



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL BAIL APPLICATION NO.2598 OF 2023

Navin Bhupendrakumar Bhutani	...Applicant
<i>Versus</i>	
The State of Maharashtra	...Respondent

Mr. Niranjan Mundargi a/w. Ms. Keral Mehta i/b. N. M. Nadar,
Advocates for the Applicant.

Mr. P. H. Gaikwad, APP for the Respondent-State.

Mr. Gokul Mahanavar, P.S.I., Arnala Sagari Police Station, present.

CORAM: MADHAV J. JAMDAR, J.

DATED : 5th MARCH 2024

PC:-

1. Heard Mr. Mundargi, learned Counsel appearing for the Applicant and Mr. Gaikwad, learned APP appearing for the Respondent-State.

2. This regular Bail Application is preferred under Section 439 of the *Code of Criminal Procedure, 1973* ("CrPC"). The relevant details are as follows:-

1.	C. R. No.	137 of 2023
2.	Date of registration of F.I.R.	09/04/2023
3.	Name of Police Station	Arnala Sagari Police Station, District-Palghar
4.	Section/s invoked	419, 420, 120-B, 34 of the I.P.C.,1860;

		43, 66, 66(C), 66(D), 75 of the I.T. Act, 2000; 25 of the Indian Telegraph Act, 1885.
5.	Date of incident	09/04/2023
6.	Date of arrest	23/06/2023
7.	Date of filing of Charge-sheet	22/07/2023

3. As per the prosecution case, the Applicant has taken a premises on leave and license basis and the Applicant was operating an illegal call centre namely 'Shriram Enterprises', therein. The Applicant is the owner of the said call centre. The said call centre was raided on 9th April 2023 at about 4.00 a.m. and total 52 persons have been arrested including 51 employees who were working in the call centre. The said employees of the said call centre were using a software called 'VICIdial' and they used the agent User ID and password to login. They received inbound calls from Australians and other foreign nationals who made enquiries about the difficulties faced by them with respect to 'PayPal' money transfer and refund. The personal and confidential information of these Australian nationals was procured by the call centre employees and then the said information was sent to the Applicant to his gmail account and then, by using the said information, the Australian customers associated with 'PayPal Australia Pty Limited' were cheated by the employees of the said call centre by impersonating as 'PayPal' officials and email were sent to one such Australian customer and the said customer has confirmed that she is the victim of the said 'PayPal' fraud and that she has lost about

10,000 AUD. As per the prosecution case, the Applicant used to sell the personal and confidential information of the bank customers for 20 AUD per customer. The Investigating Officer has sent a letter dated 9th May 2023 to the Australian Consulate, Mumbai informing about the said fraud and seeking information regarding several frauds of Australian 'PayPal' customers. However, Mr. Gaikwad, learned APP stated that there is no response to the said letter dated 9th May 2023.

4. Mr. Mundargi, learned Counsel appearing for the Applicant submitted that as per the prosecution case, the following 5 points which according to the prosecution are against the Applicant:-

- i. A raid was conducted at call centre at about 4.00 a.m. and about 47 employees were found working in the said call centre at that time.
- ii. The Applicant is the Licensee under the Leave and License Agreement of the said premises.
- iii. About 5 statements recorded of various persons who are providing canteen and other services show that the activities as alleged by the prosecution, were going on at the said premises.
- iv. Seizure panchnama of laptops and cell phones (page no.438 of the compilation).

- v. Above referred email by one Australian customer confirming about the cheating.

5. It is the submission of Mr. Mundargi, learned Counsel that at the most it can be said that an illegal call centre without any license was being operated at the premises in question. He submitted that the same may be an offence under the *Indian Telegraph Act, 1885* and the maximum punishment is of 3 years imprisonment.

6. As far as the offence under Section 420 of the *Indian Penal Code, 1860* is concerned, Mr. Mundargi, learned Counsel relied on the decision of the Supreme Court of India in *Archana Rana vs. State of Uttar Pradesh & Ors.*¹ He pointed out paragraph no.5 of the said decision, which reads as under:-

“5. Having heard learned counsel appearing on behalf of the appellant and learned counsel appearing on behalf of the respondent-State and having gone through the averments in the complaint and the chargesheet, even if the averments made in the complaint are taken on their face, they do not constitute the ingredients necessary for the offence under Sections 419 & 420 IPC. As observed and held by this Court in the case of Prof. R.K. Vijayasarathy (supra), the ingredients to constitute an offence under Section 420 are as follows:

¹ MANU/SC/0134/2021

i) a person must commit the offence of cheating under Section 415; and

ii) the person cheated must be dishonestly induced to

a) deliver property to any person; or

b) make, alter or destroy valuable security or anything signed or sealed and capable of being converted into valuable security.

Thus, cheating is an essential ingredient for an act to constitute an offence under Section 420 IPC. Cheating is defined under Section 415 of the IPC. The ingredients to constitute an offence of cheating are as follows:

i) there should be fraudulent or dishonest inducement of a person by deceiving him:

The person who was induced should be intentionally induced to deliver any property to any person or to consent that any person shall retain any property, or the person who was induced should be intentionally induced to do or to omit to do anything which he would not do or omit if he were not so deceived.

Thus, a fraudulent or dishonest inducement is an essential ingredient of the offence under Section 415 IPC. A person who dishonestly induced any person to deliver any property is liable for the offence of cheating.”

Mr. Mundargi, learned Counsel submitted that as no person has come forward and even the statement under Section 164 of the CrPC of a person who has been cheated, has not been recorded, the offence under Section 420 of the *Indian Penal Code, 1860* (“IPC”) is not made out. He submitted that in any case, the punishment for offence under Section 420 of the IPC is 7 years imprisonment and the Applicant is behind bars since 23rd June 2023. He therefore, submitted that the Applicant be enlarged on bail.

7. On the other hand, Mr. Gaikwad, learned APP strongly opposed the Bail Application. He submitted that in the morning at about 4.00 a.m., 47 persons were found to be working in the said premises. The said premises had been taken on a leave and license basis by the present Applicant. The 5 witnesses whose statements have been recorded, are working in a canteen nearby and the statements of a housekeeping staffer and others clearly show that the activities, as alleged by the prosecution, were going on in the said premises. He submitted that similar offences have been committed by the Applicant. He pointed out paragraph No.18 of the affidavit-in-reply filed by the Senior Police Inspector – Arnala Sagari Police Station, Palghar, wherein details of antecedents are mentioned. He also pointed out clause (b) of the paragraph no.20 of the affidavit-in-reply and pointed out the role of the Applicant in the crime.

8. Perusal of the record shows that F.I.R. was lodged on 9th April 2023, the present Applicant was arrested on 23rd June 2023 and Charge-sheet was filed on 22nd July 2023 and therefore, the investigation is complete. As per the Charge-sheet, there are about 31 witnesses proposed to be examined by the prosecution. Thus, the trial is unlikely to conclude any time soon and is likely to take a considerably long time and even the charge is also not framed yet.

9. There are similar antecedents. The details of which are mentioned in the affidavit-in-reply in a tabular format at page no.633 of the compilation. However, it is to be noted that in all these cases, the Applicant has been granted bail. The details of the same are as follows:-

Sr. No.	C.R. No.	Police Station	U/Sec.	Bail/ Anticipatory Bail Order Date
1	551/2021	Cyber Police Station, District-Sayabarabad, Telangana State	420 of I.P.C. r/w. 66-C of I.T. Act.	31/01/2022
2	15/2023	Taran Police Station, Punjab	420, 120-B, 467, 468, 471 of the I.P.C. and 66-C, 66-D, 75 of the I.T. Act.	06/03/2021
3	350/2011	Mayura Enclave Police Station, Pimtampura, Delhi	380, 452, 506 of the I.P.C.	08/11/13

10. In any case, the investigation is complete and maximum punishment as per Section 420 of the IPC is 7 years imprisonment.

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

12. In view thereof, the following order:-

ORDER

- (a) The Applicant-Navin Bhupendrakumar Bhutani be released on bail in connection with C. R. No.137 of 2023 registered with the Arnala Sagari Police Station, District-Palghar on his furnishing P. R. Bond of Rs.1,00,000/- with one or two local solvent sureties in the like amount.
- (b) The Applicant shall not leave India without prior permission of the Trial Court.
- (c) 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.
- (d) The Applicant shall report to the Arnala Sagari Police

Station, District-Palghar once a week on each Monday between 11.00 a.m. and 1.00 p.m. until the conclusion of the trial.

- (e) 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.
- (f) The Applicant shall not tamper with the prosecution evidence and shall not contact or influence the Complainant or any witness in any manner.
- (g) The Applicant shall attend the trial regularly. The Applicant shall co-operate with the Trial Court and shall not seek unnecessary adjournments thereat.
- (h) The Applicant shall surrender his passport, if any, to the Investigating Officer.

13. The Bail Application is disposed of accordingly.

14. It is clarified that the observations made herein are *prima facie* and the Trial Court shall decide the case on its merits and uninfluenced by the observations made in this order.

[MADHAV J. JAMDAR, J.]