Ajay

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

## CRIMINAL BAIL APPLICATION NO. 430 OF 2025

Vidyavasini Anandkumar Mishra .. Applicant
**Versus**
The State of Maharashtra .. Respondent

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- Mr. Dilip Shinde, Advocate for Applicant.
- Mr. R. M. Pethe, APP for Respondent – State.

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**CORAM : MILIND N. JADHAV, J.**
**DATE : FEBRUARY 14, 2025.**

**P.C.:**

**1.** Heard Mr. Shinde, learned Advocate for Applicant and Mr. Pethe, learned APP for Respondent – State.

**2.** This is an Application under Section 483 of the Bharatiya Nyay Sanhita, 2023 seeking Regular Bail in connection with C.R.No.509 of 2022 registered with Navghar Police Station for offences under Section 406, 420 and 120-B of the Indian Penal Code, 1860 read with Sections 3 and 4 of the Maharashtra Protection of Interest of Depositors (In Financial Establishment) Act, 1999.

**3.** Applicant before me is a 34 year old woman having two minor children. She was arrested on 10.09.2024 along with her husband who is the principal Accused No.1. She is arraigned as Accused No.2. Crime No.509 of 2022 is lodged by First Informant namely Bipin Shivshankar Jha on 05.07.2022. Investigation is completed and charge-sheet has been filed on 06.11.2024.

**4.** Briefly stated, according to prosecution case First Informant approached Accused No.1- husband of the Applicant who was an estate agent and evinced interest in buying a flat. Both accused resided in Flat No.101 on leave and license basis in New Golden Nest Society Bhayander (East) which belonged to First Informant. Accused No.1 told First Informant that Flat No. 102 next door which belonged to him could be purchased by him as he desired to sell it. First Informant was aware about the same because Accused No. 1 was known to him through his other friends in the locality. When First Informant wanted to invest in buying a flat in the locality Accused No.1 suggested to him to buy his own flat being Flat No. 102 so that he could have two flats adjacent to each other as he was in need of money. First Informant agreed. Both parties agreed on a total consideration of Rs.35 Lakhs. It is stated by First Informant that he immediately gave a token amount of Rs. 5 Lakhs in cash to Accused No.1 sometime in July, 2021. Thereafter, he paid an amount of Rs. 23.75 Lakhs to Accused No.1 in his bank account. Thus he paid a total amount Rs. 28.75 Lakhs. He sought execution and registration of the Sale Agreement from Accused No.1 but both the Accused thereafter became incommunicado and Accused No. 2 was sent to her village by Accused No.1. Accused No.1 did not answer his phone calls. Therefore, FIR was lodged. In the FIR

First Informant has stated that both Accused No.1 and 2 used the same *modus operandi* against four other persons by promising to sell to them Flat No. 102 to them and received part consideration of different denominations in cash and in their joint bank account. In the FIR First Informant has given details of the 4 persons whose statements have been recorded. Investigation has revealed the names of 5 more persons who have paid different amounts to the Accused No.1 in the present crime. Statements of 5 persons have been recorded. They are appended at Page Nos.105 to 110 of the Application. It is seen that only one person namely Manoj Keshav Dubey has filed FIR against both Accused on 04.05.2023 for similar offence. However his facts and allegations are completely different. He invested his monies with Accused No.1 but did not get his returns.

**5.** Mr. Shinde would submit that, the Applicant before Court i.e. Accused No.2 has received amount of Rs. 5 Lakhs in cash in the presence of Accused No.1 her husband who infact transacted with the First Informant as stated in the FIR. He would submit that there is no inducement by Applicant (Accused No.2) to any of the alleged purchasers including the First Informant to purchase the subject flat. He would submit that Applicant is not involved in any discussion with the alleged purchasers or with the First Informant herein regarding total or partial consideration and amounts parted by them over a substantial period of time. Hence, he would submit the Applicant be released on bail.

**6.** ***PER CONTRA***, Mr. Pethe, learned APP at the outset has vehemently submitted that invocation of MPID Act is made against the Applicant for having duped various investors on the lure of purchase of the subject flat. He has meticulously pointed out the statements of similarly placed 5 such investors who have advanced monies to the Accused persons for purchase of the subject flat which are appended to the Application. He has drawn my attention to the Leave and License Agreement of Flat No.101 where both Accused were residing. Next he has drawn my attention to the statement of the First Informant at Page No.99 wherein it is stated that he gave Rs.5 Lakhs to the present Applicant as token amount in cash for purchase of the flat and paid the balance amount in their joint bank account. Next he has read the statement of witness Salman Nazakat Khan appended at Page No.105 of the Application where he has stated that the said person gave Rs.1.5 Lakhs in cash to the Applicant in the present of Accused No.1 for purchase of the subject flat. Then he has drawn my attention to the statement of another witness Juber Nazakat Khan appended at Page No.107 of the Application wherein it is stated that the said person gave Rs.4 Lakhs in cash to the Applicant in the presence of Accused No.1 in their house. Similar are the statements of witnesses viz; Jitendra Singh and Raman Jha appended at Page Nos.108 and 110 of the Application wherein it is stated that they also gave Rs.5 Lakhs in cash each to the

Applicant in front of Accused No.1 in their house as token amount for purchase of the subject flat. He would submit that the said investors deposited the balance amount as agreed between parties in the joint bank account of both Accused which is apparent from the account statement placed at Page Nos.133 and 142 of the Application.

**7.** On the basis of the above submissions he would submit that Applicant was in the know how of everything that was done by her husband i.e. Accused No.1 and hence she cannot feign ignorance of the transactions in question. He would submit that Applicant is an equal accomplice and complicit in the crime in question. Hence, the Application for bail be rejected.

**8.** I have heard the learned Advocates for the parties and perused the record of the case. From reading the statements of the alleged investors it is seen that despite parting with such substantial amounts none of the said investors or First Informant in the case have obtained any receipt in writing or any documentation depicting the transaction of the subject Flat No.102 in question. It is ironical that there are 10 such persons who invested substantial amounts with the Accused persons and 9 out of them are claiming that there was an alleged transaction of the subject flat for which advance money was paid but none of them have a shed of documentary evidence to show that there was any agreement between them for purchase of the flat was purchased. One of the investor who is the First Informant in Crime No.234 of 2023 namely Manoj Keshav Dubey has filed a separate FIR dated 04.05.2023. His statement is not recorded though he was known to the First Informant in the present crime as can be seen from the record. His case is that Accused No.1 was in the transport and scrap business and persuaded him to make investments for better returns. His case is that, he invested Rs. 1.16 Crores over a substantial period of time with Accused No.1. He has not stated anything about dealing with the Applicant herein who is wife of Accused No.1. In that crime Accused No.2 i.e. present Applicant has been granted bail by Trial Court on merits.

**9.** However in the facts of the present case if Mr. Pethe's submissions are to be countenanced *prima facie* then in the absence of any proof of the alleged deposit for part payment made by the Applicant or similarly placed investors for purchase of the subject flat, they cannot be accepted. It is surprising that over a period time the alleged investors paid several amounts in the joint bank account of the Accused persons namely through Accused No.1 but did not seek any receipt or acknowledgment or documentary evidence for the subject flat transaction. This position raises a grave suspicion and doubt. *Prima facie* alleged role of Applicant before me is that she accepted Rs.5 Lakhs from some of the persons including First Informant and other smaller amounts from others in front of Accused No.1 in their house.

Since, there is nothing made available on record to corroborate the prosecution case with respect to the alleged Flat No.102 in question being agreed to be sold to First Informant, the benefit of doubt will have to be given to the Applicant. Further merely because amounts are received in the joint bank account may not be enough *prima facie* at this stage. From the record of the case it appears that Accused No.1 has a firm called Vidyavasini Properties dealing in property business which is seen from the record but that part has not been adequately investigated by the prosecution which can be seen. Present Application being Bail Application of Applicant is considered in the above facts. Applicant before me is having two minor children to provide care and support. Her husband i.e. Accused No.1 is in jail. He is the principal accused. The above facts if seen independently, considering the role of present Applicant, her further incarceration is unwarranted. She has made out a case for bail.

**10.** Hence the following order:-

(i) Applicant – Vidyavasisni Anandkumar Mishra is directed to be released on bail on furnishing P.R. Bond of Rs.25,000/- (Rupees Twenty Five Thousand only) with one or two sureties of the like amount;

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

(iii) 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 she does so it will entitle the prosecution to apply for cancellation of this order;

(iv) Applicant shall visit Investigating Officer of Navghar Police Station on the first Sunday of every month between 10:00 a.m. and 12:00 noon for the first six months after being released from prison and thereafter as and when called for by the Investigating Officer;

(v) Applicant shall not leave the State of Maharashtra without prior permission of the Trial Court; She shall deposit her passport with the Trial Court within one week of her release from prison;

(vi) Applicant shall keep the Investigating Officer informed of her current address and mobile contact number and / or change of residence or mobile details, if any, from time to time, as applicable;

(vii) Any infraction of the above conditions shall entail prosecution to apply for cancellation of bail granted to the Applicant.

**11.** It is clarified that the observations made in this order are limited to the question of grant of bail to the Applicant in the present Application and is not a expression of opinion of the Court and that the Trial Court shall proceed in the Trial without being influenced by the observations made in this order.

**12.** Bail Application is allowed and disposed.

**[ MILIND N. JADHAV, J. ]**

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AJAY TRAMBAK UGALMUGALE

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