

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

CRIMINAL APPLICATION NO. 235 OF 2025

Pankaj Sanjay Waje & anr. .Applicants.

Vs.

The State of Maharashtra .Respondent.

Mr. Vivekanand Vinod Krishnan (Through VC), learned Advocate for the Applicants.

Dr. Ashwini A. Takalkar, learned APP, for the Respondent – State.

CORAM : ASHWIN D. BHOBE, J.

DATE : 01.07.2025

P. C.

1. Heard Mr. Vivekanand Krishnan, learned Advocate for the Applicants and Dr. Ashwini A. Takalkar, learned APP for State.

2. Applicants are Accused Nos. 1 & 2 in C. R. No. 46 of 2025 registered by the Malegaon City Police Station, Nashik(Rural), in respect of offences punishable under Sections 318(4), 363(3), 338, 340(2) r/w. 3(5) of the Bharatiya Nagarik Suraksha Sanhita, 2023 (for short “**BNSS**”).

3. Case of the prosecution is that one Akash Endait, an employee of ICICI Bank had indulged in the siphoning of monies receivable as loans by Mahila Bachat Gat. Applicants staff members overseeing the

loan business are involved in assisting the said Akash Andait in siphoning the money.

4. Applicants filed Bail Application dated 17.04.2024 before the Court of the learned Additional CJM, Malegaon, Nashik. By Order dated 21.04.2025, learned Additional CJM, Malegaon, Nashik allowed the Application for bail filed by the Applicants. While granting bail, learned Additional CJM in para 2 has made the following observations :-

*“2. Perused application and say thereon. Accused **Pankaj Sanjay Waje, Nikhil Mothabhau Padol and Pundlik Ramesh Pathade** are in custody in connection with the CR No. 46 of 2025 under section 318(4), 363(3), 338, 340(2) r/w. 3(5) of the BNS. After perusing the record it appears that the accused persons are facing an investigation of alleged fraud of Rs. 67,92,407/- and investigation is going on. According to the police report, accused Nikhil Padol received Rs. 10,00,000/-, accused Pundlik Pathade received Rs. 9,24,000/- and accused Pankaj Waje received Rs. 13,50,000/-. In such circumstances according to me if the applicant accused persons each deposit **50% of amount in the court, which they received in their own account** as mentioned above, they would be released on bail by executing a personal bond of Rs. 50,000/- and a surety of a like amount with the following conditions :-*

*i. The applicant-accused persons shall remain present at the Police Station on every **Saturday** between 11.00 a.m. to 1.00 p.m. and as and when called by the I. O., for the purpose of further investigation till the filing of a charge-sheet.*

ii. The applicant-accused persons shall not directly or indirectly make any inducement, threat or promise to any person acquainted with facts of accusation, so as to dissuade him from disclosing such facts to the court or to any police officer.

iii. The applicant accused persons shall not tamper with the prosecution witnesses and evidence in any manner.

iv. The applicant accused persons shall furnish their detailed address and temporary address along with their photo ID.

v. If there is change in the address of the applicant-accused persons, they shall inform the concerned Police Station/Court.”

5. Though bail condition Nos. (i) to (v) do not make financial deposit as a condition, however, latter part of para 2 of the order dated 21.04.2025 makes a reference to the deposit of the amount, as a condition for bail.

6. Applicants filed Criminal Misc. Application No. 32 of 2025 before the Sessions Court, seeking modification of the said condition of financial deposit. By order dated 23.05.2025 the learned Additional Sessions Judge, Malegaon dismissed the said Criminal Misc. Application No. 32 of 2025.

7. By the present Application filed under Section 483 (1) (b) read with 528 of BNSS, the Applicants have sought the following reliefs :-

“c. That the order dated 23.05.2025 passed by the Addl. Sessions Court, Malegaon in Misc. Criminal Application No. 32/2025 be quashed and set aside;

d. That the portion of the order dated 21.04.2025 passed by Addl. CJM, Malegaon which deemed as a precondition that “if the applicant accused persons each deposit 50% of the amount in the court, which they received in their own account as mentioned above” be

deleted or relaxed or modified to the satisfaction of the Hon'ble Court as per law."

8. Mr. Krishnan, learned Advocate for the Applicants states that the Applicants neither made any representation to deposit the amount which is alleged to be the amount covered in the crime nor offered to deposit any amount for securing bail. He submits that bail was sought for on merits. He submits that the Co-accused Nos. 4 and 5 in the crime have been released on bail. He submits that the involvement of the Applicants (Accused Nos. 2 and 3) in the crime, is similar and identical to the role assigned to Accused Nos. 4 and 5 as such Applicants are entitled to bail on the ground of parity . He, therefore, submits that imposition of condition to deposit of amount, is unjustifiable.

9. Dr. Takalkar, learned APP for the Respondent – State submits that the allegations against the Applicants are in respect of fraud to the tune of Rs. 67,92,407/-. She submits that in such circumstances, and to protect interest of the Informant/Complainant, imposition of the conditions to deposit 50% of the amount is justifiable. She submits that there is no illegality in directing the Applicants to deposit the said amount.

10. Perused the records with the assistance of the Advocates.

11. In the case of ***Ramesh Kumar vs. State (NCT of Delhi)***¹, the Hon'ble Supreme Court in paras 22, 23, 24, 25 & 26 has observed as under :-

“22. We may next take note of two decisions of this Court of recent origin.

23. In Dilip Singh v.State of M.P [Dilip Singh v.State of M.P, (2021) 2 SCC 779 : (2021) 2 SCC (Cri) 106] , this Court sounded a note of caution in the following words : (SCC p. 780, paras 3-4)

“3. By imposing the condition of deposit of Rs 41 lakhs, the High Court has, in an application for pre-arrest bail under Section 438 of the Criminal Procedure Code, virtually issued directions in the nature of recovery in a civil suit.

4. It is well settled by a plethora of decisions of this Court that criminal proceedings are not for realisation of disputed dues. It is open to a court to grant or refuse the prayer for anticipatory bail, depending on the facts and circumstances of the particular case. The factors to be taken into consideration, while considering an application for bail are the nature of accusation and the severity of the punishment in the case of conviction and the nature of the materials relied upon by the prosecution; reasonable apprehension of tampering with the witnesses or apprehension of threat to the complainant or the witnesses; reasonable possibility of securing the presence of the accused at the time of trial or the likelihood of his abscondence; character, behaviour and standing of the accused; and the circumstances which are peculiar or the accused and larger interest of the public or the State and similar other considerations. A criminal court, exercising jurisdiction to grant bail/anticipatory bail, is not expected to act as a recovery agent to realise the dues of the complainant, and that too, without any trial.”

24. Yet again in Bimla Tiwari v. State of Bihar [Bimla Tiwari

¹ (2023)7 SCC 461.

v. State of Bihar, (2023) 11 SCC 607 : 2023 SCC OnLine SC 51], this is what the Court said : (SCC paras 9-11)

“9. We have indicated on more than one occasion that the process of criminal law, particularly in matters of grant of bail, is not akin to money recovery proceedings but what has been noticed in the present case carries the peculiarities of its own.

10. We would reiterate that the process of criminal law cannot be utilised for arm-twisting and money recovery, particularly while opposing the prayer for bail. The question as to whether pre-arrest bail, or for that matter regular bail, in a given case is to be granted or not is required to be examined and the discretion is required to be exercised by the Court with reference to the material on record and the parameters governing bail considerations. Putting it in other words, in a given case, the concession of pre-arrest bail or regular bail could be declined even if the accused has made payment of the money involved or offers to make any payment; conversely, in a given case, the concession of pre-arrest bail or regular bail could be granted irrespective of any payment or any offer of payment.

11. We would further emphasize that, ordinarily, there is no justification in adopting such a course that for the purpose of being given the concession of pre-arrest bail, the person apprehending arrest ought to make payment. Recovery of money is essentially within the realm of civil proceedings.”

25. *Law regarding exercise of discretion while granting a prayer for bail under Section 438CrPC having been authoritatively laid down by this Court, we cannot but disapprove the imposition of a condition of the nature under challenge. Assuming that there is substance in the allegation of the complainants that the appellant (either in connivance with the builder or even in the absence of any such connivance) has cheated the complainants, the investigation is yet to result in a charge-sheet being filed under Section 173(2)CrPC, not to speak of the alleged offence being proved before the competent trial court in accordance with the settled procedures and the applicable laws. Sub-section (2) of Section 438CrPC does empower the High Court or the Court of Session to impose such conditions while making a direction under sub-section (1) as it may think fit in the light of the facts of the particular case and such direction may include the*

conditions as in clauses (i) to (iv) thereof. However, a reading of the precedents laid down by this Court referred to above makes the position of law clear that the conditions to be imposed must not be onerous or unreasonable or excessive. In the context of grant of bail, all such conditions that would facilitate the appearance of the accused before the investigating officer/court, unhindered completion of investigation/trial and safety of the community assume relevance. However, inclusion of a condition for payment of money by the applicant for bail tends to create an impression that bail could be secured by depositing money alleged to have been cheated. That is really not the purpose and intent of the provisions for grant of bail.

26. *We may, however, not be understood to have laid down the law that in no case should willingness to make payment/deposit by the accused be considered before grant of an order for bail. In exceptional cases such as where an allegation of misappropriation of public money by the accused is levelled and the accused while seeking indulgence of the court to have his liberty secured/restored volunteers to account for the whole or any part of the public money allegedly misappropriated by him, it would be open to the court concerned to consider whether in the larger public interest the money misappropriated should be allowed to be deposited before the application for anticipatory bail/bail is taken up for final consideration. After all, no court should be averse to putting public money back in the system if the situation is conducive therefor. We are minded to think that this approach would be in the larger interest of the community. However, such an approach would not be warranted in cases of private disputes where private parties complain of their money being involved in the offence of cheating.”*

12. In the case of ***Dataram Singh Vs. State of Uttar Pradesh and another***², the Hon'ble Supreme Court has observed that the conditions for the grant of bail ought not be so strict as to be incapable of compliance, thereby making the grant of bail illusory.

² (2018)3 SCC 22.

13. In the case of *M.D. Dhanapal Vs. State represented by the Inspector of Police*³, the Hon'ble Supreme Court in Paragraph-6 has observed that it is well settled that bail cannot be made conditional upon heavy deposits beyond the financial capacity of an Applicant for bail.

14. Perusal of the Application for bail does not indicate the Applicants having made any request for deposit or having shown willingness to deposit any amount. Learned APP was unable to point out any such averments or statements in the Application for bail filed by the Applicants. Similarly, order dated 21.04.2025 does not indicate any submissions being made on behalf of the Applicants showing willingness to deposit any amount. In such circumstances, directing deposit of amount involved in the crime, would be unjustifiable considering the law on the subject.

15. The Hon'ble Supreme Court in the case of *Apruva Kirti Mehta v. State of Maharashtra*⁴ in paras 6, 7 & 8 has re-iterated the view in the case of *Ramesh Kumar (Supra)*. Paras 6, 7 & 8 are reproduced hereinbelow :-

³ (2019)6 SCC 743.

⁴ 2025 SCC OnLine SC 336.

“6. The High Court while proceeding to dismiss the applications was of the opinion that the appellant had volunteered to make payment of Rs. 40,00,000/- and the Sessions Judge granted the prayer for bail “taking into account the voluntary statement made on his behalf.

7. The High Court does not seem to be entirely correct in its understanding of the order of the Sessions Judge dated 19th May, 2023. No doubt the appellant had made a voluntary statement to make payment but that was not the sole reason which weighed in the mind of the Sessions Judge to grant bail; on the contrary, the observations made in paragraph 5 by the Sessions Judge is a clear pointer that there was no sufficient reason to keep the appellant under detention having regard to completion of the investigation and filing of the charge-sheet.

8. That apart, the direction for payment was in the teeth of a plethora of decisions of this Court. We can profitably refer to a few of them, viz. Ramesh Kumar v. State (NCT of Delhi); St. George Dsouza v. State (NCT of Delhi) and Dilip Singh v. State of M.P. Having regard to the principles of law laid down in the said decisions, inter alia, to the effect that the courts, exercising jurisdiction to grant bail/pre-arrest bail, are not expected to act as recovery agents for realization of dues of the complainant from the accused, the High Court should have independently applied its mind and arrived at a conclusion as to whether a case for grant of bail, on settled parameters, had been made out or not irrespective of whatever statement was made on behalf of the appellant before the Sessions Judge.”

16. In view of the above, the condition of deposit of 50% amount referred to in paragraph 2 of the order dated 21st April, 2025 passed in Bail Application in C.R. No. 46 of 2025 is set aside. The present Application is allowed on the following conditions :

- a. Applicants shall be released on bail in Crime No 46 of 2025 registered by the Malegaon City Police Station on execution of a personal bond of Rs. 50,000/- with a surety in the like

amount to the satisfaction of the learned Additional CJM, Malegaon.

b. Applicants shall remain present at the Police Station on every Saturday between 11.00 a.m. to 1.00 p.m. and as and when called by the I.O., for the purpose of further investigation till the filing of a charge-sheet.

c. Applicants shall not directly or indirectly make any inducement, threat or promise to any person acquainted with facts of accusation, so as to dissuade him from disclosing such facts to the Court or to any police officer.

d. Applicants shall not tamper with the prosecution witnesses and evidence in any manner.

e. Applicants shall furnish their detailed addresses and temporary addresses alongwith their photo ID.

f. If there is change in the address of the Applicants, they shall inform the concerned Police Station/Court.

17. Criminal Application No. 235 of 2025 is disposed in the abovesaid terms.

(ASHWIN D. BHOBE, J.)

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by GITALAXMI
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KOTAWADEKAR
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