Ajay

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL BAIL APPLICATION NO. 269 OF 2025

Saket Prakash Sawant .. Applicant / Accused

Versus

State of Maharashtra and Anr. .. Respondents

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- Mr. Prajakt M. Arjunwadkar a/w. Mr. Raj S. Satam, Advocates for Applicant.
- Mr. Sukanta A. Karmakar, APP for Respondent No.1 – State.
- Mr. Appa Kisave, API – Kurar Police Station present.

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CORAM : MILIND N. JADHAV, J.
DATE : MAY 09, 2025

P.C.:

1. Heard Mr. Arjunwadkar, learned Advocate for Applicant and Mr. Karmakar, learned APP for Respondent No.1 – State.

2. This Bail Application is filed under Section 439 of Code of Criminal Procedure, 1973. Applicant is arrested in connection with C.R. No.594 of 2023 registered with Kurar Village Police Station for offences punishable under Sections 406, 420, 465, 467 and 471 read with 34 of Indian Penal Code, 1860 (for short '**IPC**').

3. Applicant in the present case is arraigned as Accused No.1, his wife is arraigned as Accused No.4. Accused No.2 is his employee. Accused No.5 is VMAS Marathi Channel – Over the Top (for short '**OTT**') Platform whereas Accused No.6 is Artistocrat Production

Company owned by Applicant, a franchise of VMAS. In this Company Applicant and his wife are Directors.

4. Prosecution's case emanates from the version narrated by Respondent No.2 – First Informant in the FIR. First Informant is an Advocate. The version initiates in the backdrop of him establishing a Company by the name of Chandra Films And Entertainment on the advise of his 3 friends. The said Company produced a film 'Secrets of Gavaskar' which was directed by one of the friend Mr. Tejas Lokhande. Said Mr. Lokhande approached Applicant who was holding a franchisee of Accused No.5 and persuaded him to negotiate a contract with Accused No.5 for releasing the web series on its OTT platform. Parties entered into 2 Agreements namely a Franchise Project Agreement followed by a Film Assignment Agreement whereby the web series was purchased by Accused No.5 for a consideration of Rs.82,00,000/- for releasing the same on its OTT platform. However it was agreed that payment in respect of the web series would be made by Accused No.5 to First Informant in 3 tranches after release of the web series on the OTT platform i.e. first tranche on completion of 45 days, second tranche 45 days thereafter and third tranche on the 126th day from the date of release of the web series on OTT platform. These were the main terms and conditions of the Agreement. It was facilitated by Applicant who was holding a franchisee of Accused No.5.

5. Mr. Arjunwadkar, learned Advocate for Applicant in support of Application would submit that dispute between parties is purely civil in nature emanating out of the alleged breach of terms as agreed in the Agreement. He would submit that even if there is a breach, the same would be civil in nature as terms between parties alleged to have been breached are governed by the agreement. He would submit that in such a case the *arbitration clause* contained in the Film Assignment Agreement is of material importance and ought to have been invoked by the aggrieved party seeking relief for non-compliance of terms agreed between parties. He would submit that even in the prosecution version, essential ingredients of Sections 409 and Section 420 of IPC are not satisfied qua the Applicant as he was merely the introducer being the franchisee of Accused No.5 and hence there is no *prima facie* case made out by prosecution against him. Hence, he would urge grant of bail.

6. ***PER CONTRA,*** Mr. Karmakar, learned APP for Respondent No.1 – State would vehemently oppose the Application. He would submit that Applicant lured the Complainant to enter into the Agreement being aware that First Informant was unable to find a distributor for his web series to exploit his financial vulnerability and desperation. He would submit that Applicant was supposed to make payment in three tranches, last of which was supposed to be made on completion of the 126th day post release of the web series "Secrets of

Gavaskar" on OTT but failed to honor the obligation even after a lapse of one year thereafter. He would submit that Applicant was aware about First Informant's inability to find a producer for the web series and after the said series continued to be screened on OTT Platform even after one year, non-payment of the consideration amount depicts intention of Applicant to deceive First Informant right from inception of the transaction thus constituting a criminal wrong. She would thus pray for Application to be rejected.

7. I have heard the learned Advocates at the bar and with their able assistance perused the record of the case.

8. Prosecution alleges deception played by Applicant. From the record, it appears that parties are at loggerheads upon aspects which are governed by terms of the Agreement. Although allegations are made that Applicant deceived First Informant, no material is placed on record by prosecution to substantiate such claim of deception at the inception. At this juncture, I find it apropos to summarise the terms of Agreement and circumstances around execution of the agreement. On 03.01.2022, First Informant entered into and executed the Film Assignment Agreement and it was agreed that 30% of the consideration (Rs.24,60,000/-) shall be paid to First Informant within 45 days from the date of release of the film on OTT platform of VMAS Marathi. The agreement further stated that the second tranche of 40%

(Rs.32,40,000/-) shall be paid to First Informant within 90 days of release and the remaining balance of 30% (24,60,000/-) after 126 days from the date of release. On 03.07.2022, First Informant and Applicant's Company (Accused No.6) executed Franchise Project Agreement which was confirmed by letter dated 16.07.2022 which stated that the web series was purchased by VMAS for Rs.82,00,000/-. Date of release of the Film is 12.08.2022. The first 45 day period expired on 26.09.2022 September 2022. Prosecution case is that Applicant First Informant did not receive any tranch of payment pursuant of release of the film and therefore present FIR is filed on 03.10.2023. Applicant is arrested on 05.07.2024.

9. From the above, it is clear that rights of the film "Secrets of Gavaskar" were transferred by assignment to Accused No.5 in January 2022 in pursuance of the terms of the Film Assignment Agreement and in terms of that Agreement in the event of failure to pay the creator on 45^{th} Day, 90^{th} day and 126^{th} day, cause of action would lie as against Accused No.5 and not Accused No.6. Hence, in so far as matters relating to payment of monies is concerned, I am of the view that the same has been aptly dealt with by the terms of the Agreement with Accused No.5. In case of a breach, the remedy for the aggrieved party ought to have been as per the terms recited in the Film Assignment Agreement, more particularly, referring the dispute to arbitration as per *arbitration clause* of the Film Assignment Agreement or in an alternative to file a suit for injunction in the Civil Court, as the case may be, but certainly not initiating criminal machinery.

10. The aggrieved party, in the present case, has neglected / avoided / failed to invoke the *arbitration clause* or exercise any civil remedy. Be that as it may, in criminal cases emanating out of commercial transactions, the scope of adjudication for Criminal Courts is limited to a narrow compass – To decide the question of criminality i.e. "***Whether the acts of the Applicant constitute a criminal wrong?***"

11. While this matter presents an intriguing and rather exciting set of circumstances having precedents from various Courts settling the applicable law, I shall refrain from commenting on the merits of the charges attracted against the Applicant since this is a Bail Application. I have also deliberately limited my recordings concerning the transactions between parties given the strong likelihood that the parties may be before another adjudicating authority / dispute resolution mechanism in subsequent stages of this dispute and hence it is prudent to avoid any pronouncements or findings that might inadvertently or adversely be prejudicial to interests of any of the parties herein.

12. In the case of ***Ramesh Kumar Vs. State (NCT of Delhi),*** the Supreme Court held that criminal proceedings are not for realisation of disputed dues and thus 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.

13. In the case of ***Uma Shankar Gopalika Vs. State of Bihar***[1] the Supreme Court while quashing a criminal proceedings held that every breach of contract would not give rise to an offence of cheating and only in those cases breach of contract would amount to cheating where there was any deception played at the very inception. The relevant paragraph reads thus:-

> *"6. Now the question to be examined by us is as to whether on the facts disclosed in the petition of complaint any criminal offence whatsoever is made out much less offences under Sections 420/120-B IPC. The only allegation in the complaint petition against the accused persons is that they assured the complainant that when they receive the insurance claim amounting to Rs 4,20,000, they would pay a sum of Rs 2,60,000 to the complainant out of that but the same has never been paid. Apart from that there is no other allegation in the petition of complaint. It was pointed out on behalf of the complainant that the accused fraudulently persuaded the complainant to agree so that the accused persons may take steps for moving the Consumer Forum in relation to the claim of Rs 4,20,000. It is well settled that every breach of contract would not give rise to an offence of cheating and only in those cases breach of contract would amount to cheating where there was any deception played at the very inception. If the intention to cheat has developed later on, the same cannot amount to cheating. In the present case it has nowhere been stated that at the very inception there was any intention on behalf of the accused persons to cheat which is a condition precedent for an offence under Section 420 IPC.*
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> *7. In our view petition of complaint does not disclose any criminal offence at all much less any offence either under Section 420 or Section 120-B IPC and the present case is a case of purely civil dispute between the parties for which remedy lies before a civil court by filing a properly constituted suit. In our opinion, in view of these facts allowing the police investigation to continue would amount to an abuse of the process of court and to prevent the same it was just and expedient for the High Court to quash the same by exercising the powers under Section*

1 (2005) 10 SCC 336

482 CrPC which it has erroneously refused."

14. In the case of ***Delhi Race Club (1940) Ltd. & Ors. V/s State of Uttar Pradesh & Anr.***[2] the Supreme Court while distinguishing Sections 406 with 420 held as follows:-

> *"**27.** In our view, the plain reading of the complaint fails to spell out any of the aforesaid ingredients noted above. We may only say, with a view to clear a serious misconception of law in the mind of the police as well as the courts below, that if it is a case of the complainant that offence of criminal breach of trust as defined under Section 405 of IPC, punishable under Section 406 of IPC, is committed by the accused, then in the same breath it cannot be said that the accused has also committed the offence of cheating as defined and explained in Section 415 of the IPC, punishable under Section 420 of the IPC.*
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> ***28. Every act of breach of trust may not result in a penal offence of criminal breach of trust unless there is evidence of manipulating act of fraudulent misappropriation.** An act of breach of trust involves a civil wrong in respect of which the person may seek his remedy for damages in civil courts but, any breach of trust with a mens rea, gives rise to a criminal prosecution as well. It has been held in Hari Prasad Chamaria v. Bishun Kumar Surekha & Ors., reported in (1973) 2 SCC 823 as under:*
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> > *"**4.** We have heard Mr. Maheshwari on behalf of the appellant and are of the opinion that no case has been made out against the respondents under Section 420 Penal Code, 1860. For the purpose of the present appeal, we would assume that the various allegations of fact which have been made in the complaint by the appellant are correct. Even after making that allowance, we find that the complaint does not disclose the commission of any offence on the part of the respondents under Section 420 Penal Code, 1860. There is nothing in the complaint to show that the respondents had dishonest or fraudulent intention at the time the appellant parted with Rs. 35.000/- There is also nothing to indicate that the respondents induced the appellant to pay them Rs. 35,000/- by deceiving him. It is further not the case of the appellant that a representation was made, the respondents knew the same to be false. The fact that the respondents subsequently did not abide by their commitment that they would show the appellant to be the proprietor of Drang Transport Corporation and would also render accounts to*

2 2024 INSC 626

> *him in the month of December might create civil liability on the respondents for the offence of cheating."*
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> ***29.*** *To put it in other words, the case of cheating and dishonest intention starts with the very inception of the transaction. But in the case of criminal breach of trust, a person who comes into possession of the movable property and receives it legally, but illegally retains it or converts it to his own use against the terms of the contract, then the question is, in a case like this,* ***whether the retention is with dishonest intention or not, whether the retention involves criminal breach of trust or only a civil liability would depend upon the facts of each case.***
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> ***30.*** *The distinction between mere breach of contract and the offence of criminal breach of trust and cheating is a fine one. In case of cheating, the intention of the accused at the time of inducement should be looked into which may be judged by a subsequent conduct, but for this, the subsequent conduct is not the sole test.* ***Mere breach of contract cannot give rise to a criminal prosecution for cheating unless fraudulent or dishonest intention is shown right from the beginning of the transaction i.e. the time when the offence is said to have been committed.*** *Therefore, it is this intention, which is the gist of the offence. Whereas, for the criminal breach of trust, the property must have been entrusted to the accused or he must have dominion over it. The property in respect of which the offence of breach of trust has been committed must be either the property of some person other than the accused or the beneficial interest in or ownership' of it must be of some other person. The accused must hold that property on trust of such other person. Although the offence, i.e. the offence of breach of trust and cheating involve dishonest intention, yet they are mutually exclusive and different in basic concept. There is a distinction between criminal breach of trust and cheating. For cheating, criminal intention is necessary at the time of making a false or misleading representation i.e., since inception. In criminal breach of trust, mere proof of entrustment is sufficient. Thus, in case of criminal breach of trust, the offender is lawfully entrusted with the property, and he dishonestly misappropriated the same. Whereas, in case of cheating, the offender fraudulently or dishonestly induces a person by deceiving him to deliver any property.* ***In such a situation, both the offences cannot co-exist simultaneously.****"*
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> *(emphasis supplied)*

15. From the above, it is amply clear that criminal machinery cannot be initiated for acts which are civil in nature and every act of breach of trust may not result in a penal offence of criminal breach of trust unless there is evidence of a manipulating act of fraudulent misappropriation. In the present case, the prosecution, at this *prima facie* stage, has failed to put forth any material indicating towards any manipulating act or fraudulent misappropriation of property done by the Applicant. The question whether the retention involves criminal breach of trust or only a civil liability can be proved at a later stage. At this *prima facie* stage, there appears to be no deception played by Applicant at inception of transaction – an important element of Section 420 IPC. Similarly the ingredients of Section 409 IPC do not *prima facie* seem to be satisfied on the face of record. There is complete failure on the part of First Informant to take steps after he did not receive the first tranche on the 45th day as promised from Accused No.5. He has waited thereafter for more than 1 year to file the present FIR invoking criminal action. First Informant was well within his rights to have approached the Court for injunction against Accused No.5 from further exhibiting the web series until the terms of payment were met as agreed. He did not choose to do so. He waited for an inordinately long period and has now pleaded that Applicant and Accused No.5 have wrongfully gained by exhibiting the film on the OTT platform. In such circumstances, I am of the *prima facie* opinion that that the aspect of 'criminality' is not present in the instant case against the Applicant and he deserves to be enlarged on Bail. His complicity in the alleged crime can be established by the prosecution at trial on evidence.

16. During the course of hearing, I am informed that the daughter of the Applicant is suffering from a severe medical ailment and the Applicant being the primary caretaker of his daughter seeks the same to be considered. I am in receipt of a report dated: 08.05.2025 by Apollo Children's Hospital which states that Ms. Saamya Sawant, daughter of Applicant was diagnosed to have Autoimmune Hemolytic Anemia (AIHA) in August 2022 for which she was admitted in the said hospital and had received blood transfusion. It is also stated in that report that she requires regular follow ups to monitor her health, hemoglobin levels and Steroid Therapy as there are high chances of relapse which may be life threatening. I have considered the said report. In view of the above overall *prima facie* observations, I am of the opinion that Applicant can be released on bail. Bail Application is allowed on 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 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.

17. It is clarified that the observations made in this order are limited for the purpose of granting Bail only and I have not made any observations on merits of the case. The trial shall be adjudicated on the strength of the evidence led and strictly on its own merits being uninfluenced with any of the *prima facie* observations made herein above in this order.

18. Bail Application is allowed and disposed in the above terms.

Ajay

[MILIND N. JADHAV, J.]

AJAY TRAMBAK UGALMUGALE

Digitally signed by AJAY TRAMBAK UGALMUGALE Date: 2025.05.12 14:11:54 +0530