VRJ

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO.4204 OF 2024

Anwar Ali Machiwala ... Applicant
V/s.
The State of Maharashtra ... Respondent

WITH
INTERIM APPLICATION NO.99 OF 2025
IN
BAIL APPLICATION NO.4204 OF 2024

VAIBHAV RAMESH JADHAV
Digitally signed by VAIBHAV RAMESH JADHAV
Date: 2025.08.05 11:43:03 +0530

Jugalkishore Didwania ... Applicant
V/s.
The State of Maharashtra & Anr. ... Respondents

Mr. Murtaza Nazmi with Dilip Shukla, Faizan Shaikh and Ekta Patil for the applicant.

Mr. Anand Mishra with Ms. Kavya Smriti i/by Ashok M. Saraogi for the intervener.

Ms. Mahalakshmi Ganapathy, APP for the State.

CORAM : AMIT BORKAR, J.

DATED : AUGUST 5, 2025

P.C.:

1. By the instant bail application filed under Section 439 of the Criminal Procedure Code, 1973, the applicant is seeking regular bail in connection with Crime No. 47 of 2016 registered with EOW, Mumbai for offences punishable under Sections 406, 417, 418, 465, 467, 471 read with 120-B of the Indian Penal Code, 1860.

2. The prosecution case as reflected from charge sheet is that in the year 2008-2009 the accused No.1 came at complainant's office and discussed the insurance business by portraying that she has agency of Max Bupa Insurance Company. It was also told that two of her sons are doing business of purchase and sell of iron along with accused No.2. Accused No.1 thereafter increased her acquaintance with the complainant. In November 2013, the accused No.1 placed a proposal to purchase 1000 ton of iron plates at Rs.1 Crore 80 Lakh. However, due to condition of advance payment, the complainant did not show their interest.

3. On 20th January 2015, accused No.1 took complainant and went to Wadia Mill, Ankleshwar, Gujarat whee accused No.2 was present. It was portrayed to the complainant that they have got tender of scrap of the said mill in the name of M/s. Scrap Enterprises of 6000 tons which may result in profit of 9 to 10 crores. The accused persons thereafter induced the complainant to become partner in their business by investing amount of Rs. 1 Crore 25 Lakh and portrayed huge profit out of it. It was told to the complainant that if amount of Rs.1 Crore 25 Lakh is invested, the same amount will be returned as profit within 2 to 3 months and entered into an agreement written on stamp paper giving details as to how the amount will be returned to the complainant. Based on agreement entered into on stamp paper, the complainant transferred amount of Rs. 7.06 crores in the account of accused Nos.1 and 2 out of which 59 Lakh is allegedly received by the applicant in cash and Rs.10 Lakh was received by another person on behalf of accused Nos.1 and 2. On failure to repay the amount, the complainant filed FIR alleging that both accused in connivance with each other cheated the complainant for an amount of Rs.7.06 Crore and lodged FIR for offences under Sections 406, 417, 418, 465, 467, 471 read with 120-B of the Indian Penal Code, 1860

4. The FIR was registered on 27th May 2016. The applicant was arrested on 24th October 2016. The Additional Chief Metropolitan Magistrate, 47th Court at Esplanade, Mumbai by its order dated 8th August 2017 released the applicant on furnishing personal bond of Rs.5 lakh with solvent surety of like amount and on depositing an amount of Rs.1 Crore 67 Lakh.

5. According to the prosecution, the applicant failed to comply with condition of deposit of Rs.1 Crore 67 Lakh as he deposited only Rs.19,50,000/-. According to the prosecution, thereafter, the applicant absconded and was arrested on 3rd March 2023.

6. The applications filed by the applicant before the Magistrate and the Sessions Court for releasing him on bail have been rejected. Moreover, his applications for modification of order dated 8th August 2017 came to be rejected.

7. Learned Advocate appearing for the applicant invited attention of this Court to the material placed on record, particularly the charge sheet, to argue that the entire dispute between the applicant and the complainant is of a civil nature. It is submitted that the allegation against the applicant is that he failed to supply the goods after receiving payment, and such transaction, at the highest, may give rise to a civil claim but not a criminal prosecution. It is further pointed out that Accused No.1 is the main accused, against whom there are allegations of having received more than ₹6 Crores from the complainant. However, despite such serious allegations, the complainant has chosen to settle the matter with Accused No.1, and has given no objection for her release on bail, upon deposit of ₹10 Lakhs.

8. The learned Advocate also submits that in the case of Accused No.3, the proceedings have been quashed by this Court on the ground that he deposited an amount of ₹55 Lakhs. As against this, the present applicant is alleged to have received ₹50 Lakhs and has already deposited ₹19,50,000/- with the first informant. The applicant is also ready to submit an undertaking before this Court to deposit the balance amount within six months from date of his release. Additionally, the applicant has prepared a demand draft of ₹5 Lakhs, which is ready to be handed over to the complainant.

9. The learned Advocate contends that the applicant has already undergone incarceration for more than three years and considering the conduct of the complainant in settling the matter with other accused on payment, and further considering the nature of allegations against the applicant, which are based on financial transaction, the applicant deserves to be released on bail. It is urged that the principle of parity also operates in favour of the applicant.

10. On the other hand, learned APP appearing for the State, as well as the learned Advocate representing the complainant, have strongly opposed the prayer for bail. It is submitted that after release on bail in the year 2017, the applicant failed to comply with the condition of depositing ₹1.67 Crores and absconded from proceedings. Despite several opportunities, he remained unavailable for a long period of nearly five years. It is only after issuance of non-bailable warrant and active efforts made by the investigating agency that the applicant came to be arrested on 3rd May 2023.

11. It is further submitted that the past conduct of the applicant reveals a deliberate attempt to evade the process of law, and therefore, if released on bail once again, there is every likelihood that he may again abscond and delay the trial. It is also submitted that the allegations made in the FIR, supported by documentary and oral evidence in the charge sheet, clearly disclose the commission of offences punishable under serious sections of the Indian Penal Code. It is contended that the ingredients of the offences alleged against the applicant, particularly under Sections 406, 417, 467, and 120-B of the IPC, are prima facie made out, and as such, no case is made out for releasing the applicant on bail.

12. It is further submitted by the learned APP and learned counsel for the complainant that the applicant was granted bail earlier by the Learned Magistrate vide order dated 8th August 2017 on the condition that he shall deposit an amount of ₹1 Crore 67 Lakhs. The said order was passed after the applicant himself gave an undertaking to deposit the said amount. However, the applicant failed to honour his own undertaking and deposited only a partial amount of ₹19.5 Lakhs.

13. It is pointed out that the applicant thereafter sought modification of the said condition before the concerned Magistrate and the Sessions Court, but such request for modification was rejected. In view of the above, it is argued that unless and until the applicant complies with the condition imposed in the bail order dated 8th August 2017, no indulgence should be shown to him for grant of fresh bail. It is submitted that the applicant cannot now bypass the earlier order which attained finality, and his continued custody is justified for his failure to abide by the solemn undertaking given to the Court.

14. I have considered the submissions advanced by the learned advocate for the applicant, the learned APP for the State, and the learned counsel appearing for the complainant. I have also perused the material on record, including the charge sheet and the earlier orders passed by the Magistrate and Sessions Court.

15. It is a matter of record that the dispute, though framed in terms of criminal allegations, essentially arises out of a commercial transaction wherein the complainant was induced to invest a substantial sum of money on the assurance of profitable returns within a short period. The allegations suggest that the investment was made based on representations of partnership and potential profit in a scrap trading business. The nature of the grievance, therefore, is intertwined with elements of financial misrepresentation, breach of trust, and failure to honour a commercial understanding.

16. Out of the total alleged amount of ₹7.06 Crores, the role specifically attributed to the present applicant is limited to having received ₹50 Lakhs. Importantly, the applicant has already returned ₹19.5 Lakhs to the complainant. This partial restitution indicates a degree of responsibility on the part of the applicant, and his intention to make good the loss. Further, the applicant has now come forward with a demand draft of ₹5 Lakhs to be immediately handed over to the complainant, and has expressed willingness to file a formal undertaking before this Court to deposit the remaining balance amount within a reasonable and fixed time frame.

17. It is evident from the FIR and charge sheet that the allegations against the applicant pertain to inducement and cheating in the context of a financial transaction. It is alleged that the applicant played a role in siphoning off funds by misleading the complainant under the pretext of a profitable business deal. The applicant is specifically attributed a role involving receipt of ₹50 Lakhs. Investigation is complete and charge sheet has been filed. The applicant has been in custody for over three years.

18. Though the applicant has earlier expressed willingness to deposit certain amounts and has actually returned ₹19.5 Lakhs, this Court is now constrained not to consider such readiness or partial restitution while adjudicating the bail application, in light of the binding directions of the Supreme Court in *Gajanan Dattatray Gore v. State of Maharashtra* (2025 INSC 913).

19. The Supreme Court has clarified that no court shall pass any order granting bail or anticipatory bail on the basis of any offer, promise or undertaking of monetary deposit by the accused. Such undertakings cannot be used to foreclose a judicial examination of the merits of the bail application.

20. Therefore, this Court must now assess the bail application purely on the basis of established parameters, namely: Nature and gravity of the offence; Role of the applicant; Evidentiary material; Length of custody; and Possibility of tampering with evidence or absconding.

21. The investigation in the present matter is complete. The applicant has been in custody for more than three years. The offences alleged, though serious, are not punishable with life imprisonment or death. There are no allegations of tampering with evidence or threats to witnesses during this period. The co-accused have been granted bail and the trial is yet to commence. There is no indication that the applicant has criminal antecedents.

22. In these circumstances, without relying on any monetary offer or undertaking, and purely considering the factors relevant under Section 439 Cr.P.C., this Court is of the opinion that the applicant is entitled to be released on bail, subject to appropriate conditions to ensure his presence at trial and to protect the integrity of the judicial process.

23. As regards the contention of the prosecution that the applicant had absconded and failed to comply with the earlier order dated 8th August 2017, it is necessary to clarify that the issue of non-compliance with a prior financial condition can no longer be addressed merely by allowing substitution with a fresh undertaking or promise of future deposit. In view of the authoritative pronouncement of the Supreme Court in *Gajanan Dattatray Gore (supra)*, the practice of granting or modifying bail based on the accused's willingness to deposit any sum of money or furnish undertakings in that regard is impermissible. The Supreme Court has categorically held that bail must be granted or denied strictly on merits, and not on the basis of any voluntary financial offers made by the accused.

24. In the present case, therefore, the applicant’s recent offer to honour financial obligations or provide a monetary undertaking cannot be taken into consideration while deciding this bail application. However, keeping in view the overall facts, namely, that the applicant has undergone more than three years of incarceration, the investigation is complete, the charge-sheet has been filed, and the trial has not yet commenced, it would be unjust to continue the applicant’s detention merely for punitive purposes. The nature of allegations, absence of criminal antecedents, and the principle of parity with co-accused who have been enlarged on bail, weigh in favour of the applicant. Hence, purely on the basis of these relevant legal factors, and not on any monetary offer, I am of the considered view that the applicant is entitled to be released on bail.

25. At this stage, continued incarceration of the applicant would not serve the purpose of further investigation, which is already complete and culminated in the filing of the charge sheet. Moreover, the amount allegedly involved has, to a certain extent, been recovered, and the rest is proposed to be recovered through voluntary deposit. Thus, the broader interest of justice can be met by releasing the applicant on bail, subject to appropriate conditions ensuring repayment and securing his presence at trial.

26. It is further pertinent to note that the complainant has settled his dispute with co-accused No.1 on deposit of ₹10 Lakhs and with co-accused No.3 on deposit of ₹55 Lakhs, and has not objected to their release. The applicant has already undergone incarceration for a period of more than three years. The trial has not yet commenced and the charge has not yet been framed. Therefore, indefinite detention of the applicant without progress in the trial proceedings would not serve the ends of justice.

27. Hence, the applicant is entitled to be released on bail, subject to stringent conditions to ensure his presence during trial and to protect the interest of the complainant.

: O R D E R :

(i) The bail application is allowed.

(ii) The applicant Anwar Ali Machiwala shall be released on bail in connection with Crime No. 47 of 2016 registered with EOW, Mumbai, upon furnishing personal bond of ₹1,00,000/- (Rupees One Lakh) with two solvent sureties of like amount, to the satisfaction of the learned Trial Court.

(iii) The applicant shall appear before the trial court on each date of hearing and shall not seek unnecessary adjournments.

(iv) The applicant shall not tamper with the prosecution evidence or attempt to influence any witness in any manner.

(v) The applicant shall provide his contact details and current address to the Investigating Officer and shall inform any change of residence promptly.

(vi) In the event of breach of any of the above conditions, the prosecution shall be at liberty to seek cancellation of bail.

28. The bail application stands disposed of.

29. The interim application stands disposed of as infructuous.

(AMIT BORKAR, J.)