

Sayali Upasani

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

BAIL APPLICATION NO. 4129 OF 2023

Sanjay Pran Gopal Saha

...Applicant

Vs.

The State of Maharashtra and Others

...Respondents

Mr. Abad Ponda, Senior Advocate with Mr. Abhishek Yende,
Mr. Vishal Dhasade, Ms. Surbhi Agarwal, for Applicant.

Mr.S. R. Agarkar, APP for State-Respondent No. 1.

Mr.Pratik Deore i/b Mr. Dinesh Kadam and Mr. Amar Thakur,
for Respondent No. 2.

Mr. Kadam P.I., MIDC Police Station, Present.

CORAM:- N. J. JAMADAR, J.

DATED:- 29th FEBRUARY, 2024.

ORDER:-

1) The applicant, who is arraigned in CR No. 434 of 2023, registered with M.I.D.C. Police Station, Mumbai, for the offences punishable under Sections 406, 409 and 420 read with Section 34 of the Indian Penal Code, 1860, has preferred this application to enlarge him on bail.

2) Mr. Deven Jawaharlal Bafna, who claims to be a partner of Oberoi Mega Entertainment LLP (OMEL) has lodged the report with the allegations that as two partners of the said firm had experience in film production and organisation of events related to films, pursuant to the discussion between one of the partners of the said firm, who is an actor (actor-partner) and the applicant, it was decided to form M/s. Anandita Entertainment LLP for film production. Co-accused Nandita Saha and Radhika Nanda were to have 33.34% and 33.33% share in the partnership and the actor-partner was to have 33.33% share.

3) Eventually, in the month of February, 2021, a film titled “Gunshe” was decided to be produced. The actor-partner incurred expenses towards the fees of another lead actor, Director and script writer from his personal account. In the meanwhile, when the details of the investments made by Oberoi Mega Entertainment LLP in M/s. Anandita Entertainment LLP were scrutinized, it transpired that the applicant and the co-accused had siphoned off huge amount which was credited to the account of M/s. Anandita Entertainment LLP for various purposes unconnected with the business of the said firm. The applicant and the co-accused thus had a wrongful conversion of

the funds credited by Oberoi Mega Entertainment LLP. Upon further enquiry, it transpired that a sum of Rs.95,72,814/- was siphoned off and the applicant had also misappropriated a sum of Rs.60,00,000/- received towards the remuneration of the actor-partner for participating in the various events. The applicant and the co-accused Nandita and Radhika and others thus defrauded the actor-partner to the tune of Rs.1,55,72,814/-.

4) The applicant came to be arrested on 1st October, 2023. Post completion of investigation, chargesheet has been lodged on 28th November, 2023.

5) Mr. Ponda, the learned Senior Advocate for the applicant, submitted that a partnership dispute has been given the color of a criminal prosecution, that too at the instance of the first informant, who cannot be said to have been allegedly defrauded. Mr. Ponda further submitted that even if the case of the prosecution is taken at its face value, the offences punishable under Sections 420 and 409 of the Penal Code, 1860 cannot be said to have been prima facie made out.

6) An endeavour was made by Mr. Ponda to demonstrate that the amounts which were allegedly defrauded by the applicant

and the co-accused were, in fact, used for the purposes expressly authorised under the LLP agreement. It was submitted that the real dispute between the parties was with regard to release of the movie titled “Haddi” on OTT platform, in respect of which OMEL had taken recourse to the remedies under Arbitration and Conciliation Act, 1996, by filing Commercial Arbitration Petition (L) No. 24521 of 2023. OMEL did not succeed in the arbitration Petition as well as the Appeal preferred thereagainst. Therefore, the applicant has been falsely roped in by making allegations of cheating and criminal breach of trust.

7) In opposition to this, Mr. S. R. Agarkar, the learned APP and Mr. Pratik Deore, the learned Counsel for the first informant resisted the prayer for bail. It was submitted that the applicant and the co-accused defrauded the actor - partner to the tune of Rs.1,55,72,814/-. A strong prima facie case has been made against the applicant. The applicant has an antecedent as well. Therefore, the applicant does not deserve to be released on bail.

8) Evidently, the alleged offences have their genesis in the partnership disputes. The execution of an Agreement For Limited Liability Partnership for the purpose of the business in connection with movies and entertainment is rather

incontrovertible. The gravamen of the indictment is that the actor-partner was induced to part with a huge amount purportedly for the purpose of the business of the firm. However, the applicant and the co-accused wrongfully converted the said amount. The applicant and the co-accused had inter alia used the said amount to buy a policy on the life of co-accused partner, Radhika, and pay salary to her and also towards travelling expenses, purchase of gold and payment to the staffs etc.

9) Mr. Ponda, invited the attention of the Court to the clauses in the LLP (Exh.C) especially Clauses 38 (m) and 44 which provide for incurring of expenses for the welfare of the partners and payment of remuneration to the partners. Prima facie, the aforesaid clauses in the partnership agreement support the cause of the submission sought to be advanced on behalf of the applicant.

10) The matter is required to be appraised through the prism of the partnership dispute which has arisen between the partners. It appears that the trigger for the dispute was purported release of the film 'Haddi' on the OTT platform. An order passed by this Court in Commercial Arbitration Petition (L)

No. 24521 of 2023 dated 4th September, 2023, indicates that the Court was not persuaded to grant ad-interim relief of stay to the release of the said film. The applicant was impleaded in the said Petition as party respondent No. 1.

11) In the backdrop of the aforesaid dispute, it is necessary to note that to make out an offence punishable under Section 420 of the Penal Code, 1860, the existence of fraudulent or dishonest intention since the inception of the transaction is required to be established. Mere failure to perform the contract by itself does not amount to cheating. Likewise, the same act or omission may not constitute an offence of cheating and criminal breach of trust, simultaneously. All these issues would merit adjudication at an appropriate stage in the proceedings before the learned Magistrate.

12) At this juncture, the investigation is practically complete. Charge sheet has been lodged. Moreover, the offences revolve around documents. The applicant appears to have roots in society. The possibility of tampering with evidence and fleeing away from justice also appears to be remote.

13) In CR No. 34 of 2022 registered with Cyber Police Station, in which the applicant is arraigned as an accused, the

indictment seems to be that the applicant had misappropriated a sum of Rs.2,00,000/-. The applicant is stated to have been released on bail in the said case. In the circumstances, the said antecedent does not disentitle the applicant from bail in this case.

14) I am, therefore, inclined to exercise the discretion in favour of the applicant.

15) Hence, the following order.

: O R D E R :

(i) The application stands allowed.

(ii) The applicant be released on bail in CR No. 434 of 2023, registered with M.I.D.C. Police Station, Mumbai, for the offences punishable under Sections 406, 409 and 420 read with Section 34 of the Indian Penal Code, 1860, on furnishing a P.R. Bond in the sum of Rs.30,000/- with one or two sureties in the like amount, to the satisfaction of the trial Court.

(iii) The applicant shall mark his presence at the M.I.D.C. Police Station, Mumbai, on the first Monday of every month between 10.00 am to 12.00 noon for a period of two years or till conclusion of trial, whichever

is earlier.

(iv) The applicant shall not tamper with the prosecution evidence and/or give threat or inducement to the first informant and any of the persons acquainted with the facts of the case.

(v) By way of abundant caution, it is clarified that the observations made hereinabove are confined for the purpose of determination of entitlement for bail and they may not be construed as an expression of opinion on the guilt or otherwise of the applicant and the trial court shall not be influenced by any of the observations made hereinabove.

[N. J. JAMADAR, J.]