

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

CRIMINAL BAIL APPLICATION NO. 4606 OF 2024

1. Sandeepkumar Lal Bahadur
2. Seema Mittal

...Applicants

Versus

The State of Maharashtra

...Respondent

....

Mr. Zaid Qureshi a/w Mr. Uday Kanojia, Ms. Anshu Agrawal,
Mr. Shubham Yadav, Ms. Aaisha Patel i/by Hulyalkar and
Association, Advocates for the Applicants.

Mr. S. V. Walve, A.P.P. for the Respondent – State.

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CORAM : N. R. BORKAR, J.
DATE : 5th FEBRUARY, 2025

P.C.:

1. By this application, the applicants are seeking default bail in terms of Section 167(2) of the Code of Criminal Procedure in Crime No.1155 of 2023 registered at Wakad Police Station, Pimpri Chinchwad, for the offences punishable under Sections 406, 409, 420 r/w Section 34 of the Indian Penal Code, 1860 (for short “IPC”) and Sections 3 & 4 of the Maharashtra Protection of Interest of Depositors (in Financial Establishments) Act, 1999.

2. According to the complainant, he came across advertisement of Ratola Company wherein the offer was to invest Rs.4,20,000 in three wheeler E-rickshaw and earn Rs.31,000/- per month. According to the complainant, he visited the office of the said company and invested certain amount pursuant to the said offer. The allegations are of non-return of the said amount. There are allegations of non-return of money of other similarly circumstanced investors.

3. It is not in dispute that the applicants after their arrest on 17.08.2024 were produced before the concerned Court on 18.08.2024. The learned counsel for the applicants submits that initially Section 409 of the IPC was not invoked in the crime. It is submitted that other offences were not punishable with death, imprisonment for life or imprisonment for a term not less than 10 years and thus in terms of Section 167(2) of the Cr.P.C., charge-sheet was required to be filed within 60 days. It is submitted that as no charge-sheet was filed within 60 days, the applicants on 25/10/2024 had filed the application for default bail before the Special Court. It is submitted that the special Court has rejected the application

on the ground that the period of 90 days would be applicable to submits the charge-sheet as Section 409 of the IPC is punishable with imprisonment for life. It is submitted that in the present case Section 409 of IPC is not attracted and thus initially it was not invoked. In the alternative it is submitted that Section 409 of IPC is punishable with imprisonment for life, or with imprisonment of either description for a term which may extend to ten years. It is submitted that under Clause(i) of proviso to Section 167(2) of the Cr.P.C., if minimum punishment for the offence is not less than 10 years then only period of 90 days would be applicable and if offence is punishable for term upto ten years, then period of 60 days would be applicable. It is submitted that the learned Special Court thus committed an error in rejecting the default bail application filed by the applicants.

4. On the other hand, the learned A.P.P. for the Respondent-State has supported the order passed by the Special Court. The learned A.P.P. submits that Section 409 is clearly attracted in the present case and thus it was rightly invoked. It is further submitted that after rejection of the

default bail, the applicants had filed the application for bail on merit and the Special Court has rejected the said bail application. It is submitted that in such circumstances the present application for default bail may not be entertained.

5. It is not in dispute that initially Section 409 of IPC was not invoked. This Court in similar circumstances in **Alnesh Akil Somji Vs. The State of Maharashtra** by order dated 25.04.2022 in Bail Application No.271 of 2022 has held :

“13. There is no manner of doubt that the investigation is within the province and domain of the investigating agency. However that does not mean that the court, in almost all cases, would be bound by the invocation of a particular section against the accused by the prosecuting agency. This is because the label of the section or the provision invoked would not be decisive. To hold otherwise, would amount to placing the said right at the mercy of the investigating agency and would indirectly result in the magistrate abdicating the duty to enforce the right wherever necessary. Thus the court would be required to look into the generality of the allegations made and the material collected. In a given case where ex facie the provision is not attracted the court may not be bound by the same. Although there is no requirement for the investigating officer to obtain permission from the magistrate for such addition, as held by the Calcutta

High Court in Sayantan Chatterjee (supra), the Magistrate is not precluded from looking into the facts and the material collected, whether the offence is ex facie made out or not. The matter depends on the facts and circumstances of each case. For instance, where the investigating officer invokes section 326 of IPC, however the medical report does not ex facie show that the victim has suffered a 'grievous injury', within the meaning of Section 320 of IPC. OR a case where section 409 of IPC is invoked and admittedly the accused does not fall under any of the seven categories mentioned in the said section namely the accused is neither a public servant a banker etc. I would hasten to add that where however the facts and the material collected prima facie indicate the ingredients of a particular offence the court obviously cannot examine or appreciate the same the same at that stage in order to arrive at a different conclusion.

14. Coming back, the issue in the present case squarely turns on the question of invocation/applicability of Section 409 of IPC. If it applies obviously the period is ninety days within which the charge sheet is filed. If not the investigation was not completed within the statutory period entitling the applicant to release on default bail.

15. As noticed earlier the gist of the offence against the applicant and the co accused is that the applicant had accepted various amounts from the informant and others assuring returns in which there was a default. Thus the said offence is qua the informant and other depositors and investors. Even

the allegation by Ritweek Saghavi and his brother about the execution of the allotment letter without the flat being found to be constructed is claimed to be an offence under section 420 of IPC qua these witnesses. The alleged offence, if any, about the applicant having signed the allotment letter by Dimple Somji as a consenting party on behalf of the said LLP is presumably qua the other partners of the said LLP. It is in this context it is claimed on behalf of the applicant that the said offence, if any, is an independent offence qua the LLP and other partners unconnected with the principle offence of failure to pay the amount deposited/invested with interest.”

6. In the present case as stated earlier, initially Section 409 of the IPC was not invoked. There is no prima facie finding that Section 409 is attracted. In such situation, the Special Court erred in rejecting the application for default bail.

7. This Court in the case of *Sainath Bapu Salgar Vs. The State of Maharashtra and Anr.*¹ has held that the order for release on bail, when the charge-sheet is not filed and the right under Section 167(2) has ripened earning the status of indefeasibility, it cannot be frustrated by the prosecution on some pretext or the other. Once the accused has availed his

¹ AIR Online BOM 2590

liberty by filing an application on the ground that the charge-sheet has not yet been filed and an indefeasible right has accrued in him and he is prepared to furnish the bail bond, the court is obliged to proceed with the application. It is further held that once the application has been filed and in the meantime the charge-sheet under Section 173 of the Cr.P.C. is filed after the conclusion of the investigation, the right accrued under Section 167(2) of the Cr.P.C. would not stand defeated. Considering the overall facts and circumstances, I am inclined to release the applicants on default bail.

ORDER

- (i) Criminal Bail Application is allowed;
- (ii) The applicants are directed to be released on bail in connection with Crime No.1155 of 2023 registered at Wakad Police Station, Pimpri Chinchwad, for the offences punishable under Sections 406, 409, 420 r/w Section 34 of the Indian Penal Code, 1860 (for short "IPC") and Sections 3 & 4 of the Maharashtra Protection of Interest of Depositors (in Financial Establishments) Act, 1999 on executing P.R. Bond in the sum of Rs.25,000/- each with one or two sureties in the like amount;

- (iii) The applicants shall attend the concerned Police Station once in a month on first Saturday between 11:00 a.m. to 1:00 p.m. till conclusion of trial;
- (iv) Application stands disposed of accordingly.

(N. R. BORKAR, J.)