



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

CRIMINAL APPLICATION NO. 295 OF 2023

MILIN BALASO GADAVE

..APPLICANT

VS.

THE STATE OF MAHARASHTRA

..RESPONDENT

Mr. Rushikesh G. Patil for the Applicant.

Mr. Y. Y. Dabke, APP for the State.

CORAM : M. S. KARNIK, J.

DATE : DECEMBER 19, 2023

P.C. :

- 1.** Not on board. Upon mentioning taken on board.
- 2.** Heard learned counsel for the applicant and learned APP for the State..
- 3.** The applicant was accused of the offence punishable under Sections 406, 409, 420 read with 34 of the IPC and Sections 3 and 4 of the Maharashtra Protection of Interest of Depositors (In Financial Establishments) Act, 1999 and Sections 66(C)(D) of the Information Technology Act, 2000.
- 4.** The applicant was arrested on 15/08/2022 and was in custody till 04/11/2022, the date on which the applicant

was enlarged on bail by imposing certain conditions. The trial Court in Bail Application No. 5726 of 2022 passed the following order:

- i] Application is allowed conditionally.
- ii] Applicant shall be released on temporary bail till 31/12/2022 on furnishing PR bond of Rs. 50,000/- and one or more sureties in like amount on following conditions:-
 - a] Applicant is directed to deposit or transfer the amount of Rs. 5,00,000/- to the account of informant Poonam Dalvi before his release on bail. After release on bail, applicant shall deposit amount of Rs. 5,00,000/- in the account of informant till 31/3/2023.
 - b] He should deposit remaining amount in the installments of Rs. 5,00,000/- each after every 3 months in the account of informant. As such, applicant should deposit total amount into account of informant till the end of March – 2024.
 - c] Accused-applicant shall surrender his passport before I.O. prior to his release on bail and if it is already seized by IO then it should not be returned to accused-applicant without prior permission of this Court. Accused-applicant shall not leave India without prior permission of this Court.
 - d] Accused-applicant after his release shall appear before this Court on next Monday or working day and file undertaking supported with affidavit for compliance of the conditions laid down by the Court by this order.
 - e] Applicant shall attend concerned police station on every 1st and 15th day of each

month in between 11.00a.m. to 1.00 p.m. till filing the chargesheet in the Court.

f] He shall furnish the names and addresses of his two with proof of their residential addresses and phone numbers.

g) Accused-applicant shall not indulge himself in the act of tampering the prosecution witnesses and evidence.

h] I.O. shall remained present before the Court on 31/12/2022 and submit report that his bail should be continued or not.

i] If applicant will make breach of any of above conditions, IO and informant related to this case will be at liberty to file application for cancellation of bail granted to accused-applicant. Conduct of accused-applicant will be taken into consideration while deciding the main bail application.

j] This order shall remain in force till 31/12/2022."

5. A reading of the order of the trial Court indicates that the total amount invested by the informant was Rs.53,22,800/-. An amount of Rs.23,00,000/- was transferred to her account by the applicant prior to his release. The applicant showed readiness to deposit a further sum of Rs.5,00,000/- in the account of the informant prior to his release. The trial Court ordered that for release on bail, the applicant should deposit a sum of

Rs.5,00,000/- in the account of the informant till 31/03/2023. It is further directed that the remaining amount was to be paid in the installments of Rs.5,00,000/- each after every 3 months in the account of the informant.

6. Learned APP opposed the application. It is submitted that the informant had been cheated and the order passed by the trial Court does not call for any interference.

7. From the materials, it is seen that the applicant did not voluntarily agree to deposit the said amounts. The deposit was condition imposed by the trial Court for enlarging the applicant on bail. The informant was not a party before the trial Court. In my opinion, the condition imposed by the trial Court of depositing of the balance amount as the condition for bail calls for interference. The proceedings initiated by the informant can not be converted into recovery proceedings.

8. The condition of deposit of such amount can not be a condition of bail. In this case, the applicant had not volunteered to deposit the said amount. In making these observations, I draw support from the decision of the

Supreme Court in the case of Shane George Dsouza Vs. State of NCT of Delhi¹ decided on 04/10/2023.

9. It is always open to the informant to prefer appropriate remedies in law for recovery of the dues. In such a view of the matter, the present application deserves to be allowed.

10. The application is allowed in terms of prayer clause (a).

(M. S. KARNIK, J.)

¹ Criminal Appeal No. 3080 of 2023