Ajay

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL BAIL APPLICATION NO. 2345 OF 2024

Vicky Durairaj Naikar .. Applicant
Versus
The State of Maharashtra .. Respondent

WITH
INTERIM APPLICATION NO. 3696 OF 2024
IN
CRIMINAL BAIL APPLICATION NO. 2345 OF 2024

Manoj Kumar Shreeram Poddar .. Intervener
In the matter between:
Vicky Durairaj Naikar .. Applicant
Versus
The State of Maharashtra .. Respondent

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- Ms. Anjali Patil a/w. Mr. Tohid Shaikh, Advocates for Applicant.
- Ms. Megha S. Bajoria, APP for Respondent – State.
- Mr. Atharva Dandekar a/w. Mr. Hitendra Parab, Advocates for Intervener.
- Mr. Jalindra Lembhe, API, Anti-Extortion Cell, DCB CID, Mumbai.

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CORAM : MILIND N. JADHAV, J.

RESERVED ON : APRIL 29, 2025.
PRONOUNCED ON : MAY 09, 2025.

P.C.:

1. Heard Ms. Patil, learned Advocate for Applicant, Ms. Bajoria, learned APP for Respondent – State and Mr. Dandekar, learned Advocate for Intervenor.

2. This is an Application under Section 439 of the Code of Criminal Procedure, 1973 seeking Regular Bail in connection with C.R.

No.52 of 2022 registered by DCB CID, Anti Extortion Cell (originally C.R. No.10 of 2022 registered with Ghatkopar Police Station) for offences punishable under Sections 406, 419, 420, 467, 468, 471 readwith 120(B) and 34 of the Indian Penal Code, 1860 (for short "**IPC**"). There are total 8 accused persons in the crime. Applicant is arraigned as Accused No.2 and is incarcerated since 25.01.2024 i.e. more than 15 months.

3. Briefly stated First Informant is a businessman whose business was facing financial crunch and since 2020 he was in search of financial aid for stabilizing his business. In 2021 he got acquainted to co-accused No.4 through social networking platform LinkedIn. In August 2021, First Informant alongwith co-accused No.4 went to Chennai and over there Accused No.4 introduced First Informant to co-accused Nos.5 and 6 as businessmen into the business of gold trading who advance loan of crores of rupees at a lesser rate of interest. It is alleged that in that meeting First Informant informed co-accused Nos.5 and 6 that he was in need of loan of Rs. 45 Crores on which co-accused Nos.5 and 6 told him that they would advance him loan on keeping security / lien of some immovable property and also at 9.6% rate of interest and charge 2.25% brokerage on the loan amount. It is First Informant's case that for the said loan transaction, co-accused Nos.5 and 6 informed him that for receiving the 1st installment of Rs.20 Crores, he will have to pay advance interest for 6 months @ 9.6% and thereafter for receiving the balance loan amount he will have to pay advance interest for 4 months @ 9.6%.

3.1. It is prosecution case that as First Informant was in dire need of the loan amount he agreed to the conditions put forth by co-accused Nos.5 and 6 and decided to lien his immovable property at Phoenix Market City and asked co-accused Nos.5 and 6 to visit the said premises for inspection who informed him that their representative would visit the premises for inspection. Accordingly on 16.08.2021 present Applicant visited the said premises and conducted inspection and informed First Informant that loan could be approved and collected the documents and security cheque of Rs.2,00,000/- from him.

3.2. It is alleged that thereafter on 22.08.2021 First Informant alongwith co-accused No.4 went to Chennai to meet co-accused Nos.5 and 6 for loan amount of Rs.10 Crores with a demand draft for Rs.32 Lakhs towards advance interest of 4 months @ 9.6 % however they refused to accept the same and asked the First Informant to pay entire amount of Rs.96 Lakhs with Rs.2 Lakhs in cash for disbursement of loan amount of Rs.20 Crores. As per prosecution case thereafter on 03.09.2021, First Informant alone without Applicant went to Chennai and handed over two demand drafts amounting to Rs. 96 Lakhs with Rs.2 Lakhs cash to co-accused Nos.5 and 6 for disbursement of loan amount of Rs.20 Crores however after receiving the said amount, co-accused Nos.5 and 6 did not disburse the promised loan amount to First Informant's bank account and hence he suspected them and contacted his bank for stopping the payment of the advance interest amount, however by then both demand drafts were encashed and the said amounts were further rerouted to various other bank accounts. Therefore First Informant visited their residence and found that they used fraudulent identities to dupe him. Hence he lodged FIR against six accused persons including the Applicant for cheating, criminal breach of trust and criminal conspiracy.

4. Ms. Patil, learned Advocate for Applicant would submit that Applicant has been falsely indicted in the present crime and he was merely an employee of the Company 'Transcapital Business Solutions' of co-accused Nos.5 and 6 and as per instructions of co-accused Nos.5 and 6 he visited the premises of First Informant for inspection and collected the documents and a security cheque of Rs.2,00,000/- issued in the name of the Company 'Transcapital Business Solutions' and handed over the same to co-accused No.5, however the said cheque was not encashed as its payment was stopped by the First Informant. She would submit that apart from the aforesaid, there is no role attributed to the Applicant. She would therefore submit that no offence as sought to be alleged under Sections 420 or 406 or 120-B of the IPC is made out against present Applicant as he merely acted on instructions of co-accused Nos.5 and 6.

4.1. She would argue that from the perusal of the entire material on record it is clear that it is co-accused Nos.4, 5 and 6 who have played a key role of conspiring, luring and inducing First Informant by assuring him loan at low rate of interest. She would submit that Applicant was not even present at any of the meetings held between First Informant and co-accused Nos.4 to 6 where negotiations regarding the loan transaction were done. She would submit that not a single penny has been credited to the bank account of present Applicant.

4.2. She would submit that though investigation is completed and charge-sheet has been filed before the trial Court, till date charge is not framed which makes completion of the trial in the near foreseeable future a distinct impossibility. She would submit that in any event all offences are triable by Magistrate's Court and hence considering the role of the Applicant in the crime would urge the Court to enlarge the Applicant on bail.

5. Mr. Dandekar, learned Advocate for Intervenor has persuaded the Court to allow him to make his submissions. He has filed Interim Application No.3696 of 2024. I have heard him. He would submit that the present Applicant played a vital role in the crime by visiting the premises of First Informant as representative of the

Company of co-accused Nos.5 and 6 for inspecting the said premises and by creating an illusion before him that co-accused Nos.5 and 6 actually intended to disburse the promised loan amount to him. He would submit that Applicant is not an employee of the company but one of the key conspirators who played an active role in deceiving the First Informant into thinking that operation of Transcapital Business Solutions was legitimate. He would submit that First Informant is duped of his hard-earned money to the tune of Rs.98,00,000/- by Applicant and other co-accused persons.

5.1. He would submit that Applicant is a habitual offender and he played the same role in committing other crimes by visiting premises of the victims for inspection. He would submit that Applicant knowingly assisted the co-accused persons in conspiracy of defrauding First Informant. He would submit that other co-accused persons have around 11 criminal antecedents registered against them in Mumbai, Thane, Pune, Latur, Jharkhand and Chennai for similar offences of cheating and criminal breach of trust and out of that Applicant is arraigned as accused in 2 matters.

5.2. He would submit that Courts should be cautious while adjudicating Bail Applications arising out of economic offences as economic offences not only affect the victim who is been defrauded but also affect the financial fabric of the nation. In view of his above submissions he would urge the Court to reject the bail Application.

6. Ms. Bajoria, learned APP for Respondent – State has vehemently opposed the Bail Application and adopted the submissions made by Mr. Dandekar, learned Advocate for Intervenor. She has persuaded me to peruse the Affidavit-in-Reply dated 28.03.2025 filed by prosecuting agency and reject the Bail Application. She would submit that there is sufficient material on record to prove the complicity and precise role of the Applicant in the crime and hence considering the gravity of the offence she would urge the Court to dismiss the Bail Application.

7. With the able assistance of the learned Advocates at the bar, I have perused the record of the case. Submissions made by the learned Advocates have received due consideration of the Court.

8. In the present case it is seen that the role attributed to the present Applicant is that he being an employee of the Company of co-accused Nos.5 and 6, on their instructions visited the premises of First Informant in Mumbai for inspection and collected the loan documents and a security cheque of Rs.2,00,000/- which was not encashed by any of the accused persons. That apart there is no active role attributed to present Applicant by the prosecution. Admittedly he has not received any amount from the alleged amount involved in the present crime and nothing has been placed on record by the prosecution to show otherwise.

9. From the perusal of the material on record, it is *prima facie* evident that it is co-accused No.4 who introduced First Informant to co-accused Nos.5 and 6 and also accompanied him from Mumbai to Chennai for the meeting wherein negotiations regarding the loan transaction in question were done. *Prima facie* perusal of the material on record reveals that it is co-accused Nos.4, 5 and 6 who played a key role in inducing and luring the First Informant into parting with the amount of Rs.96,00,000/- towards advance interest of 6 months and Rs.2,00,000/- in cash for purportedly securing the loan of Rs.20 Crores. *Prima facie* there is no clinching material placed on record either by prosecution or by First Informant to *prima facie* show that present Applicant was instrumental in inducing or luring the First Informant into the purported loan transaction.

10. Considering the limited role attributed to the Applicant which *prima facie* on the face of record appears to be a task / duty performed by Applicant on account of he being an employee of co-accused Nos.5 and 6, in my opinion further incarceration of Applicant is unwarranted.

11. Investigation of the matter is completed and charge-sheet is filed before the trial Court however till date charge has not been framed. Applicant has already undergone incarceration for more than

15 months and offences in the present crime are triable by Magistrate's Court.

12. In so far as antecedents of Applicant are concerned, attention is drawn to the decision of the Supreme Court in the case of ***Ayub Khan Vs. The State of Rajasthan***[1] wherein the Supreme Court in paragraph No.10 has held as under:-

> *"10. The presence of the antecedents of the accused is only one of the several considerations for deciding the prayer for bail made by him. In a given case, if the accused makes out a strong prima facie case, depending upon the fact situation and period of incarceration, the presence of antecedents may not be a ground to deny bail. There may be a case where a Court can grant bail only on the grounds of long incarceration. The presence of antecedents may not be relevant in such a case. In a given case, the Court may grant default bail. Again, the antecedents of the accused are irrelevant in such a case. Thus, depending upon the peculiar facts, the Court can grant bail notwithstanding the existence of the antecedents……"*
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> *(emphasis supplied)*

13. In view of the above imprimatur of the Supreme Court *vis-a-vis* facts of the present case, antecedents of Applicant would not be an impediment for grant of bail to the Applicant in the present case.

14. Needless to state that complicity of the Applicant can be proved by the prosecution in the trial.

15. In the facts of the present case, support is drawn from the decision of the Supreme Court in the case of ***Sanjay Chandra Vs. Central Bureau of Investigation***[2] wherein the Supreme Court has held

1 Criminal Appeal @ Special Leave Petition (Crl.) No.10587 of 2023 decided on 17.12.2024
2 (2012) 1 SCC 40

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 (*emphasis supplied*).

16. Next, the decision of the Supreme Court in the case of ***P. Chidambaram Vs. Directorate of Enforcement***[3] 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

3 (2020) 13 SCC 791

accused to stand trial.

17. In view of the above *prima facie* observations on the role attributed to the present Applicant and considering the above delineated decisions of the Supreme Court, a fit case for bail has been made out by the 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.25,000/- with one or two sureties in the like amount;

(ii) Applicant is permitted to furnish provisional cash bail of Rs.25,000/- for his release immediately and file an undertaking that he will provide one or two sureties in the like amount of Rs.25,000/- within a period of four weeks after his release which shall be accepted by the Trial Court. Applicant shall provide sureties as directed;

(iii) 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;

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

(v) 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;

(vi) 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;

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

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

(ix) 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.

18. 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.

19. Bail Application No.2345 of 2024 is allowed and disposed.

20. In view of the disposal of the Bail Application, Interim Application No.3696 of 2024 is also disposed.

[MILIND N. JADHAV, J.]

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