

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

CRIMINAL APPLICATION NO. 682 OF 2024

Niranjan Navinkumar Shaha .Applicant

Vs.

The State of Maharashtra & anr. .Respondents

Mr. Priyal G. Sarada along with Mr. Shubham Sane, Ms. Seema S. Dighe
& Mr. Rajesh Ranglani, Advocates, for the Applicant
Ms. Veera Shinde, APP, for the Respondent – State
Mr. Satyavrat Joshi i/b. Mr. Samay Pawar, Advocates, for Respondent
No. 2

CORAM : ASHWIN D. BHOBE, J.

DATE : 30.06.2025

P C.

1. By the present Application under section 482 of the Code of
Criminal Procedure, the Applicant has sought the following substantial
reliefs :-

*“a. The clause (iii) & (iv) of Order dated
13.03.2023 passed in Criminal Bail Application
No. 769 of 2024 (Exh – C) be quashed and set
aside;*

*b. The Order dated 03.05.2024 of rejection of
extension of time to deposit an amount of Rs.
51,60,000/- passed below Exh. 18 in Cri. Bail
Application No. 769 of 2024 (Exh – E) be quashed
and set aside and the Applicant may be granted
further time of 5 months to deposit an amount of
Rs. 51,60,000/-;*

c. Pending the hearing and final disposal of the present Application the effect and implementation of clause (viii) of order dated 13.03.2024 passed in Criminal Bail Application No. 769/2024 (Exh – C) may be stayed;

d. Pending the hearing and final disposal of the present Application, the Respondent may be restrained to take any coercive action against the Applicant in respect of CR No. 474/2023 registered with Warje Malwadi Police Station, Pune;

e. Interim/Ad-interim order in terms of prayer clause 'c' & 'd' be allowed;

f. The Application be allowed finally.”

2. Applicant is an Accused in C. R. No. 474 of 2-23 registered with the Warje Malwadi Police Station, Pune for the offenses punishable under Sections 406, 409 & 420 of the Indian Penal Code and under Sections 3 & 4 of the Maharashtra Protection of Interest of Depositors (In Financial Establishments) Act. 1999.

3. Case of the prosecution is that the Applicant was doing business in Stock trading. Respondent No. 2 invested an amount of Rs. 3,10,000/- whereas his relatives invested an amount of Rs.3,15,00,000/- in the firms viz Goodwin Group and Pride Group of the Applicant. On the accusation of the Applicant having cheated the Respondent No.2 and the other investors, the said Crime was

registered.

4. Applicant was arrested on 16.11.2023.

5. Apparently, in the month of November, 2023, Applicant had filed his Affidavit before the Trial Court, in which the Applicant had shown his readiness to pay Rs.3,08,00,000/- in five installments of Rs. 61,60,000/-, to the 108 investors.

6. Criminal Bail Application No. 7470 of 2023 filed by the Applicant was dismissed on 21.12.2023.

7. On 11.01.2024, Applicant filed Bail Application No. 769 of 2024 before the Court of the Additional Sessions Judge, Pune. Ground (c) of the application reads as under:-

“c) That, the Applicant / accused is ready to return the amount to the complainant and other investors and also ready to give Undertaking and Affidavit before Court (which is filed here with this application)”.

8. On 23.02.2024, the Applicant filed an undertaking in Bail Application No. 769 of 2024, thereby undertaking to deposit the amount of Rs. 1,50,00,000/- before the Court. Said undertaking

contains the following statement :- *“I make this undertaking without anyone’s force, pressure. I make this undertaking with my own will.”*

9. Learned Additional Sessions Judge, Pune allowed the Bail Application No. 769 of 2024, vide Order dated 13.03.2024, on the following conditions :-

“ORDER

i] Bail Application 769 of 2024 is conditionally allowed.

*ii] Accused/applicant **Niranjan Navinkumar Shaha** shall be released on bail on execution of P.B. and S.B. in the sum of Rs. 1,00,000/- with surety of the like amount in connection with crime No. 474/2023 registered with Warje Malwadi Police Station, Pune for the offences punishable under Sections 406, 409, 420 of the Indian Penal Code & Sec. 3 & 4 of MPID Act.*

iii] Applicant is directed to deposit Rs. 61,60,000/- in the Court before this release on bail.

iv] Thereafter remaining amount of Rs. 2,46,40,000/- (3,08,00,000 – Rs. 61,60,000) be deposited in four installments starting from April 2024 till the end of July 2024 i.e. Rs. 61,60,000/- each in the Court without fail.

v] Applicant shall attend Warje Malwadi police station on every 1st and 15th day of month during 11.00 a. m. to 1.00 p. m. till July 2024 i. e. till the payment of remaining amount.

vi] Applicant shall not tamper with prosecution evidence and he shall not pressurize prosecution witnesses.

vii] Applicant shall not commit any offence while availing liberty granted under this order.

viii] If breach of any of the above conditions is committed, the order of bail shall automatically stand cancelled.”

10. Para Nos. 5, 6 & 7 of the Order dated 13.03.2024 being relevant to the subject matter of the present Application, are transcribed hereinbelow :-

“5] It is pertinent to note here that during pendency of this bail, charge sheet against accused is filed by IO. After filing of chargesheet, I have heard applicant’s advocate Smt, Kadambari Gaikwad and Ld. APP Mr. Wadekar at length. I have also carefully perused the chargesheet and documents annexed to it. Perused written notes of arguments filed by applicant and complainant. Applicant has also filed pursis dtd. 7/3/2024 by which he shown his readiness to pay Rs. 30,00,000/- at the time of releasing him on bail and remaining Rs. 1.20 Crore will pay in next four installments.

6] It is pertinent to note here that as stated in the argument of complainant, accused applicant has cheated more than 108 investors to the tune of Rs. 3,18,10,000/- but as per police report this amount increases upto Rs. 4,50,00,000/-. Now applicant is showing his willingness to deposit only Rs. 1,50,00,000/- which is insufficient.

7] In November 2023, accused filed his affidavit in which he assured that he is ready to pay Rs. 3,08,00,000/- in five installments of Rs. 61,60,000/- to 108 investors. Taking into consideration the above said undertaking of the accused, I proceed to pass following order.”

11. On 29.04.2024, Applicant filed an Application (at Exh. 18) in

Bail Application No. 769 of 2024 seeking extension of time for deposit of the amount of Rs. 61,60,000/-, mentioned in bail condition No. 7(iii). By the said Application, Applicant sought leave to deposit Rs. 10,00,000/- and further time for deposit of the balance amount of Rs. 51,60,000/-.

12. By Order dated 03.05.2024, learned Additional Sessions Judge, Pune, partly allowed the said Application (at Exh. 18). Operative part of the Order dated 03.05.2024 reads as under :-

“ORDER

- i] Application exh. 18 is partly allowed.*
- ii] Nazir is directed to accept DD of Rs. 10 lacs towards compliance of the order dtd. 13/3/2024 passed by this Court in bail application no. 769/2024.*
- iii] Prayer of accused for extension of time to deposit remaining amount of Rs. 51,60,000/- stands rejected.”*

13. Rejection of the Application (at Exh. 18), invoked bail condition No. (viii) of the order dated 13.03.2024, resulting in cancellation of the bail granted to the Applicant.

14. Applicant, by the present Application is before this Court

questioning the Order dated 03.05.2024 and bail condition nos. 7(iii) and (iv) of the order dated 13.03.2024, passed by the learned Additional Sessions Judge, Pune in Bail Application No.769 of 2024.

15. On 10.05.2024, this Court made the following order :-

“1. Heard Mr. Sarda, learned Counsel for the Applicant, Ms. Shinde, learned APP for the Respondent No. 1 – State and Mr. Pandey, learned Counsel for the Intervenor/proposed Respondent No. 2.

2. At the outset, Mr. Sarda, learned Counsel for the Applicant seeks leave to implead the Informant as party Respondent No. 2.

3. Leave granted. Amendment to be carried out forthwith.

4. Mr. Pandey, learned Counsel waives service on behalf of the Respondent No. 2.

5. Mr. Sarda, learned Counsel for the Applicant states that he is seeking relaxation of condition at clause (iv) of the Order dated 13th March 2024 passed by the learned Additional Sessions Judge, Pune in Bail Application No. 769 of 2024. On instructions, he states that the Applicant will deposit an amount of Rs. 5,00,000/- on or before 17th May 2024 and an additional amount of Rs. 5,00,000/- on or before 31st May 2024. He states that he has taken instructions to make this statement and that the Applicant shall tender an undertaking in accordance with these statements.

6. The said statements made by Mr. Sarda, learned Counsel on behalf of the Applicant are accepted as an undertaking given to this Court.

7. In view of the said statements, without prejudice to the contentions to be raised by the

Respondent No. 2, the benefit of the Order dated 13th March 2024 granted by the learned Additional Sessions Judge, Pune is extended for a period until 21st June 2024 on the condition that an amount of Rs. 5,00,000/- will be deposited by the Applicant on or before 17th May 2024 before the learned Trial Court and an additional amount of Rs. 5,00,000/- will be deposited by the Applicant on or before 31st May 2024 before the learned Trial Court.

8. In the meanwhile, the Respondent No. 2 is at liberty to file an affidavit-in-reply.

9. Stand over to 12th June 2024.”

16. Mr. Sarda, learned Advocate for the Applicant assailing the order dated 03.05.2024 and the bail condition nos. (iii) & (iv), submits that though the Applicant had given an undertaking to the Court, in the month of November, 2023, showing readiness to pay the amount of Rs. 3,08,00,000/-, in five installments of Rs. 61,60,000/- to 108 investors, the said undertaking was for the purpose of adjudication of Criminal Bail Application No. 7470 of 2023. He submits that the Criminal Bail Application No. 7470 of 2023 being rejected, undertaking given therein lost its validity. He submits that the Trial Court could not have considered the said earlier undertaking to pay the amount of Rs. 3,08,00,000 while deciding the Bail Application No. 769 of 2024. He submits that though the Applicant had given an undertaking to deposit an amount of Rs. 1,50,00,000/- in the the Bail Application No. 769 of 2024, according to him prior deposit or conditional deposit of the

amount involved in the crime cannot be made as a condition for release on bail.

17. Ms. Shinde, learned APP for the Respondent – State submits that the Applicant had himself volunteered to deposit the amount by submitting undertaking to the Court, from time to time. She submits that the Applicant having offered to pay / deposit the amount out of his own free will and taking benefit of such representations Applicant cannot be permitted to resile from the undertaking. She submits that all the undertakings given by the Applicant are valid, as none of the undertakings have been withdrawn by the Applicant.

18. Mr. Joshi, learned Advocate for Respondent No. 2 submits that the Applicant had secured indulgence from the Trial Court by way of bail on the sole representation and undertaking that he would be depositing / paying the amount to the Respondent No.2 and the 108 investors. He submits that the Applicant having admitted the amounts payable to the Respondent No.2 and the investors, had made the undertakings before the Court. He submits that the application dated 29.04.2024 (at Exh. 18) filed by the Applicant, shows that Applicant having accepted the order dated 13/03/2023 and the Applicant has

acted upon the same. He submits that the dishonesty of the Applicant is evident from the conduct of the Applicant. He submits that if the contentions of the Applicant are considered it will amount to give premium on the dishonest conduct of the Applicant.

19. I have perused the records with the able assistance of the Advocates for the parties.

20. As per the prosecution case, the Respondent No. 2 and 108 investors invested amounts with the Applicant, which amounts were not returned by the Applicant.

21. Records of the Bail Application No. 769 of 2024 indicate that since inception i.e. from the date of arrest of the Applicant, Applicant has been representing to the Trial Court of returning the amount to the investors by showing his readiness to deposit the amount/s in Court. Said facts are evident from the documents of the Applicant himself viz:- Affidavit filed by the Applicant in the month of November 2023; contents the Bail Application No.769 of 2024; Applicant's undertaking dated 23.02.2024; pursis dated 07.03.2024; application dated 29.04.2024 (at Exh. 18) and before this Court on 10.05.2024.

22. Applicant by voluntarily offering deposit of amounts in Court / payment of amounts to investors, while seeking indulgence of the Court to have his liberty secured and restored, foreclosed consideration of his bail application on merits. Applicant by his conduct persuaded the Court not to go into the merits of the bail. Order dated 13.05.2024 passed in Bail Application No 769 of 2024 clearly indicates the Court being called upon by the Applicant to pass order on his bail application, solely on the solemn representations made in the undertakings filed in Court. Applicant has derived benefit of the Order dated 13.03.2024 and has secured his liberty.

23. Subsequent to the Order dated 13.03.2024, Applicant filed an Application dated 29.04.2024 (at Exh. 18) seeking extension of time to deposit the amount in terms of the Order 13.03.2024. Said Application does not make any grievance either with reference to the conditions of bail being onerous or of the undertaking/s referred to in the Order dated 13.03.2024.

24. I am unable to accept contention of Mr. Sarda, that the undertaking given by the Applicant in the month of November, 2023

showing his readiness to deposit Rs. 3,08,00,000/-, loosing its validity or efficacy, for more than one reasons. Firstly, said undertaking is in respect of C. R. No. 474 of 2023 registered with the Warje Malwadi Police Station, Pune and secondly, it is not the case of the Applicant even before this Court, that the said undertakings was withdrawn by the Applicant at any point of time.

25. Applicant has been consistently filing undertakings and making representations to the Court showing his readiness to deposit the amount / pay the amount in question. Order dated 10.05.2024 passed by this Court refers to yet another undertaking of the Applicant.

26. Mr. Sarda relies on the Judgment of the Hon'ble Supreme Court in the case of *Ramesh Kumar vs. State (NCT of Delhi)*¹ to submit that a criminal court, exercising jurisdiction to grant bail is not expected to act as a recovery agent to realise the dues of the complainant. He relies on the decision of the Hon'ble Supreme Court in the case of *Shane George D'Souza vs. State (NCT of Delhi)*², to submit that imposing a financial deposit as a condition for bail is impressible.

¹ (2023) 7 SCC 461

² 2023 SCC OnLine 1940

27. It is trite law that imposing of financial deposit as a condition for bail is not permissible and that the process of Criminal Law particularly, matters of grant of bail are not akin to money recovery proceedings. However, the facts of the present case as referred above clearly indicate that it was the Applicant who out of his own free will volunteered, by way of undertaking/s to deposit the amount which pertains to 108 investors. Undertaking/s in the present case indicates the Applicant rest content with the deposit of the amount. In the peculiar facts and circumstances of this case, it is not open to the Applicant to contend that the bail condition in para 7 (iii) and (iv) to be onerous.

28. Applicant as an after thought, is attempting to renege by contending the said bail condition to deposit amount, to be onerous. Such practice, has been deprecated by the Hon'ble Supreme Court in the case of *Kundan Singh vs. The Superintendent of CGST and Central Excise*³. In paras 8, 9, 10 & 11 the Hon'ble Supreme Court has observed as under :-

“8. There cannot be any dispute that excessive bail is no bail and onerous conditions ought not to be imposed while bail is granted. As to what is an onerous condition would no doubt depend on the

³Special Leave to Appeal (Crl) No. 9111/2025

facts and circumstances of the individual case. What is troubling however, is when attempts are made to foreclose consideration of bail application on merits by voluntarily offering deposits of amounts and thereafter reneging on it by stating that a counsel had no authority and/or that the condition is onerous.

9. We are not able to countenance this practice. Even in this case the argument is that the counsel has no authority to offer monetary deposit, when in the modification application no such averment was made and all that was averred was that the amount of Rs.50,00,000/-, as directed, be also deferred to the point after the release of the petitioner.

10. We strongly deprecate this practice. If the offer for monetary deposit had not been made, at the outset, the High Court may have considered the case on merits and may have granted or may not have granted relief to the petitioner. Today the petitioner is approbating and reprobating. We are conscious of his rights under Article 21 of the Constitution of India, but we have to be equally conscious of the sanctity of the judicial process and cannot allow parties to play ducks and drakes with the Court. In this scenario, the only conclusion possible is that both, the original bail order of 08.05.2025 and the order of modification dated 14.05.2025 granting final relief, will have to be set aside and the matter be remitted to the High Court for fresh consideration on merits uninfluenced by any of the observations of this Court.

11. The situation now is that the petitioner, taking advantage of the order of the High Court, has secured his release. Ordinarily the consequence would have been to put the petitioner back in jail. However, considering the averments made in the modification application in this case, we are inclined to grant a limited interim protection to the petitioner from surrendering.”

29. Applicant is attempting to approbate and reprobate. Facts of instant case are similar to the facts in the case of *Kundan Singh (Supra)* and observations made by the Hon'ble Supreme Court of para 10 of the Order are squarely applicable to the case in hand.

30. Applicant has literally taken the Court for granted by making representations to deposit / pay the amount. Upon acceptance of the said request, securing his liberty. Thereafter, seeking an extension of time to deposit such amounts. Lastly, as an after thought contending that the conditions are onerous. Conduct of the Applicant borders on abuse of process of law.

31. Learned Trial Court upon consideration of the facts and circumstances of the case has assigned reasons in its order dated 03.05.2024 for rejection of the application dated 29.04.2024 (at Exh. 18). Applicant has failed to show any perversity in the order dted 03/05/2024.

32. In view of the above, no case is made out to entertain the present application. The present application is without any merits, as such dismissed.

33. Upon dismissal of the Application dated 29.04.2024 (at Exh. 18) in Bail Application No. 769 of 2024, the said bail condition nos. 7(viii) would get activated, resulting in cancellation of the bail granted to the Applicant.

34. Mr. Sarda learned Advocate of the Applicant, on instructions of the Applicant prays for four weeks time to surrender before the Trial Court. Considering the Applicant was secured by an interim Order dated 10.05.2024, pending this application, request made by the Applicant is granted. Applicant shall surrender before the Special Judge (MPID), Pune within four weeks from today i.e on or before 30.07.2025, subject to the Applicant furnishing P. R. Bond in the sum of Rs. 25,000/- with one or two solvent sureties in the like amount to the satisfaction of the learned Special Judge (MPID), Pune on or before 09.07.2025. In the event, P. R. Bond and surety are not furnished within time, learned Magistrate to act accordingly.

35. Criminal Application No. 682 of 2024 is dismissed.

(ASHWIN D. BHOBE, J.)