

Ajay

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

CRIMINAL BAIL APPLICATION NO. 2566 OF 2024

1. Veerath Gopalan Nair	
2. Valsala Gopalan Nair	.. Applicants
Versus	
The State of Maharashtra	.. Respondent

-
- Mr. Abhishek Yende a/w. Mr. Shubham Kahite and Ms. Surbhi Agarwal, Advocates for Applicants.
 - Mr. Sukanta A. Karmakar, APP a/w. Mr. D.J. Haldankar, APP for Respondent – State.
 - Mr. Satish Rathod, PI, EOW Thane present.
-

CORAM : MILIND N. JADHAV, J.

DATE : MARCH 03, 2025.

P.C.:

1. Heard Mr. Yende, learned Advocate for Applicants and Mr. Karmakar, learned APP for Respondent – State.

2. This is an Application under Section 439 of the Code of Criminal Procedure, 1973 seeking Regular Bail in connection with C.R. No.467 of 2021 registered with Kolsewadi Police Station for offences under Sections 406, 409, 420 readwith 34 of the Indian Penal Code, 1860 (for short “**IPC**”) and Section 3 of the Maharashtra Protection of Interest of Depositors Act, 1999 (for short “**MPID Act**”). Applicant No.1 before me namely Veerath Gopalan Nair aged 80 years is arraigned as Accused No.1 in the crime and incarcerated since 05.10.2021 i.e. 3 years 4 months and 27 days. Applicant No.2 aged 76 years i.e. wife of

Applicant No.1 and is arraigned as Accused No.2 in the crime and incarcerated since 07.06.2022 i.e. 2 years 8 months and 25 days.

3. Briefly stated role of Applicant No.1 as per prosecution case is that he is a partner in VGN Jewellers and a Director in VGN Jewellery Private Limited and VGN Chit and Finance Company Private Limited. It is alleged that through these Companies Accused floated various investment schemes and lured investors by offering them gold jewellery or cash with high returns. It is alleged that Applicant No.1 used operate from the Mulund branch of VGN Jewellers. It is alleged that Applicant No.1 through VGN Jewellers mortgaged 66 kg gold for Rs.25 Crores with Federal bank and thereafter sold that gold to other jewellers.

4. Role of Applicant No.2 wife of Applicant No.1 as per prosecution case is that she is 50% shareholder / partner in VGN Jewellers and is Director in VGN Jewellery Private Limited, VGN Chit and Finance Company Private Limited and VGN Agro Dreams LLP. It is alleged that Applicant No.2 used to operate from Ulhasnagar branch of VGN Jewellers and was responsible for the day-to-day activities of the said branch. It is alleged that both Applicants - Accused diverted huge funds into their personal savings accounts held in various Banks which amounts were thereafter either diverted to some other bank accounts or withdrawn in cash by them.

5. FIR is lodged by First Informant Shalini Jaiwant Patil who invested in various schemes floated by VGN Jewellers as she was fetching good returns from the said schemes. It is stated that she got her relatives also to invest in those schemes. She has stated that she alongwith her relatives invested an amount of Rs.66,36,500/- with VGN Jewellers between 2006 to February 2021 and also got handsome returns on the investments.

6. Mr. Yende, learned Advocate for Applicants would submit that from the statement of the First Informant at page No.63 of the Application it is evident that Applicant No.1 was running a bonafide business since more than three decades and only in 2020 – 2021 due to Covid-19 restrictions and the nation-wide lockdown imposing restrictions the business of Applicant No.1 slumped and faced several setbacks. He would submit that even thereafter as per First Informant herself she was getting returns at the agreed interest rate on her investments with VGN Jewellers until March 2020, which shows that there was no intention to defraud her on the part of Applicant No.1. He would submit pursuant to the onset of Covid-19 pandemic there was a drastic surge in the withdrawals of the invested amounts by investors which added to the difficulties faced by the Applicant No.1.

6.1. He would submit that Applicant No.1 is a senior citizen aged 80 years suffering from various ailments like Parkinsons Disease,

Diabetes, Hypertension and Anxiety and this factor may also be considered by the Court for grant of bail.

6.2. He would submit that in so far role of Applicant No.2 is concerned, she was in no way involved in the day-to-day affairs of VGN Jewellers and hence did not have any knowledge about transactions and has been indicted in the offence solely because she is the wife of Applicant No.1 and was a Director in the Companies. He would submit that there is no sufficient *prima facie* material against Applicant No.2 to justify her further incarceration. He would submit that Applicant No.2 is a senior citizen lady aged 76 years having various health ailments like Hypertension, Anxiety and Osteoarthritis which may be considered by this Court.

6.3. He would submit that even otherwise the prosecution has attached all properties belonging to Applicants which would secure the amounts of the investors and hence further custody of Applicants is not required. He would submit that Accused Nos.3 and 4 who are the son and daughter of present Applicants have been enlarged on bail by this Court by orders dated 08.12.2023 and 28.02.2023 respectively. He would submit that investigation of the crime is completed and charge-sheet is filed before Special Court under the MPID Act and prosecution has submitted a list of 58 witnesses to be examined and considering no likelihood of trial commencing in the near future coupled with long

incarceration of Applicants, would pray that Court enlarge the Applicants on bail.

7. Mr. Karmakar, learned APP for State has drawn my attention to the Affidavit dated 19.12.2024 filed by Mr. Satish Rathod, Police Inspector, EOW Thane City to oppose grant of bail to the Applicants.

7.1. He would submit that the main role of the present Applicants/Accused is that both of them were Managing Directors of VGN Jewellers, VGN Jewellers Pvt. Ltd., VGN Chit and Finance Pvt. Ltd. and GMV Consultancy Pvt. Ltd. and responsible for the conduct of the business of the firms / Companies. He would submit that the main role of Applicant No.2 Valsala Veerath Nair is that she was Managing Director of one of the aforesaid company. He would submit that First Informant and many other investors invested their hard-earned money and were duped since 2006 till the lodging of FIR. This submission of the Prosecution *prima facie* appears farfetched as according to the Complaint she got substantial returns until 2020.

7.2. He would submit that during the course of investigation, the investigating agency recorded statements of 53 witnesses/investors out of a total 32640 investors. Details of 32640 investors are not placed on record. He would submit that during the course of investigation the investigating agency recorded supplementary statement of witness namely Binu @ Venattil Kurian on 05.12.2021 wherein he stated that

he used to give gold ornaments from co-accused Ms. Leena Peter to Applicant No.1 namely Veerath Gopalan Nair on the instructions of Veerath Gopalan Nair. He would submit that the investigating agency has seized 42 bank Accounts in the name of VGN Jewellers, VGN Jewellers Pvt. Ltd., VGN Chit and Finance Pvt. Ltd. and GMV Consultancy Pvt. Ltd., which are maintained at various banks and on perusal of the bank statements of the said accounts many suspicious transactions are found. He would submit that the investigating agency has frozen the amount of Rs.36,99,461/- from 42 bank accounts belonging to Applicant's firms / Companies.

7.3. He would submit that during the course of investigation, it was revealed that Applicants used to take gold from the jeweller's shops and shifted the gold stock to other places for the purpose of disposing of the said gold. He would submit that investigation has revealed that Applicants lured various investors/witnesses to invest their monies in the scheme of said VGN Jewellers showing the stock of gold as security towards their invested money due to which investors incurred financial loss of huge amount when they did not get their promised returns.

7.4. He would submit that Forensic Audit Report was received by the investigating agency on 27.06.2023 which reveals that Applicants have siphoned off huge funds of several investors. He would submit

that the offence of huge proportion amounting to the tune of crores of rupees i.e. Rs.620,97,65,484/- and there is possibility of tracing further investor.

7.5. He would submit that the fixed depositors / investors comprises of agriculturist, tillers, vendors, small businessmen, retired personnel etc. He would submit that the accused persons have cheated poor investors and robbed of them of their hard earned money and hence as per the provisions of MPID Act it is inevitable to protect the interest of the depositors for recovery of their invested amount.

7.6. He would submit that in so far as applicability of Section 3 of the MPID Act is concerned, it has been provided in Section 3 that every person including the Promoter Partner, Director, Manager or other person or an employee responsible for the management of conducting the business or affairs of such Financial Establishment is liable to be punished and as the present Applicants / Accused were the Managing Directors of VGN Jewellers, VGN Jewellers Pvt. Ltd. VGN Chit and Finance Pvt. Ltd. and GMV Consultancy Pvt. Ltd. and responsible for the conduct of the business and hence offence under Section 3 of the MPID Act is attracted against them. He would submit that Applicants have all the information about where the stock of gold ornaments and gold bar code are kept as they are the Managing Directors of the companies.

7.7. He would submit that the present Applicants also have past criminal antecedent for offence of similar nature vide C.R. No. 216 of 2021 under Sections 420, 406, 409 read with 34 of IPC and Sections 3 and 4 of MPID Act registered by Mulund Police Station.

7.8. He has drawn my attention to the order dated 08.12.2023 passed by this Court (Coram: M.S. Karnik, J.) in Bail Application of Accused No.3 – son of Applicants wherein in paragraph No.3 thereof there is a reference to an Affidavit filed by Applicant No.1 stating that he is solely responsible for the transactions in question and on that ground Applicant therein (his son) was granted bail.

7.9. He would therefore submit that complicity of Applicants in the crime is *prima facie* established and hence their Bail Application be rejected.

8. With the able assistance of the learned Advocates at the bar, I have perused the record of the case. In the present case it is seen that all offences except Section 409 IPC entail a punishment with imprisonment between 3 to 7 years. Applicant No.1 has already undergone pre-trial imprisonment of 3 years 4 months and 27 days whereas Applicant No.2 has undergone pre-trial imprisonment of 2 years 8 months and 25 days. Age of both Applicants is also advanced; viz; 80 years and 76 years.

9. From perusal of the material on record it is seen that the First Informant alongwith other investors have been investing in the schemes floated by the Companies of Applicants since past several years rather from 2006 onwards and were getting the benefits therefrom regularly. Prosecution case is that the investors were lured and induced by the Applicants to invest into the schemes floated by their Companies by promising interest more than what is offered by nationalized banks. Hence it can be deduced that the case of prosecution at the highest can be for cheating under Section 420 of IPC.

10. It is trite law that offence of cheating and criminal breach of trust cannot co-exist simultaneously. In this context reference is made to a decision of the Supreme Court in the case of *Delhi Race Club (1940) Ltd. and Ors. Vs. State of Uttar Pradesh and Anr.*¹ wherein in paragraph Nos.24 to 30 the Court has laid down the distinction between offence of cheating and criminal breach of trust. Paragraph Nos. 24 to 30 read thus:-

"DIFFERENCE BETWEEN CRIMINAL BREACH OF TRUST AND CHEATING

24. *This Court in its decision in S.W. Palanitkar & Ors. v. State of Bihar & Anr. reported in (2002) 1 SCC 241 expounded the difference in the ingredients required for constituting an offence of criminal breach of trust (Section 406 IPC) viz-a-viz the offence of cheating (Section 420). The relevant observations read as under: -*

"9. The ingredients in order to constitute a criminal breach of trust are: (i) entrusting a person with property or with

¹ Criminal Appeal No. 3114 of 2024 decided on 23.08.2024

any dominion over property, (ii) that person entrusted (a) dishonestly misappropriating or converting that property to his own use; or (b) dishonestly using or disposing of that property or wilfully suffering any other person so to do in violation (i) of any direction of law prescribing the mode in which such trust is to be discharged, (ii) of any legal contract made, touching the discharge of such trust.

10. The ingredients of an offence of cheating are: (i) there should be fraudulent or dishonest inducement of a person by deceiving him, (ii)(a) the person so deceived should be induced to deliver any property to any person, or to consent that any person shall retain any property; or (b) the person so deceived should be intentionally induced to do or omit to do anything which he would not do or omit if he were not so deceived; and (iii) in cases covered by (ii)(b), the act of omission should be one which causes or is likely to cause damage or harm to the person induced in body, mind, reputation or property.”

25. What can be discerned from the above is that the offences of criminal breach of trust (Section 406 IPC) and cheating (Section 420 IPC) have specific ingredients.

In order to constitute a criminal breach of trust (Section 406 IPC): -

- 1) There must be entrustment with person for property or dominion over the property, and
- 2) The person entrusted: -
 - a) dishonestly misappropriated or converted property to his own use, or
 - b) dishonestly used or disposed of the property or wilfully suffers any other person so to do in violation of:
 - i. any direction of law prescribing the method in which the trust is discharged; or
 - ii. legal contract touching the discharge of trust (see: S.W.P. Palanitkar (supra).

Similarly, in respect of an offence under Section 420 IPC, the essential ingredients are: -

- 1) deception of any person, either by making a false or misleading representation or by other action or by omission;
- 2) fraudulently or dishonestly inducing any person to deliver any property, or
- 3) the consent that any persons shall retain any property and finally intentionally inducing that person to do or omit to do anything which he would not do or omit (see: Harmanpreet Singh Ahluwalia v. State of Punjab, (2009) 7 SCC 712 : (2009) Cr.L.J. 3462 (SC))

26. Further, in both the aforesaid sections, mens rea i.e. intention to defraud or the dishonest intention must be present,

and in the case of cheating it must be there from the very beginning or inception.

27. In our view, the plain reading of the complaint fails to spell out any of the aforesaid ingredients noted above. We may only say, with a view to clear a serious misconception of law in the mind of the police as well as the courts below, that if it is a case of the complainant that offence of criminal breach of trust as defined under Section 405 of IPC, punishable under Section 406 of IPC, is committed by the accused, then in the same breath it cannot be said that the accused has also committed the offence of cheating as defined and explained in Section 415 of the IPC, punishable under Section 420 of the IPC.

28. Every act of breach of trust may not result in a penal offence of criminal breach of trust unless there is evidence of manipulating act of fraudulent misappropriation. An act of breach of trust involves a civil wrong in respect of which the person may seek his remedy for damages in civil courts but, any breach of trust with a mens rea, gives rise to a criminal prosecution as well. It has been held in *Hari Prasad Chamaria v. Bishun Kumar Surekha & Ors.*, reported in (1973) 2 SCC 823 as under:

“4. We have heard Mr. Maheshwari on behalf of the appellant and are of the opinion that no case has been made out against the respondents under Section 420 Penal Code, 1860. For the purpose of the present appeal, we would assume that the various allegations of fact which have been made in the complaint by the appellant are correct. Even after making that allowance, we find that the complaint does not disclose the commission of any offence on the part of the respondents under Section 420 Penal Code, 1860. There is nothing in the complaint to show that the respondents had dishonest or fraudulent intention at the time the appellant parted with Rs. 35,000/- There is also nothing to indicate that the respondents induced the appellant to pay them Rs. 35,000/- by deceiving him. It is further not the case of the appellant that a representation was made, the respondents knew the same to be false. The fact that the respondents subsequently did not abide by their commitment that they would show the appellant to be the proprietor of Drang Transport Corporation and would also render accounts to him in the month of December might create civil liability on the respondents for the offence of cheating.”

29. To put it in other words, the case of cheating and dishonest intention starts with the very inception of the transaction. But in the case of criminal breach of trust, a person who comes into possession of the movable property and receives it legally, but illegally retains it or converts it to his own use against the terms of the contract, then the question is, in a case like this, whether the retention is with dishonest intention or not, whether the retention involves criminal breach of trust or

only a civil liability would depend upon the facts of each case.

30. *The distinction between mere breach of contract and the offence of criminal breach of trust and cheating is a fine one. In case of cheating, the intention of the accused at the time of inducement should be looked into which may be judged by a subsequent conduct, but for this, the subsequent conduct is not the sole test. Mere breach of contract cannot give rise to a criminal prosecution for cheating unless fraudulent or dishonest intention is shown right from the beginning of the transaction i.e. the time when the offence is said to have been committed. Therefore, it is this intention, which is the gist of the offence. Whereas, for the criminal breach of trust, the property must have been entrusted to the accused or he must have dominion over it. The property in respect of which the offence of breach of trust has been committed must be either the property of some person other than the accused or the beneficial interest in or ownership of it must be of some other person. The accused must hold that property on trust of such other person. Although the offence, i.e. the offence of breach of trust and cheating involve dishonest intention, yet they are mutually exclusive and different in basic concept. There is a distinction between criminal breach of trust and cheating. For cheating, criminal intention is necessary at the time of making a false or misleading representation i.e., since inception. In criminal breach of trust, mere proof of entrustment is sufficient. Thus, in case of criminal breach of trust, the offender is lawfully entrusted with the property, and he dishonestly misappropriated the same. Whereas, in case of cheating, the offender fraudulently or dishonestly induces a person by deceiving him to deliver any property. In such a situation, both the offences cannot co-exist simultaneously.*

11. From the above it can be deduced that the grievance of the investors in the present case would at the most lie for offence of cheating under Section 420 IPC and not criminal breach of trust under Section 406 or 409 IPC because of their long standing relationship. In the present case, the investigation has brought to light evidence regarding the alleged diversion of funds by the companies, purportedly at the direction of the accused persons and the Applicants into certain Companies in which the Applicant and their family members had an interest as also their individual bank accounts. At this *prima facie*

stage, it is essential to consider the nature of the grievance raised by the First Informant and other investors that led to initiation of criminal proceedings. *Prima facie*, the fulcrum of the complaint appears to be that they were induced or misled into investing substantial amounts in the said Companies based on false assurances made by the accused. It is owing to the promise of attractive returns given to the First Informant and other investors by Applicants that necessitated initiation of criminal proceedings. Hence essential elements to constitute an offence under Section 409 of the IPC are *prima facie* not established when Complainant admittedly received high returns over several years before lodging the FIR.

12. Furthermore it is seen that the only role attributable to Applicant No.2 is that she being the wife of Applicant No.1 was a Managing Director / Director in the Companies instituted by Applicant No.1. However *prima facie* there is no material on record to show her direct complicity in the crime. Furthermore the age and medical ailments suffered by both Applicants also need to be taken into consideration. Chargesheet has been filed before the Trial Court and there is no possibility of the Trial commencing in the near future. The charge-sheet gives a list of 58 witnesses. Co-accused Nos.3 and 4 who are children of Applicants have been granted bail by this Court.

13. In this regard, support is drawn from the decision of the Supreme Court in the case of *Sanjay Chandra Vs. Central Bureau of Investigation*² wherein the 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.

14. Next, in the context of the present case the decision of the Supreme Court in the case of *P. Chidambaram Vs. Directorate of Enforcement*³ is also relevant. 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

² (2012) 1 SCC 40

³ (2020) 13 SCC 791

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.

15. Considering the above observations and findings, on *prima facie* consideration, as also due to their long incarceration pending trial and clear uncertainty of the trial commencing or being completed in the near foreseeable future, further incarceration of Applicants is unwarranted and hence I pass the following order:-

- (i) Both Applicants are directed to be released on bail on furnishing P.R. Bond in the sum of Rs.50,000/- each with one or two sureties in the like amount;
- (ii) Applicants shall report to the Investigating Officer of the concerned Police Station once every month on the third Saturday between 10:00 a.m. to 12:00 noon for the first three months after their release and thereafter as and when called;
- (iii) Applicants 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 they do so, it will entitle the prosecution to apply for cancellation of this order;

- (iv) Applicants shall not leave the State of Maharashtra without prior permission of the Trial Court;
- (v) Applicants shall not influence any of the witnesses or tamper with the evidence in any manner;
- (vi) Applicants shall keep the Investigating Officer informed of their current address and mobile contact number and / or change of residence or mobile details, if any, from time to time;
- (vii) Any infraction of the above conditions shall entail prosecution to apply for cancellation of this order.

16. The aforesaid observations are *prima facie* on the basis of record of the case which have been argued before me and is an expression of opinion by this Court only for the purpose of enlargement of Applicants on bail and shall not influence the trial in the present case and the trial shall be adjudicated on the basis of evidence strictly in accordance with law.

17. Bail Application is allowed and disposed.

[MILIND N. JADHAV, J.]

Ajay

AJAY
TRAMBAK
UGALMUGALE
Digitally signed
by AJAY
TRAMBAK
UGALMUGALE
Date: 2025.03.03
14:30:17 +0530