the applicant that in the present case, the charge-sheet ought to have been filed within 60 days. It is submitted that the accusations in the present case do not satisfy the ingredients of section 409 of IPC. The charge-sheet was filed on 10/11/2023. It is thus the submission that the charge-sheet is not filed within 60 days from the date of the first remand, the applicant is entitled to exercise his indefeasible right of the default bail.

4. Learned counsel for the applicant relied upon the decisions of this Court in case of ¹**Alnesh Akil Somji Vs. State of Maharashtra** and in case of ²**Irfan Moiuddeen Saiyyed and ors. Vs. State of Maharashtra** in support of his submissions.

5. In my opinion, the decisions relied upon by learned counsel for the applicant do not apply in the facts and circumstances of the present case. There is no dispute that

1 2022 SCC OnLine Bom 11566

2 2023 SCC OnLine Bom 983

the provisions of section 409 of IPC was invoked and added to the FIR even prior to the arrest of the applicant. The decision in Alnesh's case as well as in Irfan's case was rendered in a fact situation where invocation of section 409 of IPC was misconceived as the same was done at the stage when 60 days period was about to get over so that the investigating agency could get the benefit of additional 30 days to file the charge-sheet thereby scuttling the applicant's infeasible right therein to avail default bail. It is in those circumstances that this Court held that the invocation and applicability of section 409 of IPC is questionable.

6. In the present case section 409 is invoked even prior to the arrest of the applicant. The charge-sheet has been filed on 10/11/2023 within a period of 90 days as per requirement of the section 167 CrPC. I do not find any merit in this application. The application is rejected.

7. Needless to mention that it is open for the applicant to apply for regular bail before the trial Court. The observations made herein are limited for the purpose of considering the present bail application. If an application is

made for regular bail, the trial Court shall decide the same on its own merits in accordance with law without being influenced by any observations made by me in this order.

(M. S. KARNIK, J.)