



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

940 BAIL APPLICATION NO. 105 OF 2024

Abhijeet Vijay Pansare

..APPLICANT

-VERSUS-

1. The State of Maharashtra
2. Sharad Kisan Gawali

..RESPONDENTS

...
Advocate for Applicant : Mr. Prashant Prabhakar Giri
APP for Respondent/State : Mr. Mukesh G. Goyanka
Advocate for Respondent No.2 : Mr.Shinde Manoj Dharmaraj
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CORAM : SANJAY A. DESHMUKH, J.
DATED : 5th APRIL, 2024.

PER COURT :-

1. This is a second bail application seeking bail under section 439 of the Criminal Procedure Code, 1973 (for short, "Cr.P.C."). The applicant has been arrested in connection with crime No.0018 of 2020 registered with CIDCO Police Station, Aurangabad, for the offences punishable under sections 406, 420, 467, 468, 471, 120-B read with 34 of the Indian Penal Code and sections 3 and 4 of the Maharashtra Protection of Interest of Depositors (In Financial Establishments) Act.

2. The learned advocate for the applicant submits that this

application is filed on the change in circumstances that the informant and depositors have compromised the matter outside the court and memorandum of understanding is executed, which is at page no.70. The learned advocate submitted that the applicant is well educated having creativity. If he remains behind bars, informant and others, who have invested the lacks of rupees with him, will not get that amount. The applicant has one written book i.e. Fiction and also is having some other arts by which he can raise certain amount. The transaction took place during demonetization period, therefore, the investors deposited certain amount.

3. The learned advocate for the applicant further submitted that the affidavits of the informant and all other investors are filed on record. The informant was present on the earlier day before this Court and submitted that if the applicant is released on bail, he will with his creativity, raise some amount and all the investors will be benefited by it.

4. The learned advocate for the applicant submitted that the applicant may be released on conditional bail on the peculiar set of facts. To show the bonafides of the applicant, his mother and sister have raised the amount of Rs.2,00,000/-. Demand Draft is presented before this Court. The learned advocate for the applicant is relying

upon the authority of ***Gian Singh Vs. State of Punjab and another, (2012) 10 Supreme Court Cases 303***. The para 61 of it reads as under :-

“61. The position that emerges from the above discussion can be summarised thus: the power of the High Court in quashing a criminal proceeding or FIR or complaint in exercise of its inherent jurisdiction is distinct and different from the power given to a criminal court for compounding the offences under Section 320 of the Code. Inherent power is of wide plenitude with no statutory limitation but it has to be exercised in accord with the guideline engrafted in such power viz.: (i) to secure the ends of justice, or (ii) to prevent abuse of the process of any court. In what cases power to quash the criminal proceeding or complaint or FIR may be exercised where the offender and the victim have settled their dispute would depend on the facts and circumstances of each case and no category can be prescribed. However, before exercise of such power, the High Court must have due regard to the nature and gravity of the crime. Heinous and serious offences of mental depravity or offences like murder, rape, dacoity, etc. cannot be fittingly quashed even though the victim or victim's family and the offender have settled the dispute. Such offences are not private in nature and have a serious impact on society. Similarly, any compromise between the victim and the offender in relation to the offences under special statutes like the Prevention of Corruption Act or the offences committed by public servants while working in that capacity, etc.; cannot provide for any basis for

quashing criminal proceedings involving such offences. But the criminal cases having overwhelmingly and predominatingly civil flavour stand on a different footing for the purposes of quashing, particularly the offences arising from commercial, financial, mercantile, civil, partnership or such like transactions or the offences arising out of matrimony relating to dowry, etc. or the family disputes where the wrong is basically private or personal in nature and the parties have resolved their entire dispute. In this category of cases, the High Court may quash the criminal proceedings if in its view, because of the compromise between the offender and the victim, the possibility of conviction is remote and bleak and continuation of the criminal case would put the accused to great oppression and prejudice and extreme injustice would be caused to him by not quashing the criminal case despite full and complete settlement and compromise with the victim. In other words, the High Court must consider whether it would be unfair or contrary to the interest of justice to continue with the criminal proceeding or continuation of the criminal proceeding would tantamount to abuse of process of law despite settlement and compromise between the victim and the wrongdoer and whether to secure the ends of justice, it is appropriate that the criminal case is put to an end and if the answer to the above question(s) is in the affirmative, the High Court shall be well within its jurisdiction to quash the criminal proceeding.”

5. The learned advocate for the applicant therefore submitted that the applicant can be released on conditional

temporary bail in order to comply the terms of memorandum of understanding.

6. The learned APP for the respondent-State has strongly opposed the application and submitted that the earlier bail application is rejected by this Court considering the serious nature of the crime. He submitted that if the applicant is released on bail, he will flee away from the trial. Now the charge-sheet is filed and trial can be expedited. It is lastly prayed to reject the application.

7. The learned APP is relying upon the following authorities:-

(i) Narayanaswamy v. State of Karnataka, 2017 CRI. L. J. 3159.

The paras 24 & 25 of it reads as under :-

“24. The law of parity would be applied in granting bail to an accused, where the co- accused has been granted bail on similar set of circumstances. Law of parity is a desirable rule where the case of accused/petitioner is identical with the co-accused, who is already enlarged on bail. Simply because the co-accused has been granted bail also cannot be the sole criteria for granting bail to another accused if they are standing on different footings.

25. Parity cannot be the sole ground for granting bail and if on scrutiny and examination of records in a given case it

transpires that the case of the petitioner before the Court is identically similar to the accused, who has already been granted bail, then it would be desirable that petitioner should also be enlarged on bail. However, if material placed by the prosecution and further developments in the investigation unravelling changed circumstances, this aspect also requires to be taken into consideration and in such circumstances the principle of parity as an universal application or a straight jacket formula cannot be applied.”

(ii) ***Neeru Yadav Vs. State of Uttar Pradesh and Anr., AIR 2015 Supreme Court 3703.*** Paras 11, 15, 18 & 19 of it reads as under :-

“11. It is a well settled principle of law that while dealing with an application for grant of bail, it is the duty of the Court to take into consideration certain factors and they basically are, (i) the nature of accusation and the severity of punishment in cases of conviction and the nature of supporting evidence, (ii) reasonable apprehension of tampering with the witnesses for apprehension of threat to the complainant, and (iii) Prima facie satisfaction of the court in support of the charge. [See Chaman Lal v. State of U.P.) (2004) 7 SCC 525: (AIR 2004 SC 4267).

15. This being the position of law, it is clear as cloudless sky that the High Court has totally ignored the criminal antecedents of the accused. What has weighed with the High Court is the doctrine of parity. A history-sheeter involved in the nature of crimes which we have reproduced hereinabove, are not minor offences so that he is not to be retained in custody, but the crimes are of heinous nature

and such crimes, by no stretch of imagination, can be regarded as jejune. Such cases do create a thunder and lightening having the effect potentiality of torrential rain in an analytical mind. The law expects the judiciary to be alert while admitting these kind of accused persons to be at large and, therefore, the emphasis is on exercise of discretion judiciously and not in a whimsical manner.

18. Before parting with the case, we may repeat with profit that it is not an appeal for cancellation of bail as the cancellation is not sought because of supervening circumstances. The annulment of the order passed by the High Court is sought as many relevant factors have not been taken into consideration which includes the criminal antecedents of the accused and that makes the order a deviant one. Therefore, the inevitable result is the lancination of the impugned order.

19. Resultantly, the appeal is allowed and the order passed by the High Court is set aside. If the respondent No. 2 is at large, he shall be taken into custody forthwith; and if he is still in custody because of certain other cases, he shall not be admitted to bail in connection with the present case. We make it clear that we have not expressed any opinion with regard to other cases and simultaneously we also clearly state that our observations in this case are only meant for purpose of setting aside the order granting bail and would have no impact or effect during the trial.”

(iii) ***Neeru Yadav Vs. State of Uttar Pradesh and Anr., (2016) 15 Supreme Court Cases 422.***

(iv) ***Neeru Yadav Vs. State of Uttar Pradesh and Anr., (2014) 16 Supreme Court Cases 508.***

(v) ***Jai Kumar Vs. State Of Haryana, (2009) 15 Supreme Court Cases 282.*** The para 12 of it reads as under :-

“12. Overt acts on the part of the appellant, however, together with Jagmohan (*sic* Joginder) Singh were totally different. The deceased even after being thrown in the canal tried to save himself desperately. He wanted to come out of the canal by catching the grass. He was kicked on the face and again thrown in the canal. The fact that he was in an inebriated condition is not in dispute. He, therefore, upon receiving injuries, unlike Mane Ram (PW 8) could not have swum to the shore to save his life.”

(vi) ***Jagebar Ali Alias Settu Vs. State of Tamil Nadu, (2009) 11 Supreme Court Cases 108.*** The para 10 of it reads as under :-

“10. The High Court did not accept the stand of the prosecution regarding applicability of Section 304 Part II read with Section 149 IPC. It was held that in respect of the respective acts committed by each one of them the matter is required to be considered. From the post-mortem certificate it was noticed that the first injury was caused by A-1 with aruval on the neck and the corresponding injury caused the death. At the same time, A-2, A-4, A-5 and A-6 were armed with aruvals, A-7 with a knife and A-3 with an iron rod and they had attacked the deceased and contributed corresponding injuries. Therefore, it was held that A-1 had to be convicted in terms of Section 302 IPC.

So far as others are concerned the acts attracted Section 304 Part II IPC.”

(vii) ***Badru Ram and others Vs. State of Rajasthan, (2015) 11 Supreme Court Cases 476.*** The paras 9 & 10 of it reads as under:-

“9. The learned Amicus Curiae appearing on behalf of the appellants have argued that since the High Court has acquitted six persons, on the doctrine of parity the appellants before us should also be acquitted. We find from the High Court judgment that the reasons for acquittal of the six other accused is only because they were not named by Radhey Shyam in the parcha bayan. The State is not in appeal before us on this finding of the High Court. The doctrine of parity cannot replace the substantive evidence of the two injured eyewitnesses mentioned above, who have been believed concurrently by the courts below.

10. The further argument by the learned amicus curiae on behalf of the appellants is that this is a case which ought to be converted into a case of culpable homicide not amounting to murder under Section 304 Part II IPC because according to the learned Amicus Curiae seeing the overall circumstances of the case, the incident might have occurred on sudden provocation, there being no reason or motive. This contention has only to be stated to be rejected. The evidence of the two injured eyewitnesses is clear- this is not a case of sudden provocation and the mere absence of motive does not bring home the lesser charge.”

(viii) ***Munna Alias Pooran Yadav Vs. State of Madhya Pradesh, (2009) 1 Supreme Court Cases 202.*** The para 12 & 14 of it read as under :-

“**12.** The learned counsel for the defence argued that in the post-mortem report, it was indicated that the timing of injury and death could be about 24 hours to 36 hours earlier from the time of post-mortem. The post-mortem was conducted on 2-2-1997 i.e. the next day at 9.00 a.m. From this, the learned counsel argued that if 36 hours have to be counted backwards from 9.00 a.m. on 2-2-1997, then the death of Chhota could not have occurred in the morning but it must be somewhere at night between 1-2-1997 and 2-2- 1997 (*sic* 31-1-1997 and 1-2-1997). It was on this basis that the learned counsel tried to develop his theory of false implication as also the wrong timing of filing of FIR.

14. The learned Senior Counsel argued that it was the duty of the prosecution to establish the timing of injury and the death and that it had failed to establish the exact hour. We do not agree with this contention inasmuch as the post-mortem report specifically states that the death had occurred 24 hours prior to the post-mortem was conducted. We, therefore, reject the contention of the learned Senior Counsel that the death must have occurred much more than 24 hours earlier to the hour of the post-mortem. nearabout 36 hours. Once this basic argument is rejected, the rest of the arguments based on this very aspect predominantly must fall and the argument that Chhota was already dead at night and only was found to be shown (*sic* dead) in the morning has to be rejected.”

8. Nobody will dispute the ratio and guidelines laid down in these authorities.

9. The learned advocate for respondent no.2 submits that the informant has filed an affidavit in accordance with the memorandum of understanding executed in the jail itself and informant and other investors have hope that by the creativity of the applicant, he can raise certain amount and pay that to them. He, therefore, submitted to grant bail to the applicant.

10. This Court cannot enter into the merits of the case. It is because this Court has already rejected the bail application of this applicant. It is a part of judicial discipline. However, considering the change in the circumstances and the facts and circumstances of this case that the applicant has shown his bonafides to repay that amount to the informant and other investors and as per reformatory theory under Criminology, the applicant is entitled for bail for a period of two years. The application, therefore, deserves to be partly allowed on certain stringent conditions. However, it is clarified that this order shall not be treated as a precedent. Hence the following order.

O R D E R

- I. Application is partly allowed.
- II. The applicant in connection with crime No.0018 of 2020 registered with CIDCO Police Station, Aurangabad, for the offences punishable under sections 406, 420, 467, 468, 471, 120-B read with 34 of the Indian Penal Code and section 3 and 4 of the Maharashtra Protection of Interest of Depositors (In Financial Establishments) Act be released on bail for a period of two years on furnishing personal bond of Rs.50,000/- with one surety of the like amount for two years from today on following conditions:-
 - a) The applicant shall not pressurize the prosecution witnesses and shall not tamper with the prosecution evidence in any manner.
 - b) The applicant shall not leave the jurisdiction of this Court without permission of the trial Court and shall not go abroad.
 - c) The applicant shall pay an entire amount of the informant and other investors and surrender before trial Court within two years.
 - d) The applicant, if succeeds in depositing that amount then he may pray for regular bail before this Court.
 - e) The applicant shall attend each and every date before the trial Court.
 - f) The applicant shall not indulge in the same nature of the activities.
- III. If any breach of the above conditions is noticed by the trial

Court, the trial Court is at liberty to cancel the bail granted to this applicant without further reference to this Court.

IV. Demand Draft of Rs.2,00,000/- is handed over to the learned Advocate for respondent no.2 as per the request of the co-accused and sister of this applicant who are present in the Court.

(SANJAY A. DESHMUKH, J.)

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