

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

BAIL APPLICATION NO. 2241 OF 2022

Siddhesh Shivaji Shelar ...Applicant
vs.
The State of Maharashtra ...Respondent

**ALONGWITH
INTERIM APPLICATION NO. 2814 OF 2023
IN
BAIL APPLICATION NO. 2241 OF 2022**

Darshana Dilip Namde and Anr. ...Applicants
vs.
The State of Maharashtra ...Respondent

Meghana Gonalani	Advocate for the Intervenor/ Depositor / victim
Mr. Sameer Hatle	Advocate for the Applicant in BA
Mr. V. N. Sagare	APP for the Respondent-State
Hitendra Chavan	PSI Manikpur Police Station, Palghar

CORAM : S. M. MODAK, J.

DATE : 27th MARCH 2024

P. C. :-

1. It is true that this Court has heard submissions made on behalf of the Applicant as well as learned APP. While dealing with earlier

assignment as this being part heard matter, hearing is assigned to me again, as per Order of the Hon'ble Chief Justice. After that, I have also heard learned Advocate for the Intervenor one of the depositor Ms. Darshana Dilip Namde and her son Rishikesh Dilip Namde. Both are the investors. When there is an application for intervention, there is opposition on behalf of the Applicant-accused on the basis of the observations made in the Order dated 06/02/2014, in case of Krishna Appaya Patil Vs. State of Maharashtra in Anticipatory Bail Application No. 25 of 2014.

2. Whereas today learned Advocate for the Intervenor filed number of judgments. I am not referring all the judgments but only referring one judgment i.e. Jagjeet Singh and Ors. Vs. Ashish Mishra @ Monu and Anr. in Criminal Appeal No. 632 of 2022, dated 18.04.2022. The High Court of Judicature at Allahabad has granted bail to one of the accused and there is challenge to the said Order before the Hon'ble Supreme Court on behalf of the victim. The Hon'ble Supreme Court has considered certain points in para no. 15 dealing with right of the audience to be given to the victim. The provisions of Section 2(wa) of the Criminal Procedure Code are also referred. Those points were answered in favour of the victim and the Order granting bail was set

aside and matter was remanded back to the High Court. The observations are very much applicable to this case as there are by Hon'ble Supreme Court.

3. The investigating agency has recorded the statements of both these Applicants. Statement of the son Rishikesh was already recorded and it is part of the charge-sheet. Whereas statement of Darshana was recorded after filing of the charge-sheet and its copy is tendered alongwith report given today. The statement recorded and one panchnama carried out, they are also annexed. All are of 31/08/2023. This is not the stage to decide why there was delay in recording that statement and panchnama.

4. Panchnama is in respect of the spot situated at Kini Compound wherein certain machinery and raw pencils and other raw materials are kept. It is described in the panchnama at page no. 65. This Court after hearing both the sides on 08/08/2023 directed the learned APP to take instructions as to whether panchnama of these licensed premises was conducted. This direction was given because submissions was made on behalf of the intervenors that machinery and raw materials are kept in leave and licensed premises. It seems that investigating agency might have formed an opinion that direction was given to carry out

panchnama. In fact this Court has never directed the Police, only instructions was sought whether panchnama is carried out or not. Now what will be the fate of this additional documents can be considered by the trial Court only when the trial will go on. There was also contention raised on behalf of the intervenor that unnecessarily these raw materials and machinery are lying idle and it is caused them financial burden. All these issues cannot be decided by this Court and proper forum will be the trial Court. If at all any one will ask for direction about these articles and machinery either by way of return of these articles or disposal, suffice to say that these intervenors can be said to the victim and as such right of the audience cannot be denied to them. So Interim application is allowed and disposed of.

5. Now the question remains whether the Applicant deserves to be granted bail. During early hearing, I have recorded the submission of the both the sides in various orders including 12/04/2023, 31/05/2023, 14/06/2023, 25/07/2023, 11/07/2023, 08/08/2023 and lastly on 21/02/2024 and 13/03/2024. There is an offence registered with Manikpur Police Station in C.R. No. 92 of 2020 under Sections 420, 406 read with 34 of the Indian Penal Code on the complaint of one Ajay Chotelal Singhhad. After investigation Police have realized

that the provision of the MPID Act are required to be invoked. After completion of the investigation, charge-sheet was filed for the offence invoked earlier and under Section 3 of the MPID Act. In all there are five accused persons. Out of them three have been granted regular bail. one is yet to be arrested and this Applicant is behind bar from the date of the arrest i.e. 19/07/2021.

6. The sum and substance of the allegation from the papers alongwith charge-sheet is needy persons were allured of good returns, if they will invest some money, if they will purchase raw materials required for the purpose of manufacturing of the pencils. The representations are made by several persons on behalf of the M/s. Baileys International including the present Applicant. There are statements to that effect. Even needy persons were asked to purchase the machinery required for converting raw materials into pencils. There was further promises that this pencil will be purchased by the Company at concessional rate. After believing the promises, the needy persons have purchased raw materials and machinery. When the question of the purchasing the pencils had arose accused persons have backtracked and they have not fulfilled the promises that is why the complaint was lodged. There was some issue as to how many such

persons are there and how much exact amount is misappropriated. It was submitted that total amount is Rs. 1,54,43,728/- and such customers are initially 142 but reduced it to 128.

7. Learned Advocate for the Applicant tried to raise the contention that transaction needs to be divided into separate parts depending upon the purchase of the machinery, purchase of the raw pencil and thirdly purchase of the finished pencil by M/s. Bailey International. This submission was made in order to reduce the total amount of misappropriation. This contention cannot be gone into during hearing of the bail application. The proper remedy for the Applicant is agitate of this contention before the trial court.

8. Today, I am inclined to grant bail to the Applicant for the reason that the charge-sheet is already filed. For arresting remaining accused, the Applicant need not be detained in the jail. It is the cardinal principle of the criminal law that there should not be such detention which will amount to pre-trial punishment. The Applicant has remained in the jail since 19/07/2021. Though the period of the punishment for all these offences is not completed as contemplated under Section 436-A of the Criminal Procedure Code, otherwise also further detention in jail is not required. If we will refused the bail to the

Applicant just because few of the investors are opposing the bail, it will amount to violation of the principles for grant of bail. These offences is not for recovery of the money. Furthermore, the Applicant though his advocate has shown readiness to protect the interest of the investors. It is by way of following :-

- a) To deposit an amount of Rs. 4,84,085/-. The Court is not going into an issue how this amount is calculated by the Applicant.
- b) The affidavit of one Savita Sapate mother-in-law of the Applicant is also tendered wherein she has consented for attachment of the property described therein by the Competent authority and it can be utilized for distributing the amount among the investors.

9. There is submission by learned APP and learned Advocate for the intervenor that total amount misappropriated comes to Rs. 2 Crores and proportionately, the Applicant should be asked to deposit the amount. It is made clear that there cannot be a condition to deposit the amount while granting the bail. The bail prayer has to be decided on its own merits, which I have already decided. At the most, the Court can record the readiness shown on behalf of the Applicant.

10. Hence I am inclined to grant bail to this Applicant. Hence the

Order:-

Order

- (i) Bail Application is allowed.
- (ii) The Applicant-Siddhesh arrested in connection with C.R. No. I-92 of 2020 registered with Manikpur Police Station for the offence punishable under Sections 406, 420 and 34 of the Indian Penal Code alongwith Section 3 of the Maharashtra Protection of Interest of Depositors Act, 1999 be released on bail on furnishing Personal Bond and Surety Bond of Rs. 50,000/-.
- (iii) The Applicant is directed to give attendance to Manikpur Police Station, Palghar on first Monday of every month from 10.00 a.m. to 12.00 noon till completion of the trial.
- (iv) The readiness shown by the Applicant to deposit Rs. 4,84,085/- before the trial Court is accepted. Let it be deposited prior to furnishing bail before the trial Court.
- (v) Trial Court to pass an appropriate order about its disposal at an appropriate stage after hearing the concerned parties. Till that time, money be invested in fixed deposit as per the Rules.
- (vi) Affidavit filed by Savita Sapate-Mother-in-law of the

Applicant be also considered by investigating agency by informing the Competent Authority that property described therein be considered, if steps are taken as per provision of the MPID Act.

- (vii) Prior to release on bail, even the Applicant is directed to file an affidavit before trial Court that the readiness shown by her mother-in-law is acceptable to him.
- (viii) The Applicant through his mother-in-law to produce the necessary original papers of that property before the Police prior to furnishing the bail.

11. The Bail application is disposed of.

[S. M. MODAK, J.]