

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

CRIMINAL BAIL APPLICATION NO.2120 OF 2024

Somnath Vilas Patole

...Applicant

Versus

The State of Maharashtra

...Respondent

Ms. Rekha Musale a/w Mr. Nitin Rajguru, for the Applicant.
Mr. P.H. Gaikwad, APP, for Respondent-State.
Mr. Ramji Kotali (through V.C.) for Intervenor.

CORAM : MADHAV J. JAMDAR, J.

DATED : 10th May 2024

P. C.

1. Heard Ms. Musale, learned Counsel for the Applicant, Mr. Gaikwad, learned APP for the Respondent-State and Mr. Kotali, learned Counsel for Respondent No.2.
2. At the outset, Ms. Musale, seeks leave to amend to implead the Informant as a party.
3. Accordingly, leave granted. Amendment be carried out forthwith.
4. Mr. Ramji Kotali appears for Respondent No.2 and waives service.
5. This regular Bail Application is preferred under Section 439 of the *Code of Criminal Procedure, 1973*. The relevant details are as follows:

1.	C.R. No.	336 of 2022
2.	Date of registration of F.I.R.	3 rd June 2022
3.	Name of Police Station	Foujdar Chawadi, Solapur

4.	Sections invoked	417, 420 r/w 34 of <i>I.P.C., 1860</i> ;
5.	Date of incident	2020
6.	Date of arrest	28 th October 2023
7.	Date of filing Charge-sheet	14 th October 2023

6. This is the first regular Bail Application. By Order dated 12th April 2023, an Anticipatory Bail Application was rejected by a learned Single Judge (Smt. Anuja Prabhudessai, J.). In the said Order dated 12th April 2023, the learned Single Judge has set out the prosecution case in paragraph '3', which reads as under:

“The aforesaid crime was registered pursuant to the FIR lodged by Nikhil Sudhakar Sarawade. The facts narrated in the FIR prima facie reveal that the Applicant had informed the first informant that Ahirrao, proprietor of Inspire Infrastructure Pvt. Ltd., Nashik had got a tender from MSEDCL to install electricity meters. He agreed to give sub-contract to the first informant on payment of Rs.15,00,000/-. The records reveal that the first informant had paid Rs.15,00,000/- from time to time, as per the details mentioned in the FIR. It is also on record that the Applicant had received Rs.15,00,000/- from the first informant out of which Rs.12,00,000/- were received through bank transaction and Rs.3,00,000/- were received in cash. The Applicant did not give the sub-contract to the first informant on the premise that the tender in favour of Ahirrao was cancelled. The said statement is prima facie a false statement and this fact would prima facie indicate that the Applicant had intention to cheat the first informant right from the inception.”

7. Ms. Musale, learned Counsel for the Applicant states that even as per the prosecution case, Rs.15,00,000/- were received by the Applicant; Rs.12,00,000/- received through R.T.G.S. and Rs.3,00,000/-

was received in the form of cash. She submits that Rs.12,00,000/- has already been refunded to the Informant and the Applicant's wife is ready and willing to tender an undertaking to this Court that the balance amount of Rs.3,00,000/- will be paid to the Respondent No.2 within a period of eight months. She states that in any case, the Charge-sheet has been filed and therefore the Applicant can be released on bail.

8. Learned Counsel for the Applicant submitted that the transaction is commercial in nature and in fact this is a civil dispute. In any case, she states that the Applicant is ready and willing to refund the entire amount of Rs.15,00,000/- and accordingly an amount of Rs.12,00,000/- has already been refunded.

9. On the other hand, Mr. Gaikwad, learned APP vehemently opposed the Bail Application. He pointed out the Order dated 12th April 2023 passed by the learned Single Judge in Anticipatory Bail Application No.2124 of 2022. He relied on paragraph no.4 thereof and submitted that the Bail Application be rejected. He also pointed out paragraph no.12 of the Order dated 26th April 2024 passed by the learned Trial Court. He therefore submitted that the Bail Application be rejected.

10. Learned Counsel for Respondent No.2 submitted that the Respondent No.2 has received an amount of Rs.12,00,000/-. He submitted that Rs.3,00,000/- is outstanding. He submitted that as the

Applicant is assuring through his wife that the refund of said outstanding amount of Rs.3,00,000/- will be made within 8 months, the Respondent No.2 has no objection if the Applicant is granted bail.

11. Learned Counsel for the Applicant states that the Affidavit/undertaking of the wife of the Applicant will be filed on or before 15th May 2024.

12. Perusal of the record shows that the incident in question took place in the year 2020, F.I.R. was lodged on 3rd June 2022, the Applicant was arrested on 28th October 2023 and the Charge-sheet was filed on 14th December 2023. As per the Charge-sheet, there are about 10 witnesses proposed to be examined by the prosecution. Till date, there is no progress in the trial and even the Charge is not framed. Accordingly, the trial will take considerably long time to conclude.

13. *Prima facie*, there is substance in the contention of the learned Counsel for the Applicant that the transaction is commercial in nature. However, it is to be noted that in the facts and circumstances of the case, a commercial transaction can give rise to a civil dispute as well as a commercial dispute.

14. *Prima facie*, the prosecution case in the Charge-sheet shows involvement of the Applicant in the offence in question. However, as the investigation is completed and the Charge-sheet has been filed and as the Applicant is having a family consisting of his wife and 4 years old

daughter, the Applicant can be enlarged on bail by imposing conditions.

15. The Applicant does not appear to be at risk of flight.

16. The Applicant does not have any criminal antecedents.

17. Accordingly, the Applicant can be enlarged on bail by imposing conditions.

18. In view thereof, the following order:

ORDER

(a) The Applicant - Somnath Vilas Patole be released on bail in connection with C.R. No.336 of 2022 registered with the Foujdar Chawadi Police Station, Solapur, District - Solapur on his furnishing P.R. Bond of Rs.25,000/- with one or two solvent sureties in the like amount.

(b) On being released on bail, the Applicant shall furnish his cell phone number and residential address to the Investigating Officer and shall keep the same updated, in case of any change thereto.

(c) The Applicant shall report to the Faujdar Police Station, Solapur, District - Solapur on the first Sunday of every month between 11.00 a.m. and 1.00 p.m. until the conclusion of the trial.

(d) The Applicant shall not directly or indirectly make any inducement, threat, or promise to any person acquainted with

the facts of the case, so as to dissuade such a person from disclosing the facts to the Court or to any Police personnel.

(e) The Applicant shall not tamper with the prosecution evidence and shall not contact or influence the Complainant or any prosecution witness in any manner.

(f) The Applicant shall attend the trial regularly. The Applicant shall co-operate with the Trial Court and shall not seek unnecessary adjournments thereat.

(g) The Applicant shall surrender his passport, if any, to the Investigating Officer.

19. The Bail Application is disposed of accordingly.

20. It is clarified that the Trial Court shall decide the case on its merits, uninfluenced by the *prima facie* observations made in this Order.

[MADHAV J. JAMDAR, J.]