HARSHADA H. SAWANT
(P.A.)

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO.1800 OF 2024

Kalpesh Anand Jadhav .. Applicant
Versus
State of Maharashtra .. Respondent

WITH
INTERIM APPLICATION (ST.) NO.1173 OF 2025
IN
BAIL APPLICATION NO.1800 OF 2024

Nikhil Shrawan Killa .. Applicant
IN THE MATTER BETWEEN:
Kalpesh Anand Jadhav .. Applicant
Versus
State of Maharashtra .. Respondent

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- Mr. HareKrishna Mishra, Advocate for Applicant.
- Ms. Rajshree V. Newton, APP for Respondent – State of Maharashtra.
- Mr. Santosh Pawar a/w. Mr. Aman A. Kothari, Advocates for Intervenor.
- Mr. Vivek Tambe, API, Bangurnagar Police Station.

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CORAM : MILIND N. JADHAV, J.
DATE : JANUARY 17, 2025

P.C.:

1. Heard Mr. Mishra, learned Advocate for Applicant; Ms. Newton, learned APP for Respondent – State of Maharashtra and Mr. Pawar, learned Advocate for Intervenor.

2. This is an Application under Section 439 of Code of Criminal Procedure, 1973 (for short '**Cr.P.C.**') seeking Bail in connection with C.R. No.750 of 2021 registered with Malad Police Station, Mumbai for offences punishable under Sections 408, 419, 420, 465, 467, 468, 471, 381,120(B) read with Section 34 of the Indian Penal Code, 1860 (for short '**IPC**').

3. Application is filed by Applicant who is arraigned as Accused No.1 as principal Accused. The First Information Report (for short '**FIR**') is filed by Mr. Nikhil Shravan Kumar Khila on behalf of Company called Gokul Fuel Chem Private Limited wherein Applicant was working as Chief Accountant from the years 2009 to 2021 until institution of Complaint. In the year 2021, Company realised that there was a rolling over and turn over which was low as a result of which certain internal investigation was made in regard to the financial position of the Company as also transactions which were undertaken and portrayed by Applicant as the Chief Accountant of the Company. It was revealed that certain payments which were made on behalf of Company were never received by the real recipients / beneficiaries but went into the Bank Accounts which were opened by Applicant to facilitate siphoning of the said amount of the Company into these accounts which belonged to either the other co-Accused in the crime and / or his relatives.

4. At this stage it needs to be stated that the Company has persuaded the Court to be heard and has also filed Intervention Application. It is nomenclatured as Interim Application (Stamp)

No.1173 of 2025. I have permitted Mr. Pawar to address the Court. Mr. Pawar has informed the Court that after verifying the accounts and correspondence it was realised that Applicant being the Chief Accountant of the Company committed a massive fraud rather financial fraud with the Company by either transferring the amounts from the Company to fictitious accounts and / or raising inflated bills in the name of various suppliers and claimed them from the Company. He would inform the Court that after a detailed scrutiny which culminated in August – 2021 by the Chartered Accountant of the Company it was realised that the amount which was *prima facie* misappropriated by the Applicant was in the range of Rs.3,86,00,000/-. He would also inform the Court that Applicant was also responsible for transferring a substantial amount to his personal Bank Account as also in the name of other fictitious accounts and more specifically in the name of his wife – Megha Suryavanshi *alias* Megha Jadhav. Wife of Applicant is one of the absconding Accused as on date. It is an irony that the Investigating machinery has still not been able to apprehend her till date in the past four years. Prosecution has been launched, investigation has commenced and according to the case of prosecution as informed by Ms. Newton, Applicant has misappropriated an amount in the range of Rs.4,26,00,000/-.

5. Mr. Mishra would submit that the figure with respect to causing financial loss has been changing and the latest figure which has now emanated from the prosecution side is approximately in range of Rs.7,30,00,000/-. This submission of Applicant is not appreciable since the element of fraud caused would undoubtedly be dependent on investigation that is carried out by the prosecution over a period of time.

6. Mr. Mishra makes two specific submissions for seeking bail of Applicant. He would submit that there already is a recovery of approximately Rs.2,59,00,000/- which is appended at page Nos.23, 38, 73 and 74, 308, 430, 431, 439, 459 and 461 of the charge-sheet which is appended to the Application. He would submit that various amounts ranging in several lakhs of rupees totally amounting to Rs.2,59,57,126/- has been recovered from ten entities. One of the Accused has already returned back an amount of Rs.28,00,000/- to the Company in respect of which learned Sessions Judge has passed an order dated 31.05.2023 in Bail Application No.392 of 2023 granting bail to the said Accused – Ibad Nazir Gire which is placed before me ascertaining and confirming the aforesaid payment.

7. Next submission made by Mr. Mishra is due to long incarceration suffered by the Applicant. He would submit that Applicant is incarcerated since the date of arrest i.e. 15.11.2011 for a period of three years and two months despite the fact that charge has already been framed as far back as on 24.12.2021. Until today the trial has not commenced. On being asked as to the reason for the trial to not have commenced, Ms. Newton would have no answer. She has candidly informed the Court that one of the probable reason for trial to not commence was the fact that substantial investigation was undertaken by prosecution and the Investigating Officer which ultimately lead to the discovery of the amount siphoned by Applicant to the tune of Rs.7,30,00,000/-. I give the benefit of doubt to the prosecution for this reason. Nevertheless being in custody for period of three years and two months is itself long incarceration which I am inclined to consider.

8. While relying on the decision of the Supreme Court in the case of ***Ramesh Kumar Vs. State (NCT of Delhi)***[1] considering Bail Applications, the said Court held that criminal proceedings are not for realisation of disputed dues and thus a criminal Court exercising jurisdiction to grant bail / anticipatory bail is not expected to act as a recovery agent to realise the dues of the Complainant, and that too, <u>without any trial</u>(*emphasis supplied*). Supreme Court has however held that in exceptional cases where allegation of misappropriation of public money by Accused is levelled, it would be open to the concerned Court to consider whether in the larger public interest the money which is misappropriated be allowed to be deposited before application for Anticipatory Bail or Bail is taken up for consideration.

1 (2023) 7 Supreme Court Cases 461.

9. As noted above, recovery to the extent of Rs.2,59,57,126/- has already been effected by the prosecution till date. Undoubtedly, this does not mean that the Applicant can be now free if released on bail. He will have to show his bonafides and participate in investigation for recovery of the balance amount if released on bail. Substantial recovery of amount of approximately Rs.4,50,00,000/- is yet to be made and wife of Applicant is also absconding. However this may not be a consideration relevant for me to consider the release of Applicant due to his long incarceration. It is seen in the present case that it is obvious that timely completion of trial would not be possible in view of the fact that despite filing of the charge-sheet as far back as on 24.12.2021, trial has not commenced. Accused – Applicant has already suffered incarceration for a significantly long period of time. Supreme Court has considered such long incarcerations when timely completion of trial is not possible and is delayed in the decisions of ***Union of India Vs. Najeeb***[2], ***Kalvakuntla Kavitha Vs. Directorate of Enforcement***[3], ***Jalaluddin Khan Vs. Union of India***[4] and ***Manish Sisodia Vs. Directorate of Enforcement***[5].

10. Supreme Court has time and again emphasised that right to life and personal liberty enshrined in Article 21 of the Constitution of India is overreaching and sacrosanct. Charges against Applicant are

2 1992 (1) SCC 225.
3 2024 SCC OnLine SC 2269.
4 (2024) 10 SCC 574.
5 2024 SCC OnLine SC 1920.

qua misappropriation, cheating, forgery and criminal breach of trust. They are serious but keeping in mind the length of his custody and unlikelihood of trial being completed any time soon, I am inclined to consider the case of Applicant for grant of bail.

11. As far back as in 1931 in the case of ***Emperor vs H.L. Hutchinson***[6] the Allahabad High Court has held that power of granting bail conferred on the High Court is entirely unfettered by any conditions. It has held that legislature has given the High Court and the Court of Session discretion unfettered by any limitation other than that which controls all discretionary powers vested in a Judge, viz. that the discretion must be exercised judiciously. The Court has given primacy to the fact that Applicant if granted bail will be in a much better position to defend himself but also aid the investigation for recovery of the balance amount which is not yet recovered.

12. Equally, Supreme Court in the case of ***Hussainara Khatoon vs. Home Secy., State of Bihar***[7], has held as under:-

> *"**10.** Bearing in mind the nature of the crime and the need to protect the society and the nation, TADA has prescribed in Section 20(8) stringent provisions for granting bail. Such stringent provisions can be justified looking to the nature of the crime, as was held in Kartar Singh's case (supra), on the presumption that the trial of the accused will take place without undue delay. No one can justify gross delay in disposal of cases when undertrials perforce remain in jail, giving rise to possible situations that may justify invocation of Article 21."*

6 AIR 1931 ALL 356.
7 (1980) 1 SCC 81.

13. Applicant has been incarcerated for three years and two months and detaining him any further for a further extended period of time would violate his fundamental right to speedy trial flowing from Article 21 of the Constitution of India. Supreme Court in a catena of judgments has laid down in situations where the undertrials / Accused persons have suffered incarceration rather long incarceration for considerable period and there been no possibility of trial being completed within the forceeable future that the Constitutional Courts can exercise power to release the Accused undertrials on Bail as Bail is the Rule and Jail is an exception. In ***Satender Kumar Antil v. CBI*** [8],Supreme Court has reiterated the above proposition regarding jurisprudence of bail and held that Bail is Rule and Jail is exception which is well recognised through repetitive pronouncements of the Supreme Court which is on the touchstone of Article 21 of the Constitution of India.

14. In view of my above observations and findings, undoubtedly which are *prima facie* on the basis of record placed before me and the charge-sheet placed before me and considering the long incarceration of Application for three years and two months and progress of trial rather trial not having commenced, I am of the clear opinion that Applicant deserves to be enlarged on bail.

8 (2022) 10 SCC 51.

15. In view of the above, Application is allowed in terms of prayer clause (a) however subject to the following terms and conditions:-

(i) Applicant be enlarged on bail on executing P.R. Bond in the sum of Rs.2,00,000/- (Rs. Two lacs only) with one or **two** solvent sureties in the like amount;

(ii) Applicant shall report to the Investigating Officer at concerned Police Station, on the first and third Monday of every month between 10:00 a.m. to 05:00 p.m. alongwith the requisite information / documents for enabling recovery of the balance amount from the persons / recipients which shall be scrupulously followed by him and if this condition is not followed it will entail the prosecution to seek cancellation of this order;

(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 revocation of this order;

(iv) Applicant shall not misuse his liberty in any manner or influence the informant, witnesses or any person concerned with the case and he shall not tamper with the evidence;

(v) Applicant shall deposit his Passport with the Investigating Officer within a period of one week from date of release on bail;

(vi) Applicant shall furnish particulars of his address and mobile number to the Investigating Officer within one week from today and in event of any change keep the Investigating Officer informed about the same;

(vii) Investigating Officer shall allow Complainant to participate in the investigation and seek information from Complainant with respect to recovery of balance amount and call for necessary information;

(viii) Any infraction of the above conditions shall entail revocation of this order.

16. Parties to act on a server copy of this order.

17. The aforesaid observations are *prima facie* on the basis of record of the case which has been argued before me and is an expression of opinion by this Court only for the purpose of enlargement of Applicant on bail and shall not influence the trial in the present case.

18. Bail Application stands allowed and disposed.

19. In view of disposal of Bail Application, Interim Application is also disposed.

H. H. SAWANT

[MILIND N. JADHAV, J.]

HARSHADA HANUMANT SAWANT

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