

Ajay

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

CRIMINAL BAIL APPLICATION NO. 396 OF 2024

Sarfraz Jaffar Ahsan @ Amar Khanna

.. Applicant

Versus

The State of Maharashtra and Anr.

.. Respondents

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- Mr. Nitin Sejpal a/w. Ms. Akshata Desai and Mr. Siddhart Gharat, Advocates for Applicant.
 - Mr. R.M. Pethe, APP for Respondent No.1 – State.
 - Mr. Niranjan Mundargi a/w. Ms. Keral Mehta and Ms. Sakshi Jogdand, Advocates i/by Mr. Omkar Mulekar for Respondent No.2 – Complainant.
 - Mr. Shriram Ghodake, API – Unit-9, DCB, CID, Mumbai present.

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CORAM : MILIND N. JADHAV, J.

DATE : FEBRUARY 27, 2025.

P.C.:

1. Heard Mr. Sejpal, learned Advocate for Applicant; Mr. Pethe, learned APP for Respondent No.1 – State and Mr. Mundargi, learned Advocate for Respondent No.2 – Complainant.

2. This is an Application under Section 439 of the Code of Criminal Procedure, 1973 seeking Regular Bail in connection with C.R.No.133 of 2018 registered with Juhu Police Station, Mumbai for the offences punishable under Sections 376, 420, 465, 467, 468, 469, 471 and 506 of the Indian Penal Code, 1860.

3. Mr. Sejpal, learned Advocate for Applicant has at the outset fairly pointed out the order dated 16.11.2021 in Bail Application No.167 of 2019 in respect of rejection of the previous Bail Application of the Applicant on merits. That order is also referred to and relied upon by the learned APP Mr. Pethe for the Prosecution as also by the learned Advocate Mr. Mundargi for Respondent No.2 – Complainant. He would however persuade the Court to consider the long incarceration of the Applicant from the date of his arrest on 22.03.2018 and juxtapose the same with the conduct of the trial in the present case which has also incidentally been taken into cognizance by this Court in its order dated 10.10.2024 in the present Application itself.

3.1. He would submit that apart from implicating the Applicant in the grievous charge of 376 of IPC, he has also been charged with cheating, forgery and criminal breach of trust which forms fulcrum of charges levelled by Respondent No.2 – Complainant. All that he would submit is that this is a case where the Applicant and the Complainant were known to each other and they apparently had a healthy relationship which is *prima facie* evident on reading the facts which are noted by this Court while disposing of the previous Bail Application, as also the record of the case placed before me.

4. Mr. Pethe, learned APP for Respondent No.1 – State would persuade the Court to consider the gravity of the charges against the Applicant and would harp on the breach of trust committed by Applicant inducing the Complainant for parting with not only the substantial amount of money but also jewellery and other artefacts fraudulently.

4.1. He would submit that the enormity of the crime committed by the Applicant as delineated from the record would show that the Applicant had gained trust of the Complainant over a substantial period of time while inducing him repeatedly into parting with the money, however the relationship between them according to him was under deception. He would therefore persuade the Court not to exercise its discretionary power for any reason to allow the present Application.

5. Mr. Mundargi, learned Advocate for Respondent No.2 – Complainant has adopted the submissions made by Mr. Pethe, learned APP and in addition thereto at the cost of repetition consider the conduct and role of the Applicant in deceiving the Complainant who was a single woman and was lured into not only a relationship but also deceived to part with substantial monies running into crores of rupees as also valuable jewellery belonging to her. He would submit that the offences registered against the Applicant are serious in nature and if he

is enlarged on bail, there is likelihood of he re-offending considering his conduct in the present case.

5.1. He would submit that the conduct of the Applicant in the present case does not justify grant of bail. He would draw the Court's attention to the breach of undertaking of the Applicant when this Court (Coram: Prakash D. Naik, J.) by its order dated 14.01.2020 had released the Applicant on bail on a specific condition to deposit the money which was extended by the Court from time to time despite which the Applicant breached the said undertaking and it was used as a ruse to come out of prison by the Applicant. He would submit that considering the Applicant's antecedents the Application be rejected.

6. I have heard the submissions of the learned Advocates at the bar and perused the record in the present case.

7. *Prima facie*, the material on record shows that Applicant had befriended the Complainant and they had a substantially long relationship over a period of substantial period of time. What impels the Court to consider the case of the Applicant is incarceration. Applicant is arrested on 22.03.2018. He is incarcerated for 6 years, 11 months and 5 days. Out of this, between 04.02.2020 and 15.01.2021 Applicant was granted interim bail but the Applicant could not comply with the condition and on the rejection of his SLP by the Supreme Court, he immediately surrendered and showed his bonafides.

7.1. The second reason which I deem fit to consider are the observations made by this Court in an interim order in the present case itself on 10.10.2024. It is seen that the First Informant – Complainant is prosecution witness No.1 and her witness action has commenced. This Court opined that it would be appropriate that the evidence of the First Informant – Complainant be completed and thereafter the present Application is considered. There are two reasons as to why I deem fit to answer to consider the Bail Application of the Applicant at this stage.

8. I am informed by the learned Prosecutor that the witness action of PW-1 is continuing. He would fairly inform the Court that on some days of hearing the witness action could not continue and that is the probable reason that it would not be completed.

9. Mr. Mundargi also fairly endorses the fact that witness action of PW-1 is continuing. That apart, prosecution undoubtedly will be leading evidence of further witnesses. According to Mr. Sejpal, the prosecution has endeavoured to lead evidence of 77 witnesses in the trial. Considering this position, there is a grave uncertainty as to the time when the said trial would be completed. The second reason is that considering long incarceration of the Applicant if he is granted bail and appropriate stringent conditions are imposed on him to attend the trial, he would be in a better position to defend his case which in the

case of an under-trial accused in long incarceration which should be considered by the Court.

10. Though considering the submissions made by Mr. Pethe, learned APP and Mr. Mundargi, learned Advocate for Complainant in the facts of the present case which are delineated herein above, on the ground of long incarceration of the Applicant, I am of the opinion that Applicant has made out case for grant of bail, however clarifying that the Applicant will have to adhere to the strict conditions which shall be imposed by the Court.

11. In view of my above observations borne out from the record, Applicant is directed to be released on bail on the following terms and conditions:-

- (i) Applicant is directed to be released on bail on furnishing P.R. Bond of Rs.50,000/- (Rs. Fifty Thousand only) with one or two sureties of the like amount;
- (ii) Applicant shall report to the Investigating Officer at Juhu Police Station, Mumbai as and when called by the Investigating Officer;
- (iii) Applicant shall co-operate with the conduct of trial and attend the Trial Court on all dates, unless specifically exempted and will not take any unnecessary adjournments, if he does so it will entitle the

prosecution to apply for cancellation of this order;

- (iv) Applicant shall not enter into to the jurisdiction of DCP Zone-IX, Mumbai until the completion of trial;
- (v) Applicant shall not leave the State of Maharashtra without prior permission of the Trial Court;
- (vi) Applicant shall not influence any of the witnesses or tamper with the evidence in any manner;
- (vii) Applicant shall keep the Investigating Officer informed of his current address and mobile contact number and / or change of residence or mobile details, if any, from time to time, as applicable;
- (viii) Applicant shall not make any attempt to re-associate with the victim girl in any manner either through any device or in-person; and
- (ix) Any infraction of the conditions shall entail prosecution to apply for cancellation of bail granted to the Applicant.

12. It is clarified that the above observations in this order are limited for the purpose of granting bail only and I have not made any observations on the merits of the case and the trial shall proceed uninfluenced by the present order.

13. Bail Application is allowed and disposed.

[MILIND N. JADHAV, J.]

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