HARSHADA H. SAWANT
(P.A.)

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL BAIL APPLICATION NO. 595 OF 2024

Sanjay Bhausaheb Bhange .. Applicant
Versus
The State of Maharashtra .. Respondent

WITH
INTERIM APPLICATION NO.1938 OF 2024
IN
CRIMINAL BAIL APPLICATION NO. 595 OF 2024

Ashish Kirtikumar Shah .. Intervenor
IN THE MATTER BETWEEN:
Sanjay Bhausaheb Bhange .. Applicant
Versus
The State of Maharashtra .. Respondent

WITH
INTERIM APPLICATION NO.1546 OF 2024
IN
CRIMINAL BAIL APPLICATION NO. 595 OF 2024

Prajakta Suresh Dhas .. Intervenor
IN THE MATTER BETWEEN:
Sanjay Bhausaheb Bhange .. Applicant
Versus
The State of Maharashtra .. Respondent

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- Mr. Kuldeep Patil i./by Mr. Sumitkumar Nimbalkar, Advocates for Applicant.
- Mr. Rizwan Merchant a/w. Mr. Mohammed Zain Khan and Mr. Ashraf Kapoor, Advocates i./by One Legal for Intervenor – Applicant in IA No. 1938/2024.
- Ms. Madhavi Ayyappan, Advocate i./by Talekar and Associates for Intervenor – Applicant in IA No. 1546/2024
- Ms. Megha S. Bajoria, APP for State.

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CORAM : MILIND N. JADHAV, J.
DATE : MARCH 24, 2025

P.C.:

1. Heard the learned Advocates for respective parties and learned APP.

2. Present Application is filed by Applicant – Sanjay Bhausaheb Bhange under Section 439 of the Code of Criminal Procedure, 1973 in connection with C.R. No. 107 of 2021 registered with Economics Offences Wing, General Cheating Unit – III (originally C.R. No. 749 of 2021 registered with Pant Nagar Police Station) for offences under Sections 406, 409, 420 readwith 34 of the Indian Penal Code, 1860 (for short "**IPC**"). There are two Accused in the crime namely Applicant (Accused No.1) and his wife – Smita Sanjay Bhanage (Accused No.2). Applicant is incarcerated since 01.08.2023 i.e. 1 year 7 months and 24 days.

3. Interim Application No.1938 of 2024 is filed by First Informant – Ashish Kirtikumar Shah to oppose grant of bail to present Applicant and Interim Application No.1546 of 2024 is filed by Prajakta Suresh Dhas, Director of Machindra Overseas Private Limited with whom Applicant executed an Agreement for investment in his company to resist the Bail Application as the Applicant has caused huge losses to her Company.

4. Briefly stated First Informant is Mr. Ashish Kirtikumar Shah, managing Director of Chemtrade Global Impex LLP, a company which deals in import and export of industrial chemicals like pharmaceutical ink, thinner, etc. It is prosecution case that in January 2020 one Ashok Dand alongwith Satish Pawar, Rahul Sonawane and both Accused visited the office of First Informant at Ghatkopar. It is stated that during that meeting First Informant was introduced to both Accused by his acquaintance Ashok Dand as being Directors of a Company namely Bhange Organic Chemicals Private Limited which manufactures Ethyl Acetate chemical. It is alleged by First Informant that in that meeting an offer was made to him to provide working capital loan to the Company of Accused persons so as to facilitate growth of their Company. It is alleged by First Informant that Applicant gained his trust by promising him in writing that if he provided working capital and raw material then he would sell the finished products to his Company at a concessional price. First Informant lent working capital loan for raw material to Applicant. However he did not deliver the finished products as per their agreement and hence First Informant filed FIR for offences of cheating and criminal breach of trust.

5. Mr. Patil, learned Advocate for Applicant would at the outset draw my attention to the FIR appended at page No.23 of the Application and would submit that from perusal of the statement of First Informant at page Nos.25 to 28, no offence whatsoever under Sections 406, 409 or 420 of IPC is made out against Applicant. He would submit that none of the ingredients of Sections 406, 409 or 420 of IPC are present in the crime. He would submit that the entire fulcrum of the matter pertains to disputes in commercial business transactions which have been given a criminal colour for reasons best known to him.

5.1. He has placed before me copy of two Awards dated 03.12.2024 which state that two Petitions were filed by Applicant's company against First Informant's Company before the Micro and Small Enterprises Facilitation Council, Nashik which were allowed by directing the First Informant to pay amount of Rs.1,96,63,557/- and Rs.54,56,860/- to Applicant's Company in respect of the same dispute and cause of action. Hence he would submit that it is clear that the dispute, if any, between the parties is of a civil nature and not criminal and FIR is lodged by First Informant with ulterior motives.

5.2. He would submit that Accused No.2, namely wife of Applicant has been enlarged on bail by order dated 27.10.2023 passed by the Sessions Court and hence Applicant's case for grant of bail be considered of ground of parity.

5.3. He would submit that investigation in the matter is completed; charge-sheet is filed but till date trial before the Court has not commenced and even charges are not framed. He would submit that FIR is registered on 23.12.2021 but arrest of Applicant is effected on 01.08.2023 which is after more than 18 months from the registration of FIR which makes it clear that Applicant has co-operated with the investigation carried out by the prosecuting agency and he undertakes to extend further co-operation, if any, to the prosecuting agency. He would submit that Applicant has already suffered pre-trial incarceration and punishment of 1 year, 7 months and 24 days and hence in the above facts it is *prima facie* clear that further custodial interrogation of Applicant is not necessary and hence considering the overall factors of the case at this stage Court be pleased to allow the Bail Application of Applicant on terms and conditions as deemed fit by Court.

6. Ms. Bajoria, learned APP for State has vehemently opposed the Bail Application. She would submit that the crime committed by Applicant is a serious economic offence involving an amount of Rs.7,32,71,123/-. She would submit that there is sufficient material placed on record in the charge-sheet which establishes complicity of Applicant in the crime. She would submit that economic offences affect the financial fabric of the nation and hence Court should be cautious while deciding Bail Application wherein economic offences are involved. She would submit that Applicant did not have any requisite permissions for manufacturing the chemical Ethyl Acetate, hence his fraudulent intention to dupe the First Informant since inception is made out. She would submit that investigation has revealed that there was no leakage of any chemical as alleged by Applicant. She would submit that Applicant by using the same *modus operandi* has duped several persons including another Company who has filed FIR against Applicant with Nevasa Police Station. She would submit there are chances of Applicant influencing the witnesses and tampering with evidence during trial if he is enlarged on bail and hence his Bail Application be rejected.

7. Mr. Merchant, learned Advocate for First Informant has opposed the grant of bail to Applicant and would submit that Applicant has in connivance and collusion with his wife thoughtfully devised a plan to defraud the First Informant. He would submit that initially Applicant and his wife by visiting his office gained trust of First Informant and thereafter induced him to transfer monies which run into crores of rupees to them as working capital.

7.1. He has placed on record two orders dated 30.01.2025 passed by this Court (Coram: Amit Borkar, J.) in Civil Writ Petition Nos.1339 of 2025 and 1357 of 2025 wherein this Court has granted stay on the execution of the twin Awards granted by Micro and Small Enterprises Facilitation Council, Nashik in favour of Applicant's Company regarding the dispute between the parties.

7.2. He would thus submit that First Informant furnished raw material / capital for raw material to Applicant thereby fulfilling his part of the agreement, however in turn Applicant alongwith his wife as per their pre-planned *modus operandi* did not supply the finished products to First Informant but sold it to some third party wrongfully causing loss to them to the tune of Rs.7,32,71,123/- over the passage of time.

7.3. He would submit that the present case is a case of white collar crime which includes offence of cheating. In support of his submission, he has referred to and relied upon the decisions of the Supreme Court in the case of (i) ***Rajesh Bajaj Vs. NCT of Delhi***[1]; (ii) ***M/s. Indian Oil Corporation Vs. M/s. NEPC India Limited and Ors.***[2] and (iii) ***Mohammed Ibrahim & Ors. Vs. State of Bihar & Anr.***[3]. He would submit that in the above cases though they arise from commercial business transactions, the Supreme Court has held that the intention of the Accused at the inception is what needs to be considered and it refused to quash the complaint against the accused persons therein.

7.4. In support of his submissions with reference to the gravity of the economic offence in the present case, he has referred to and relied upon the decisions of the Supreme Court in the case of (i) ***Nimmagadda Prasad Vs. Central Bureau of Investigation***[4]; (ii) ***Y.S. Jagan Mohan Reddy Vs. Central Bureau of Investigation***[5]; (iii) ***State of***

1 [1999] 1 S.C.R. 1012
2 [2006] Supp. (3) S.C.R. 704
3 [2009] 13 S.C.R. 1254
4 AIR 2013 SC 2821
5 (2013) 7 SCC 439

Bihar Vs. Amit Kumar[6] and (iv) ***Neeru Yadav vs. State of Uttar Pradesh***[7] and would submit that in the above cases the Supreme Court has discussed about the long term ramifications of economic offences and has laid down the basis for treating economic offences as a class apart from other offences. Hence he would urge the Court to reject the Bail Application.

8. Ms. Ayyapan, learned Advocate appearing for Intervenor – Applicant Prajakta Suresh Dhas, Director of Machindra Overseas Private Limited who claims to be a victim of the alleged crime committed by Applicant has persuaded the Court to allow her to make submissions to oppose the Bail Application. She has adopted and supported the submissions made by the learned APP Ms. Bajoria as also Mr. Merchant, learned Advocate for First Informant. In addition to it she has placed before the Court a copy of FIR No.318 of 2023 registered by her Company against Applicant for cheating and forgery and would submit that Applicant by using the same *modus operandi* as that in the present crime has duped her Company to the tune of crores of rupees. Hence she would submit that Applicant's Bail Application be rejected considering the gravity of offence as also his antecedents.

9. I have heard the submissions made by the learned Advocates at the bar and with their able assistance perused the record of the case.

6 (2017) 13 SCC 751
7 [2014] 12 SCR 253

10. In the present case it is seen that dispute between the parties essentially arises out of a commercial business transaction between Company of First Informant, Company of Applicant, Company of Ashok Dand namely Khusboo Dye Chem and Machindra Overseas Private Limited. Perusal of the record reveals that there are various documents executed between the parties in furtherance of their business transactions namely Memorandum of Understanding, Tripartite Agreement etc. through which the rights and obligations of the parties flow. There are also various proceedings pending between the parties before the Micro and Small enterprises Facilitation Council, Nashik, the National Company Law Appellate Tribunal, Arbitral Tribunal as also this Court on the civil appellate side. Two Awards passed by the Micro and Small Enterprises Facilitation Council, Nashik have been placed before me. They are in favour of Applicant's Company and are under challenge and presently stayed by this Court. However at the stage of bail, this Court may not delve into all those documents as also proceedings.

11. *Prima facie*, present case admittedly arises out of commercial business transaction between parties. Entire case of prosecution is based on documentary evidence, which have been recovered by the prosecution and there is no further recovery pending at the instance of Applicant. The other offences against the Applicant also arise from commercial business transactions. In my *prima facie* opinion, the remedy of the First Informant, if any, therefore lies before the civil court and not criminal court which is already invoked.

12. The submissions made by Mr. Merchant that the present case is a case of white collar crime which includes offence of cheating while placing reliance on the decisions of the Supreme Court in the case of (i) ***Rajesh Bajaj*** (*supra*); (ii) ***M/s. Indian Oil Corporation*** (*supra*) and (iii) ***Mohammed Ibrahim & Ors.*** (*supra*) cannot be countenanced at this stage as all these decisions pertain to quashing of the FIR / proceedings. This Court at the stage of bail is concerned with determining on consideration of the *prima facie* facts and material placed on record, whether it would warrant further incarceration / custody of the Applicant.

13. Record also *prima facie* shows that as alleged by the prosecution it is not a case of complete inaction on the part of Applicant's Company. Against the amount advanced by the First Informant's Company, *prima facie* it is seen that a substantial obligation stands delivered but a dispute has arisen thereafter regarding the balance amount.

14. In the present case though charge-sheet has been filed before the trial Court, charges have not been framed till date. Prosecution have cited probable 36 witnesses to be examined in the charge-sheet. Hence possibility of commencement / completion of trial in the near foreseeable future is bleak which is another factor that impels me to consider the Application of Applicant.

15. It is settled law that a Court while deciding a Bail Application has to keep in mind the principal rule of bail which is to ascertain whether the Accused is likely to appear before the Court for trial. There are other broad parameters also like gravity of offence, likelihood of Accused repeating the offence while on bail, whether he would influence the witnesses and tamper with the evidence, his antecedents are required to be considered in such cases.

16. Support is drawn from the decision of the Supreme Court in the case of ***Sanjay Chandra Vs. Central Bureau of Investigation***[8] wherein the Supreme Court has held that in economic offences while considering an application for bail, the nature of charge may be relevant but at the same the punishment to which the party may be liable, if convicted is also a significant aspect and therefore both, the seriousness of the charge and the severity of the punishment should be taken into consideration for arriving at decision of grant of bail. It further observed that deprivation of liberty must be considered a punishment unless it is absolutely necessary in the interest of justice and that object of bail is merely to secure appearance of accused at the trial (*emphasis supplied*).

8 (2012) 1 SCC 40

17. Next, the decision of the Supreme Court in the case of ***P. Chidambaram Vs. Directorate of Enforcement*** [9] is also relevant in the facts of the present case. The Supreme Court observed that economic offences would fall under the category of 'grave offences' and in such circumstances while considering application for bail, the Court will have to deal with the same being sensitive to the nature of allegations made against the accused, however the term of sentence that is prescribed for the offence which is in addition to the triple test or the tripod test that would be normally applied. In that regard the Supreme Court has further held that even if the allegation is one of grave economic offence, it is not a rule that bail should be denied in every case and ultimately the consideration will have to be on case-to-case basis on the facts involved therein and securing the presence of the accused to stand trial.

18. In view of the above *prima facie* observations on facts, considering the imprimatur of the Supreme Court *vis-a-vis* facts of the present case, a fit case for bail has been made out by Applicant before me. Hence, Bail Application is allowed subject to the following terms and conditions:-

(i) Applicant is directed to be released on bail on furnishing P.R. Bond in the sum of Rs.50,000/- with one or two sureties in the like amount;

9 (2020) 13 SCC 791

(ii) Applicant is permitted to furnish provisional cash bail of Rs.50,000/- for his release immediately and file undertaking that he will provide one or two sureties in the like amount of Rs.50,000/- within a period of four weeks after his release which shall be accepted by the Trial Court. Applicant shall provide sureties as directed;

(iii) Before his actual release from jail, Applicant shall furnish his address where he proposes to reside after his release from jail to the concerned Police Station and also to the trial Court;

(iv) After his release from jail, Applicant shall report to the Investigating Officer as and when called for;

(v) Applicant shall attend the trial Court on first Tuesday of every month between 11.00 a.m. and 1.00 p.m. to mark his presence. If the first Tuesday of the said month falls on a holiday and / or non Court working day, the Applicant shall mark presence on the next working day;

(vi) 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;

(vii) Applicant shall not leave the State of Maharashtra without prior permission of the Trial Court;

(viii) Applicant shall not influence any of the witnesses or tamper with the evidence in any manner; and

(ix) In case of any infraction of the above conditions and / or two consecutive defaults in marking his attendance before trial Court, it shall attract the provisions of Section 439(2) of Cr.P.C. i.e. for cancellation of bail.

19. It is clarified that the observations made in this order are limited for the purpose of granting Bail only. They shall not be construed as observations on merit. The trial shall be adjudicated on the strength of evidence led by parties and strictly on its own merits being uninfluenced with any of the *prima facie* observations made herein above in this order.

20. Bail Application No.595 of 2024 is allowed and disposed.

21. In view of the disposal of the Bail Application, Interim Application No.1938 of 2024 and Interim Application No. 1546 of 2024 are also disposed.

H. H. SAWANT

[MILIND N. JADHAV, J.]

HARSHADA HANUMANT SAWANT

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