Amberkar

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO. 4158 OF 2024

Saket Gaurangbhai Zaveri .. Applicant

Versus

The State of Maharashtra .. Respondent

WITH

INTERIM APPLICATION NO. 1234 OF 2025

IN

BAIL APPLICATION NO. 4158 OF 2024

Hiralal Dhayabhai Rathod .. Intervenor

In the matter between:

Saket Gaurangbhai Zaveri .. Applicant

Versus

The State of Maharashtra .. Respondent

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- Mr. Mithilesh Mishra a/w. Mr. Vinayak Pandit, Mr. Maitreyee Garade i./by Mr. Ajinkya Udane, Advocates for Applicant.
- Mr. Karan V. Mertia a/w. Ms. Prajakta P. Tawde, Advocates for Intervenor.
- Mr. Hitendra J. Dedhia, APP for Respondent - State.

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CORAM : MILIND N. JADHAV, J.

DATE : APRIL 29, 2025

P. C.:

1. Heard Mr. Mishra, learned Advocate for Applicant, Mr. Mertia, learned Advocate for Intervenor and Mr. Dedhia, learned APP for Respondent - State.

2. The present Bail Application is filed by the Applicant in connection with C.R. No.82 of 2024 registered with Kasturba Marg Police Station for offences punishable under Sections 406, 409, 420 readwith 34 of the Indian Penal Code, 1860. He is arrested on

30.03.2024 and as on today he has been in incarceration for 1 year and 1 month. There are total three accused persons indicted in the crime and present Applicant is arraigned as Accused No.2.

3. Briefly stated prosecution case is that in the year 2020 First Informant's son introduced him to the present Applicant and the First Informant purchased a land parcel though present Applicant for which he paid 10% commission to Applicant. It is alleged that thereafter present Applicant introduced First Informant to Accused No.1. In the meantime as First Informant wanted to invest his retirement money, present Applicant and co-accused gave a proposal to First Informant for purchase of 30 acres land valued at Rs.1,59,00,000/- which was accepted by him and in lieu thereof he made a payment of Rs.82,90,000/- to Accused No.1 by RTGS. He also paid Rs.51,58,700/- at his behest to some farmers in relation to the land parcel. Further First Informant's daughter paid an amount of Rs.5,50,000/- to Accused No.1 towards stamp duty and registration charges of the proposed sale transaction. By agreement between them Accused No.1 agreed to transfer the land parcel in the name of First Informant by 31.01.2023. However Accused No.1 thereafter evaded and resiled from his promise and agreed to transfer 20 acres land instead of the 30 acres land which was agreed to be purchased.

3.1. As per prosecution case in September 2021 both accused persons approached First Informant and induced him to purchase another 11.5 acres land parcel from block Nos.219, 234 situated at Village Karan, Taluka Karjan, District Vadodara for consideration of Rs.41,00,000/- which was paid by him to Accused No.1 by RTGS. It is alleged that both accused persons guaranteed him a return of Rs.82,00,000/- on the said investment on resale / redevelopment of said land and Accused No.1 assured him return of Rs.82,00,000/- in two tranches of Rs.41,00,000/- each, 1st tranche by 31/03/2022 and 2nd tranche by 31/09/2022. It is alleged that First Informant did not get any return nor Accused No.1 made payment or refund of either principal money or the profit money.

3.2. It is alleged that in October 2021 both accused persons induced First Informant to purchase a three room / flat at Surat for consideration of Rs.62,06,000/- which First Informant paid to Accused No.1 by RTGS and he guaranteed return of Rs.92,25,000/- from the said investment. It is alleged that however the Accused No.1 without taking consent of First Informant and without his knowledge, sold the said flat and misappropriated the sale proceeds for his own use and benefit.

3.3. It is alleged that in October 2021 both accused persons approached First Informant and induced him to make investment in production of one music album which was to be made by Accused No.1 and one Akil Sayyed (Accused No.3) in furtherance of which First Informant paid Rs.25,00,000/- in two tranches of Rs.12,50,000/-each to them who guaranteed him return of Rs.50,00,000/- and agreed to pay the return or principal amount of Rs.25,00,000/- by 31.03.2022 and profit of Rs.25,00,000/- by 31.09.2022 which was not paid.

3.4. It is alleged that during the course of above transactions, First Informant also paid Rs.5,00,000/- on 20.11.2021, Rs.2,00,000/-on 24.01.2022 and Rs.10,00,000/-on 29.01.2022 to Accused No.1 towards purchase of land near the National Highway Road. First Informant has stated in his statement that Accused No.1 accepted liability of all transactions above-mentioned and in furtherance of the same issued two cheques of Rs.25,00,000/- each in favour of First Informant but same were dishonoured on 23.01.2023. Therefore First Informant filed FIR before the Kasturba Marg Police Station for cheating and criminal breach of trust to the tune of Rs.2,97,54,700/- by all Accused persons.

4. Mr. Mishra, learned Advocate for Applicant would submit that Applicant has been falsely indicted in the present crime as admittedly role attributed by prosecution to Applicant even on the showing of First Informant's case is that of introducing Accused No.1 to First Informant. He would submit that Applicant and First Informant were infact partners in a firm and shared an independent business relationship which turned sour as First Informant intended to acquire 15% of Applicant's share in the said firm which Applicant denied owing to which he has roped in the Applicant in the present crime by First Informant. He would submit that perusal of FIR would reveal that it is Accused No.1 who has dealt with First Informant in all transactions and there is no role played by Applicant except for facilitating the introduction. He would submit that admittedly as per prosecution case all amounts have been paid by First Informant to Accused No.1 and Applicant is not the beneficiary of any amount whatsoever even according to the First Informant. Hence he would submit that no ingredient whatsoever of offence of cheating or criminal breach of trust can be attributed to the present Applicant.

4.1. He would submit that First Informant has filed proceedings under Section 138 of the Negotiable Instruments Act, 1881 against Accused No.1 for dishonour of cheques issued by him to First Informant in respect of return of payment against the transaction mentioned in the FIR and hence would submit that criminal action cannot lie when alternate remedy has been invoked. He would submit that in so far as allegation pertaining to Applicant receiving any benefit from Accused No.1 is concerned, that receipt of money is under a completely different transaction between them as both of them established a new business of Mahogany Tree Plantation.

4.2. He would submit that investigation of the matter is completed and charge-sheet is filed and Applicant has extended complete co-operation for investigation in the present crime. He would submit that though trial has commenced it would not be completed in the near foreseeable future. He would submit that considering role of Applicant alleged in the present crime as also the fact that the offences are triable by Magistrate, the maximum sentence which may be imposed is 7 years and Applicant has already undergone imprisonment of more than 1 year. Hence he would urge the Court to allow the Bail Application.

5. Mr. Dedhia, learned APP for State has vehemently opposed the Bail Application. He would submit that the crime committed by Applicant is a serious economic offence involving amount of Rs.2,97,54,700/-. He would submit that there is sufficient material placed on record in the charge-sheet which establishes complicity of Applicant in the crime. He 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. He would submit that there are chances of Applicant influencing witnesses and tampering with evidence during trial if he is enlarged on bail and hence his Bail Application be rejected.

6. Mr. Mertia, learned Advocate is appearing for Intervenor - First Informant and he has filed Interim Application No.1234 of 2025 to resist the grant of bail to the Applicant. On the request made by him to intervene, I have granted him leave to intervene and address the Court. He would support the arguments advanced by Mr. Dedhia and would additionally submit that Applicant being a partner in the firm with First Informant misappropriated funds of the firm / company and hence First Informant filed complaint with the Registrar of Companies seeking removal of Applicant as Director of the said firm. He would submit that Applicant is the principal conspirator of the crime as he was aware that First Informant invested his entire retirement money and even then alongwith Accused No.1 he duped the First Informant by devising various proposals for investment. He would submit that the bank statements on record reveal that Accused No.1 who received the money from First Informant siphoned off part of the said monies to the bank account of present Applicant. He would submit that Applicant is an influential person and there is every possibility of him tampering with evidence as well as influencing witnesses if he is enlarged on bail. He would submit that offence under Section 409 is punishable with sentence upto life imprisonment or a term which may extend upto 10 years. In support of his submissions, he has referred to and relied upon the decision of the Supreme Court in the cases of ***N. Raghavendr Vs. State of Andhra Pradesh, CBI***[1] and ***Prahlad Singh Bhati Vs. NCT Delhi and Ors.***[2]. Hence he would pray for rejection of the Bail Application.

7. I have heard the learned Advocates at the bar and with their able assistance perused the record of the case.

8. 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.

9. *Prima facie* perusal of the statement of First Informant recorded at the time of filing of the FIR reveals that the only role attributed to the present Applicant is limited to he having introduced the First Informant to the Accused No.1. The other allegations in the FIR are entirely directed towards Accused No.1 who as can be seen from prosecution case to be the principal accused. Apart from the 10%

1 MANU/SC/1242/2021
2 MANU/SC/0193/2001

commission which First Informant paid to Applicant for the first land transaction, all other monies regarding alleged investments have been transferred by First Informant directly to Accused No.1 by RTGS and at his behest to some farmers. In so far as transfer of amounts from Accused No.1 to Applicant is concerned, it is seen that Applicant and Accused No. 1 were at the same time negotiating establishing business of Mahogany Tree Plantation due to which they had certain inter se transactions.

10. Though trial has commenced in the present matter, evidence of PW-1 has not been completed till today, hence possibility of the trial concluding in the near future is also bleak. In view of the specific role attributed to the present Applicant emanating from the First Informant's statement and the period of incarceration undergone by Applicant already with no possibility of the trial concluding in the near foreseeable future, in my opinion Applicant can be released on bail.

11. In this regard, support is drawn from the decision of the Supreme Court in the case of ***Sanjay Chandra Vs. Central Bureau of Investigation***[3] 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

[3] (2012) 1 SCC 40

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*).

12. Next, the decision of the Supreme Court in the case of ***P. Chidambaram Vs. Directorate of Enforcement*** [4] 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.

[4] (2020) 13 SCC 791

13. In view of the above *prima facie* observation on facts, considering the imprimatur of the Supreme Court *vis-a-vis* facts of the present case and more particularly specific role attributed to the Applicant before me, a fit case for bail has been made out by Applicant. 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;

(ii) 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;

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

(iv) 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;

(v) 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;

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

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

(viii) 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.

14. 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.

15. Bail Application No.4158 of 2024 is allowed and disposed.

16. In view of the disposal of the Bail Application, Interim Application No.1234 of 2025 is also disposed.

[MILIND N. JADHAV, J.]

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RAVINDRA MOHAN AMBERKAR

Digitally signed by RAVINDRA MOHAN AMBERKAR Date: 2025.04.29 14:55:21 +0530