

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

**INTERIM APPLICATION NO. 4524 OF 2024
IN
CRIMINAL BAIL APPLICATION NO. 445 OF 2024**

Navnath Balaso Deshmukh. ... Applicant.

Vs.

1. Gajanan Dattatraya Gore,
2. The State of Maharashtra ... Respondents

Mr. Ganesh Gole, a/w. Mr. Ateet Shirodkar & Mr. Bhavin Jain,
Kunjan Makwana, Advocate for Applicant.

Mr. Shailesh Kharat i/b. Mr. Yogesh Birajdar, Advocate for
Respondent No. 1.

Mrs. Veera Shinde, APP for Respondent/State.

CORAM : ASHWIN D. BHOBE, J.

DATE : 1st JULY, 2025.

P.C. :

1. Heard Mr. Ganesh Gole, learned Advocate for the
Applicant, Mr. Shailesh Kharat, learned Advocate for Respondent
No. 1, and Mrs. Veera Shinde, learned APP for State.

2. Respondent No. 1 is the Accused in Crime No. 652 of
2023, registered with the Satara City Police Station, Satara for the
offences punishable under section 406, 408, 420, 467, 468, 471,
504 & 506 of Indian Penal Code. Said crime is registered at the
instance of the Applicant (Complainant).

3. Prosecution case is that the Applicant runs Satara Advertising Company and I-Can Training Institute, having several of its branches in the State of Maharashtra. Respondent No. 1 was employed as a business development manager, by the Applicant. Respondent No.1 is alleged to have siphoned an amount of Rs. 1,60,00,000/- from the funds belonging to the Applicant.

4. Respondent No. 1 was arrested on 17.08.2023.

5. Bail Application No. 445 of 2024, filed by the Respondent No. 1 was allowed by this Court on 01.04.2024. Respondent No. 1 was released on the following bail condition :

“(a) The application is allowed.

(b) The applicant- Gajanan Dattatray Gore in connection with C.R. No.I-652 of 2023 registered with Satara City Police Station shall be released on bail on his furnishing P.R. Bond of Rs.25,000/- with one or more sureties in the like amount.

(c) The applicant is permitted to furnish cash bail surety in the sum of Rs. 25,000/- for a period of 6 weeks in lieu of surety.

(d) The applicant shall attend the Investigating Officer of Satara City Police Station once in three months on every first Monday of the concerned month commencing from May 2024 between 11.00 a.m. and 1.00 p.m.

(e) The applicant shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing the facts to Court or any Police Officer. The applicant shall not tamper with evidence.

(f) On being released on bail, the applicant shall furnish his contact number and residential address to the Investigating Officer and shall keep him updated, in case there is any change.

(g) The applicant shall attend the trial regularly. The applicant shall co-operate with the trial Court and shall not seek unnecessary adjournments.

(h) The applicant shall abide by the statements made in the affidavit.

(i) The amount of Rs.25 lakhs be deposited in the trial Court instead of this Court which shall abide by the final outcome of the trial Court's order. It is open for the trial Court to invest the amount in any nationalized bank."

6. The prelude to the said bail conditions is found in paragraphs- 5 and 6 of the said order 01.04.2024, which paragraphs are transcribed herein below :

5. The affidavit-cum-undertaking dated 22/03/2024 has been filed by the applicant voluntarily which is duly affirmed by the applicant which reads thus :

"I, Mr. Gajanan Dattatray Gore, Age: 31 years, Occ: Business, Residence at:154, Block, Somwar

Peth, Near Datta Mandir, Satara presently at Central Prison of Kalamb, Dist: Kolhapur, do hereby state on solemn affirmation as under:-

1) I say that, I undertake to deposit 25,00,000/- (Twenty Five Lakhs Only) within 5 months Before this Hon'ble Court for showing my bonafide Before this Hon'ble Court.

2) I say and undertake that, I will not use the name of I Can Institute.

3) I further say and undertake that, I will also not use a logo of I Can Institute for my person as well as business purpose.

Whatever stated hereinabove is true to my knowledge, which I believe to be true and correct for which I sign herein under.”

6. The statements made in the affidavit-cum-undertaking are treated as an undertaking to this Court. Learned counsel for the applicant on instructions submitted that the applicant is willing to abide by the statements made in the affidavit. The statements are accepted. It is expressly made clear by learned counsel for the applicant on instructions of the applicant that in the logo of “JAMAKA” which is used by the accused, the words “ICAN TRAINING INSTITUTE PVT LTD” will not be used. The statement is accepted. There are no criminal antecedents reported against the applicant. The applicant was arrested on 17/08/2023. The trial is likely to take a long time to conclude. Further custody will only be

by way of a pre-trial punishment in the facts and circumstance of the case. The applicant will face the consequences post-trial if found guilty. The applicant is in custody for more than 7 months with no possibility of the trial concluding any time soon. The investigation is complete. The charge-sheet has been filed. The applicant can be enlarged on bail. Hence, the following order :”

7. On 06.08.2024, Respondent No.1 filed Interim Application No. 3106 of 2024, seeking the following relief:-

“That this Hon’ble Court be pleased to relax the condition No. (i) imposed by this Hon’ble Court while passing the order dated 01.04.2024.”

8. Interim Application No. 3106 of 2024, was unconditionally withdrawn by the Respondent No. 1, on 23.06.2025.

9. By the present Application, the Applicant has sought for the following reliefs :

“a. This Hon’ble Court may kindly cancel the bail granted by this Hon’ble Court in Criminal Bail Application No. 445 of 2024, whereby this Hon’ble Court was pleased to grant bail to the Respondent No. 1 vide order dated 01.04.2024, and further be pleased to direct the Respondent No. 2 to immediately arrest Respondent No.1 and to take him in custody in connection with the C.R. No. I-652/2023 dated 16.08.2023 registered with Satara City Police Station, Satara.”

10. Mr. Gole, learned Advocate for the Applicant submits that Respondent No. 1 while seeking bail had made representation to this Court, by which he had voluntarily expressed his desire to deposit the amount in Court, as more particularly mentioned and stated in the undertaking dated 22.03.2024, supported with an affidavit. He submits that the Respondent No. 1, had called upon and persuaded this Court to consider the request for bail solely on the basis of his representations and assurances made / given in the undertaking i.e. his willingness to pay the amount. He submits that by the said mode the Respondent No.1 had prevented this Court from dealing with the bail application on merits. He submits that Respondent No. 1 has defaulted and breached the solemn undertaking given by the Respondent No. 1 to this Court, thereby violating bail condition No. 6(i). He relies on the grounds raised by the Applicant in paragraph 14(a) to (l) of the Application and prays for cancellation of bail.

11. Mrs. Veera Shinde, learned APP for the State. submits that the Respondent No.1 had himself volunteered to deposit the amount by submitting undertaking to this Court. She submits that the application for bail was decided solely on the basis of the offer to deposit as made by the Respondent No.1. She submits that the Respondent No.1 having offered to deposit the amount out of his own free will and after having taken benefit of such representations, Respondent No.1 cannot be permitted to resile from the undertaking. She submits that the undertaking given by

the Applicant is valid. She submits that Respondent No. 1 having breached the undertaking, the bail is required to be cancelled.

12. Mr. Kharat, learned Advocate for the Respondent No. 1 submits that the bail conditions 6(i) imposed by the this Court in its order dated 01.04.2024 in Bail Application No. 445 of 2024 is onerous conditions. He submits that such condition while granting bail is not tenable. In support of his submissions he relies on the decision of the Hon'ble Supreme Court in the case of *Ramesh Kumar v/s. State of NCT of Delhi*¹ and the decision of the Hon'ble Supreme Court in the case of *Apurva Kirti Mehta V/s. State of Maharashtra & Anr.*². He further relies on the decision of Hon'ble Supreme Court in the case of *Biman Chatterjee v/s. Sanchita Chatterjee & anr.*³ to contend that non-fulfillment of assurance of a compromise cannot be the basis of canceling bail.

13. I have perused record with the assistance of the learned Advocates for the parties.

14. Respondent No.1 by voluntarily offering deposit of amount, while seeking indulgence of this Court to have his liberty secured and restored, foreclosed consideration of his bail application on merits. Respondent No.1 by his conduct persuaded this Court not to go into the merits of the bail. Order dated

1 (2023) 7 SCC 461

2 CRIMINAL APPEAL [arising out of SLP (Crl.) No.15402-15403/2024]

3 (2004) 3 SCC 388

01.04.2024 passed in Bail Application No. 445 of 2024 clearly indicates this Court being called upon by the Respondent No.1 to pass an order on his bail application, solely on the representation of deposit of money as made in the undertaking dated 22.03.2024. Respondent No.1 has derived benefit of the Order dated 01.04.2024 and has secured his liberty.

15. Mr. Shailesh Kharat relies on the Judgment of the Hon'ble Supreme Court in the case of *Ramesh Kumar* (supra) and *Apurva Kirti Mehta* (supra) to submit that a criminal court, exercising jurisdiction to grant bail is not expected to act as a recovery agent to realise the dues of the complainant and that imposing a financial deposit as a condition for bail is impressible.

16. It is trite law that imposing of financial deposit as a condition for bail is not permissible and that the process of Criminal Law particularly, in matters of grant of bail are not akin to money recovery proceedings.

17. Respondent No.1 as and by way of an after thought, is attempting to renege by contending the said bail condition to deposit amount, to be onerous. Such practice, has been deprecated by the Hon'ble Supreme Court in the case of *Kundan Singh vs. The Superintendent of CGST and Central Excise*⁴. In paras 8, 9, 10

⁴ Special Leave to Appeal (Crl) No. 9111/2025

& 11 the Hon'ble Supreme Court has observed as under :-

“8. There cannot be any dispute that excessive bail is no bail and onerous conditions ought not to be imposed while bail is granted. As to what is an onerous condition would no doubt depend on the facts and circumstances of the individual case. What is troubling however, is when attempts are made to foreclose consideration of bail application on merits by voluntarily offering deposits of amounts and thereafter reneging on it by stating that a counsel had no authority and/or that the condition is onerous.

9. We are not able to countenance this practice. Even in this case the argument is that the counsel has no authority to offer monetary deposit, when in the modification application no such averment was made and all that was averred was that the amount of Rs.50,00,000/-, as directed, be also deferred to the point after the release of the petitioner.

10. We strongly deprecate this practice. If the offer for monetary deposit had not been made, at the outset, the High Court may have considered the case on merits and may have granted or may not have granted relief to the petitioner. Today the petitioner is approbating and reprobating. We are conscious of his rights under Article 21 of the Constitution of India, but we have to be equally conscious of the sanctity of the judicial process and cannot allow parties to play ducks and drakes with the Court. In this scenario, the only conclusion possible is that both, the original bail order of 08.05.2025 and the order of modification dated 14.05.2025 granting final relief, will have to be set aside and the matter be remitted to the High Court for fresh consideration on merits uninfluenced by

any of the observations of this Court.

11. The situation now is that the petitioner, taking advantage of the order of the High Court, has secured his release. Ordinarily the consequence would have been to put the petitioner back in jail. However, considering the averments made in the modification application in this case, we are inclined to grant a limited interim protection to the petitioner from surrendering.”

18. Mr. Kharat, submits that the decision in the case of *Kundan Singh* (supra) would not apply to the case of the Respondent No. 1. Said contention is premised on the ground that the bail condition of making deposit as a condition of bail is onerous. I am unable to accept the said contention as it was the Respondent No.1 who out of his own free will volunteered, by way of an undertaking to deposit the amount. Undertaking in the present case indicates the Respondent No.1 rest content with the deposit of the amount. Interim Application No. 3106 of 2024, filed by the Respondent No.1 seeking relaxation of bail condition No. 6 (i) is dismissed as withdrawn. In the peculiar facts and circumstances of this case, it is not open to the Respondent No.1 to contend that the bail condition in para 6 (i) to be onerous.

19. Mr. Kharat, submits that the order dated 01.04.2024, in addition to the undertaking dated 22.03.2024, considers the bail on

merits. Reliance is placed on para 6 of the order to submit that this Court while granting bail had made reference to the Respondent No. 1 not having criminal antecedents and the trial is likely to take some time to conclude. I am again unable to accept the said contention of the Respondent No. 1 as the order dated 01.04.2024 clearly gives an impression that the Respondent No. 1 with the intent to dissuade this Court from considering the merits made the above said offer to deposit amount in this court. Respondent No.1 has taken the Court for granted by securing his liberty on the basis of the undertaking dated 22.03.2024. Respondent No. 1 is attempting to approbate and reprobate. Facts of instant case are similar to the facts in the case of *Kundan Singh* (Supra) as such observations of the Hon'ble Supreme Court in para 10 are squarely applicable to the case in hand. Case of the Respondent No. 1 as now contended is nothing but reneging voluntarily offering deposits. The Hon'ble Supreme Court in the case of *Kundan Singh* (supra) has deprecated such practice.

20. Mr. Kharat, relied on the case of *Biman Chatterjee* (supra) to submit that non fulfillment of the terms of compromise cannot be basis of granting or cancelling the bail. He places reliance on the paragraph no. 7 of the said decision. Case in *Biman Chatterjee* (supra) was a proposed settlement between a couple having matrimonial discord. Bail granted to the Accused in the said crime was cancelled on the ground that the Accused was not adhering to the settlement terms. It is in this context that the

Hon'ble Supreme Court in paragraph-7 has made the observations as under :

7. Having heard the learned counsel for the parties, we are of the opinion that the High Court was not justified in cancelling the bail on the ground that the appellant had violated the terms of the compromise. Though in the original order granting bail there is a reference to an agreement of the parties to have a talk of compromise through the media of well wishers, there is no submission made to the court that there will be a compromise or that the appellant would take back his wife. Be that as it may, in our opinion, the courts below could not have cancelled the bail solely on the ground that the appellant had failed to keep up his promise made to the court. Here we hasten to observe first of all from the material on record, we do not find that there was any compromise arrived at between the parties at all, hence, question of fulfilling the terms of such compromise does not arise. That apart non-fulfilment of the terms of the compromise cannot be the basis of granting or cancelling a bail. The grant of bail under the Criminal Procedure Code is governed by the provision of Chapter XXXIII of the Code and the provision therein does not contemplate either granting of a bail on the basis of an assurance of a compromise or cancellation of a bail for violation of the terms of such compromise. What the court has to bear in mind while granting bail is what is provided for in Section 437 of the said Code. In our opinion, having granted the bail under the said provision of law, it is not open to the trial court or the High Court to cancel the same on a ground alien to the grounds mentioned for cancellation of bail in the said provision

of law.

21. The Respondent No. 1 though having withdrawn his Application seeking relaxation of the said bail condition No. 6(i), has not come forward to deposit the amount even during the course of hearing of this Application. Respondent No. 1 having breached / violated bail condition no. 6(i) of the order dated 01.04.2024, this Court is left with no other option but to exercise jurisdiction under Section 483(3) of the Bharatiya Nagarik Suraksha Sanhita, 2023 (for short “BNSS”) to cancel the bail. Bail granted to the Respondent No. 1 on 01.04. 2024 stands cancelled.

22. Respondent No. 1 was released pursuant to the order dated 01.04.2024. Bail being cancelled, the Respondent No. 1 is now required to surrender. Mr. Kharat, on instructions from the Respondent No. 1 prays time to surrender. He prays for 8 weeks’ time to surrender.

23. Considering that the Respondent No.1 was on bail since 01.04.2024, I find it appropriate to grant 4 weeks’ time, to the Respondent No.1 to surrender before the learned Court of Judicial Magistrate First Class, Satara. Respondent No.1 to surrender before the said Court on or before 31st July, 2025, subject to the Respondent No. 1 furnishing P.R. bond in the sum of Rs. 50,000/- with one or more sureties in the like amount to the satisfaction of the learned Judicial Magistrate First Class, Satara, within 10 days

from today. In the event, P.R. bond and sureties are not furnished within the said period, learned Judicial Magistrate First Class to act in accordance with law.

24. Interim Application No. 4524 of 2024 is allowed in the above terms.

(ASHWIN D. BHOBE, J.)