

HARSHADA H. SAWANT
(P.A.)

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL REVISION APPLICATION NO.264 OF 2024
WITH
INTERIM APPLICATION NO.4739 OF 2024
IN
CRIMINAL REVISION APPLICATION NO. 264 OF 2024

Sachin Ramchandra Gadade

.. Applicant

Versus

State of Maharashtra

.. Respondent

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- Mr. Shrikant Gadade, Advocate for Applicant.
- Ms. Sangita E. Phad, APP for Respondent – State of Maharashtra.

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CORAM : MILIND N. JADHAV, J.

DATE : DECEMBER 20, 2024

P.C.:

1. Heard Mr. Gadade, learned Advocate for Applicant and Ms. Phad, learned APP for Respondent – State of Maharashtra.

2. By Interim Application No. 4739 of 2024, Applicant seeks suspension of substantive sentence and enlargement on Bail. Applicant is arrested and in jail since 25.01.2020 until today. Applicant is convicted for offence under Section 420 of Indian Penal Code, 1860 (for short "**IPC**"). He stands acquitted for the offence under Section 406 of IPC by the Trial Court. Sentence is to suffer rigorous imprisonment (for short '**R.I.**') for 7 years and payment of fine of Rs.50,000/- and in default six months R.I.. Criminal Appeal No. 29 of 2022 was filed by Applicant to challenge his conviction. By the impugned judgement and

order dated 11.04.2023, Sessions Judge, Solapur upheld the Trial Court's judgment and order. Hence, Criminal Revision Application (for short "**CRA**") is filed alongwith Interim Application for bail and suspension of sentence. Applicant is in custody since 25.01.2020 i.e. for 4 years, 10 months and 26 days.

3. Interim Application for suspension of balance sentence and bail is taken up for hearing. Perused the record and judgments of conviction and impugned judgment of Appellate Court.

4. Prosecution has led the evidence of 17 witnesses in the present case. Briefly stated, the prosecution case is that Complainant – First informant, Dr. Anil Tushlidas Bhakare having his clinic at Shelgi, District Solapur was introduced to Applicant by a medical representative called Mr. Harish Kulkarni sometime in the year 2018. Complainant was informed that Applicant was working as a Branch Manager in Religare Share Market office and he was into the business of purchasing vehicles from Shriram Finance and selling them in the market and getting good returns. Complainant therefore, without any documentation or agreement, with the hope of getting good / higher returns started lending / investing money with the Applicant from time to time thereafter.

5. Admittedly, it has been prosecution case that there was no written agreement between the parties. According to the Complainant

he advanced Rs. 5,00,000/- by cheque to the Applicant on 24.09.2018 and thereafter he invested substantial amounts totaling to Rs. 58,00,000/- with the Applicant from time to time. Then according to prosecution on 08.04.2019, Complainant advanced Rs. 8,00,000/- to Applicant for purchasing a car with condition to receive back the same within a period of one month.

6. Prosecution has admitted that Applicant repaid back an amount of Rs. 6,20,000/- at various times to Complainant upto March 2019. Thereafter it is alleged on 28.05.2019, Complainant demanded his entire investment back from the Applicant which he assured to return within 3 days but thereafter he did not answer Complainant's phone calls. When Complainant visited his office, he realised that Applicant had cheated many people like him, therefore he lodged complaint being CR. No. 649 of 2019 with Sadar Bazaar Police Station under Sections 420 and 406 of IPC. Investigation was carried out. Chargesheet was filed. Prosecution led evidence of 17 witnesses, some of whom had advanced and invested monies with Accused.

7. Trial was conducted and Applicant stood convicted as stated herein above.

8. I have perused the judgement of Trial Court dated 28.07.2022 and the judgement of the Sessions Judge dated 11.04.2023. At the outset, it is to be noted that Trial Court has

convicted the Applicant under Section 420 of IPC whereas exonerated him for offence under Section 406 of IPC. The Session Judge in Appeal has upheld the said judgement of the Trial Court. The relevant portion of the judgement is reproduced which reads thus:-

“35. However, there is no material to bring the act of the accused under sec. 406 of the I. P. Code as there is no evidence to show that he has misappropriated the amount nay converted the said amount to his own use. Rather there is material on record to show that he has given the share in profit to the witnesses. So the offence under sec. 406 is not made against the accused.”

9. It is seen that conviction of the Applicant is on the ground of he having induced investors some of whom testified as prosecution witnesses to invest monies with the hopes of receiving higher returns / profits and only when the returns stopped coming, some of the investors like the Complainant approached the Law Enforcement Agencies. These facts are undisputed. They clearly highlight that parties chose to repose faith in Applicant, they trusted him, they invested monies with him and most importantly on the investments made by the investors they received returns for sometime, which is not denied by any of them. Similar is the case of the Complainant herein who also received an amount of Rs. 6,20,000/- in a span of 4 months from time to time from the Applicant on his investments. This clearly shows that the Appeal Court accepted the fact that there was material on record to show that Applicant had given share in profits to the Investors / Prosecution Witnesses who testified affirmatively in their

testimony. Therefore, Applicant stood exonerated under Section 406 of IPC.

10. Though the complaint is lodged by Dr. Anil Bhakare, according to prosecution, the total amount of the Complainant and other investors received by Applicant is Rs. 1,21,42,500/-. From the evidence of Prosecution witnesses itself, it is discernible that almost all the Prosecution Witnesses received handsome returns intermittently from the Applicant in various denominations from time to time, after their investment which is also taken cognizance of by the impugned orders of conviction and appeal by both Courts below. Hence, in such a situation, when the Applicant has been exonerated under Section 406 of IPC on the basis of a positive finding, an arguable case has been made out by the learned Advocate for the Applicant on the basis of the grounds stated in the Interim Application and the findings in the Order dated 11.04.2023 passed by the Sessions Judge for seeking enlargement on Bail. Moreover Applicant has been in custody since 25.01.2020 for almost 4 years 10 months and 26 days. The maximum punishment under Section 420 IPC is that it may extend to 7 years.

11. In that view of the matter, incarceration of the Applicant any further can be dispensed with in view of his personal liberty being hampered and the substantive challenge in the Revision on the above facts and grounds to the judgement of the Sessions Judge as also *prima*

facie fact that Applicant cannot be construed to have committed inducement of the Complainant and other witnesses to part with their property when admittedly they willingly invested with him and received intermittent returns from the Applicant which they have clearly admitted in their testimony. Therefore, a question and doubt is raised on the findings in the impugned order.

12. In view of the above observations, the twin judgments and orders dated 28.07.2022 passed by the Trial Court and 11.04.2023 passed by the Sessions Court require a revisit in the Revision proceedings.

13. Considering the above observations and findings and long incarceration of Applicant as observed above, the Advocate for Applicant has made out a case for enlargement on bail of the Applicant and suspension of the balance sentence.

14. In view of the above, following order is passed:-

- (i) Revision Applicant is directed to be immediately released from prison and his further sentence stands immediately suspended subject to the final decision in the present CRA;
- (ii) Revision Applicant is incarcerated in Yerwada Central Jail, Pune. Jail Superintendent / Incharge

of the said jail is directed to act on a server copy of this order and immediately release the Applicant on bail today itself subject to compliance of this order;

(iii) Applicant is directed to be released on bail on his furnishing PR Bond of Rs.50,000/- with one or more solvent sureties in the like amount before the Trial Court;

(iv) Registry of this Court is directed to forward a copy of this order immediately to the Jail Authorities /Superintendent of Yerwada Central Jail, Pune;

(v) Revision Applicant is directed to remain present as and when called by the concerned police station; and

(vi) Revision Applicant shall not leave the jurisdiction of the State of Maharashtra without the permission of this Court.

15. All parties shall act on server copy of this order.

16. Interim Application No.4739 of 2024 is allowed and disposed.

17. List the CRA on 17th January, 2025.

H. H. SAWANT

[MILIND N. JADHAV, J.]

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