

HARSHADA H. SAWANT
(P.A.)

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
BAIL APPLICATION NO.5413 OF 2024

Pukhraj Amitraj Ghachi	Applicant
	.. (Accused No.6)
Versus	
State of Maharashtra	.. Respondent

WITH
INTERIM APPLICATION NO. 1219 OF 2025
IN
BAIL APPLICATION NO. 5413 OF 2024

Shailesh Kumar Lalchand Jain	.. Applicant
Versus	
State of Maharashtra	.. Respondent

WITH
BAIL APPLICATION NO.5412 OF 2024

Ramesh Kumar Mangilalji Rawal	Applicant
	.. (Accused No.7)
Versus	
State of Maharashtra	.. Respondent

WITH
BAIL APPLICATION NO.5395 OF 2024

Lalit Kumar Prajapati	Applicant
	.. (Accused No.8)
Versus	
The State of Maharashtra	.. Respondent

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- Mr. Sanad Vijay Desai i/b Mr. Ashok Bagal, Advocates for Applicants in all Bail Applications
 - Ms. Savita M. Yadav, APP for Respondent State
 - Mr. Atharva Gade, Advocate i/b Jayakar & Partners for Intervenor in Bail Application No. 5413 of 2024.
 - Mr. Sandip Phanse, P.I. Agripada Police Station

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CORAM : MILIND N. JADHAV, J.
DATE : MAY 02, 2025

P.C.:

1. Heard Mr. Desai learned Advocate for Applicants in all 3 Bail Applications; Ms. Yadav, learned APP for Respondent – State in all Bail Applications and Mr. Gade, learned Advocate for Intervenor in Bail Application No. 5413 of 2024.

2. Applicants are seeking Regular Bail under Section 483 of the Bharatiya Nagarik Suraksha Sanhita, 2023 in connection with C.R.No. 312 of 2024 registered with Agripada Police Station for offences punishable under Sections 408, 411, 413, 201 read with 34 of the Indian Penal Code, 1860 (for short ‘IPC’).

3. There are in all 13 Accused persons in the present crime out of which Accused Nos. 5 and 9 have not been arrested till date. Accused Nos. 10 to 13 are absconding. Accused Nos. 1, 2, 3 and 4 have been released on bail.

4. Applicant in Bail Application No. 5413 of 2024 is arraigned as Accused No. 6, he was arrested on 03.10.2024; Applicant in Bail Application No. 5412 of 2024 is arraigned Accused No. 7, he was arrested on 04.10.2024 and Applicant in Bail Application No. 5395 of 2024 is arraigned as Accused No. 8, he was arrested on 04.10.2024. Applicants are incarcerated for the past 6 months 29 days pending trial.

5. First – Informant is a Goldsmith and runs a gold and silver

coin / bars manufacturing business along with his brother, employing a staff of 35 workers. Accused No. 6 was employed by First Informant for the last 8 months prior to filing of the FIR. It is prosecution case that on 21.06.2024 First – Informant's brother handed over 40 gold bars (100 grams each), 11 gold bars (20 grams each) totaling to 4.22 kgs of gold valued at Rs. 3,00,00,000/- and 16 silver bars (1 kg in total) and 6 silver bars (500 grams each) valued at Rs. 18,00,000/- for delivery to Riddhi Siddhi Company at Zaveri Bazar. It is prosecution case that Accused No.6 became untraceable however his Activa – scooter used for delivery was later found abandoned near Saat Rasta, Mumbai and silver bars were recovered from the scooter. Gold bars of 4.22 kgs were missing leading to filing of FIR.

6. Mr. Desai, learned Advocate for Applicants with regard to Accused No. 6 – Applicant would submit that he has been falsely implicated in the present crime and he is solely indicted on the basis of co-accused statement and nothing more. He would submit that there is no direct or independent evidence linking Applicant to the present crime. He would submit that no recovery has been made till date at the instance of Applicant and prosecuting agency has already recovered a substantial amount of the stolen gold hence no further recovery is to be made at the instance of Accused No. 6 - Applicant. He would submit that prosecution case is solely based on circumstantial evidence without any evidence or incriminating material placed on record to

believe the prosecution case of handing over the alleged gold to the Applicant.

6.1. He would submit that the charge under Section 411 of the IPC (dishonestly receiving stolen property) is unsustainable as there is no recovery from Accused No. 6 – Applicant either. If it is prosecution's own case that Accused No. 6 – Applicant had stolen the alleged gold bars then invocation of Section 411 is contrary to their own case of criminal breach of trust by servant under Section 408 of the IPC . Hence prosecution case falls to the ground. He would submit that with regard to invocation of Section 413 of IPC which pertains to habitually dealing in stolen property, it is *prima facie* inapplicable to Applicant as there are no prior criminal antecedents and no evidence has been placed on record to establish the habitual conduct of Applicant.

6.2. He would submit that co-accused persons namely – Accused Nos. 1 to 5 and 9 have been released on bail by Sessions Court hence he would urge the Court to consider Accused No. 6 – Applicant's case on the ground of parity also.

7. Next, he would submit on behalf of Accused No. 7 – Applicant that this Applicant is not an employee of First – Informant, nor was he entrusted with any property. Hence ingredients of Section 408 of the IPC are inapplicable to Applicant. He would submit that the only role attributed to Accused No. 7 – Applicant is that he received

1.5 kgs of gold from Accused No.6 and facilitated its sale however this is once again based on a confessional statements of co-accused persons in absence of any independent evidence. He would submit that prosecution has recovered 164 grams of gold from this Applicant hence no further recovery is pending at his instance.

7.1. He would submit that offence under Section 411 of IPC is not made out in the present case as prosecution has failed to demonstrate that Applicant had knowledge that the gold was stolen property. Mere receipt of gold without knowledge or intention is insufficient to attract the offence under Section 411 of IPC. He would submit that offence under Section 413 of IPC is also not applicable as there is no evidence placed on record to corroborate the same. He would submit that this Applicant was in possession of 1.5kgs of gold out of which 164.5 grams has been recovered. However Accused No. 1 who allegedly received the largest share / quantity has been granted bail by the Court. Hence on the ground of parity also he would urge the Court to grant bail to Applicant.

7.2. Next with regard to Accused No. 8, he would submit that prosecution case against Accused No. 8 – Applicant is extremely weak as the case is solely based on confessional statements of other co-accused persons and nothing more. He would submit that the only role attributed to Accused No. 8 – Applicant is of he merely being present at

the time when gold was handed over by Accused No. 6 to Accused No. 7. He would submit that there is no allegation with respect to Applicant having received, sold or concealed any part of the stolen gold. His mere presence without any further role or conduct, does not constitute an offence under any of the alleged Sections.

7.3. He would submit that this Applicant was neither a clerk nor a servant of First – Informant, hence the applicability of Section 408 of the IPC is invalid. In the present case, none of the ingredients of this Section are attracted against Accused No.8 – Applicant. He would submit that no recovery has been made at the instance of Applicant hence prosecution case of invocation of Section 411 of IPC also would not apply. With regard to invocation of Section 413 of IPC he would submit that it is inapplicable as there are no prior criminal antecedents and no evidence that has been placed on record to establish the habitual conduct of Applicant.

7.4. He would submit that co-accused persons namely – Accused Nos. 1 to 5 and 9 have been released on bail by the Sessions Court hence he would urge the Court to consider Accused No.8 – Applicant's case on the ground of parity also.

7.5. He would submit that all three Applicants have deep roots in the Society and have no criminal antecedents to their discredit. He would submit that investigation is completed, charge-sheet is filed,

charge is not been framed till date, hence commencement and completion of trial in the near foreseeable future is doubtful. He would urge the Court to therefore allow the three bail Applications.

8. Ms. Yadav, learned APP for Respondent – State has vehemently opposed the submissions made by Mr. Desai. She would submit that Accused No. 6 – Applicant is the main accused in the present crime who misappropriated 4.22kgs of gold which is corroborated by the statements of co-accused persons. She would submit that Accused No. 6's case squarely falls under Section 408, 411 and 413 of the IPC.

8.1. Next with regard to Accused No. 7, she would submit that this Applicant is one of the beneficiary of 1200 grams of misappropriated gold. She would submit that Applicant was found in conscious possession of 164 grams of gold which has been recovered and further recovery of 936 grams is yet to be made from him. She would submit that though charge-sheet has been filed however investigation is not completed and it is still in progress with regard to further recovery from other absconding accused persons.

8.2. With regard to Accused No. 8 – Applicant, she would submit that it is stated in the statement of co-accused persons that Applicant is one of the beneficiary of the 1200 grams of gold received by Accused No. 7 which was further passed on to him for sale. She would submit

that with regard to parity, co-accused persons released on bail have played a completely different role as that from the present Applicants. She would submit that the crime in question is of a serious nature. She would submit that if Applicants are released on bail, possibility of them re-offending, tampering with evidence and influencing First – Informant and witnesses cannot be ruled out. Hence she would urge the Court to reject all three Bail Applications.

9. Mr. Gade, learned Advocate for the Intervenor – First Informant in Bail Application No. 5413 of 2024 would adopt the submissions advanced by learned APP. He would submit that the crime in question is of a very serious nature. He would fairly submit that he desires to object the Bail Application of accused No. 6 on instructions and not the Bail Application of the other two co-accused persons. He would submit that First – Informant had entrusted 4.22 kgs of gold to Accused No. 6 which was sold by him to multiple dealers to cause disappearance of evidence. He would submit that Applicant Nos. 7 and 8 have committed offence under Section 411 and 413 in connivance of the said main accused No. 6. He would submit that if he is released on bail, possibility of him re-offending, tampering with evidence and influencing First – Informant and witnesses cannot be ruled out. Hence he would urge the Court to reject the Bail Application.

10. I have heard the learned Advocates at the bar and perused

the record with the able assistance of the learned Advocates.

11. On perusal of the charge-sheet it is *prima facie* seen that with regard to Accused No. 6 – Applicant no recovery of the alleged misappropriated gold is made till date. It is seen that prosecution case is solely based on circumstantial evidence, co-accused statements and nothing more. It is seen that Accused No. 6 - Applicant has no criminal antecedents to prove the ingredients of Section 413 of IPC. However if at all prosecution case is considered then there is no CCTV footage of the recovery of Accused No. 6's Aactiva – scooter was from Saat Rasta to corroborate the prosecution case. Hence it is *prima facie* noticed that no direct evidence is placed on record to corroborate the prosecution case.

12. Next, with regard to Accused No. 7 – Applicant it is seen that his *prima facie* role is restricted to receiving part of the misappropriated gold. It is *prima facie* seen that it is not prosecution case that Accused No. 7 was the servant of First – Informant. Hence invocation of Section 408 and prosecution case casts a doubt on the prosecution case at this stage. It is seen that prosecution has also failed to *prima facie* establish the intention or motive as necessary under Section 411 of the IPC. It is seen that Accused No. 7 - Applicant has no criminal antecedents to attract the ingredients of Section 413 of IPC.

13. With regard to Accused No. 8 – Applicant, it is *prima facie*

seen for prosecution's own case that he was merely present at the spot when the alleged transfer of gold between Accused No. 6 and Accused No. 7 took place. *Prima facie* it is seen that Applicant was not the servant or clerk of First – Informant to be indicted under Section 408 of IPC. Case of prosecution once again is based on circumstantial evidence and co-accused statement and nothing more. It is seen that no recovery is made at the instance of this Applicant till date.

14. However what intrigues the Court is whether further custodial interrogation of Applicants is required or justified overriding their right to liberty and speedy trial? The reason which impels me to consider the Applications is lack of documentary evidence, *prima facie* incriminating material, absence of mens rea and absence of recovery in the case of Accused Nos. 7 and 8. Case of prosecution is based only on circumstantial evidence and statement of complainant - first informant in the FIR and co-accused statements recorded before Police Officer. Investigation is under progress. Complicity of Applicants in crime undoubtedly can be proved in trial.

15. As far back as in 1923, it was held by the High Court of Calcutta in the case of *In Re: Nagendra Nath Chakravarti*¹ that the object of bail is to secure the attendance of the accused at the trial, that the proper test to be applied while adjudicating Bail Applications is whether it is probable that the party will appear to take his trial and

¹ 1923 SCC OnLine Cal 318

that it is indisputable that bail is not to be used as a tool to withheld as a punishment. The said proposition has been affirmed and upheld by the Supreme Court in its decision in the case of *Satender Kumar Antil Vs. Central Bureau of Investigation*².

16. The Supreme Court has also held in a series of judgments and orders that in situations where the under-trial-prisoner / accused persons have suffered incarceration rather incarceration for a considerable period of time and there is no possibility of the trial commencing and completing within the foreseeable future, Constitutional Courts can exercise power to release the accused under-trial on bail, as bail is the rule and jail is the exception.

17. In the case of *Emperor Vs H.L. Hutchinson*³ the Allahabad High Court, as far back as in the year 1931 held that power of granting bail conferred on High Court is entirely unfettered by any conditions. It 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 accused person if granted bail will be in a much better position to defend himself. In this very case, it was delineated that grant of Bail is the Rule and refusal is an exception. This was in the famous Meerut

² (2022) 10 SCC 51

³ AIR 1931 ALL 356

Conspiracy case. Justice Mukherjee writing for the Bench in paragraph

No.9 held as under:-

“9. Speaking for myself, I think it very unwise to make an attempt to lay down any particular rules for the guidance of the High Court, having regard to the fact that the legislature itself left the discretion of the Court entirely unfettered. The reason for this action on the part of the legislature is not far to seek. The High Court might be safely trusted in this matter and it goes without saying that it would act in the best interests of justice whether it decides in favour of the prosecution or the defence. The variety of cases that may arise from time to time cannot be safely classified and it will be dangerous to make an attempt to classify the cases and to say that in particular classes a bail may be granted but not in other classes.”

18. 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 which are required to be considered in such cases.

19. Considering Applicants' roles as emanating from prosecution record based only on statements recorded without any incriminating material to indict the role of Applicants including that of Accused No. 6, absence of *mens rea*, absence of recovery of any misappropriated gold from Accused Nos. 7 and 8, absence of criminal antecedents of all Applicants, it is crucial to consider that co-accused Nos.1 to 5 and 9 have already been enlarged on bail, which therefore establishes a

clear case of parity also. Given that charges have not been framed till date, commencement and conclusion of trial in the near foreseeable future is doubtful, the aforesaid mitigating facts and Applicants' incarceration persuades me to consider Applicants' case for grant of bail subject to conditions.

20. Hence all 3 Applicants are granted bail in above terms and conditions:-

- (i) 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 are permitted to furnish provisional cash bail of Rs. 50,000/- each for their release immediately and file undertaking that they will provide one or two sureties in the like amount of Rs. 50,000/- each within a period of four weeks after their release which shall be accepted by the Trial Court. Applicant shall provide sureties as directed;
- (iii) After their release from jail, Applicants shall report to the Investigating Officer as and when called for;
- (iv) Applicants shall attend the trial Court on first Monday of every month between 11.00 a.m. and 1.00 p.m. to

mark their presence. If the first Monday 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) 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;
- (vi) Applicants shall not leave the State of Maharashtra without prior permission of the Trial Court;
- (vii) Applicants shall not influence with any of the witnesses or tamper with the evidence in any manner;
- (viii) Before their actual release from jail, Applicants shall furnish their address where they proposes to reside after their release from jail, to the concerned Police Station and also to the trial Court; and
- (vii) In case of any infraction of the above conditions and / or two consecutive defaults in marking their attendance before trial Court, it shall attract the provisions of Section 439(2) of Cr.P.C. i.e. for cancellation of bail.

21. It is clarified that the above observations in this order are limited for the purpose of granting bail only and I have not made any observations on the merits of the case and the trial shall be adjudicated on the basis of the evidence led by the parties uninfluenced by the present order and strictly in accordance with law.

22. All three Bail Applications are allowed and disposed.

23. In view of above, Interim Application No. 1219 of 2025 in Bail Application No. 5413 of 2024 is accordingly disposed.

H. H. SAWANT

[MILIND N. JADHAV, J.]

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Digitally signed
by RAVINDRA
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