Ajay

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL BAIL APPLICATION NO. 620 OF 2025

Jagdish Bhagwandas Ahuja .. Applicant
Versus
The State of Maharashtra .. Respondent

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- Mr. Tapan Thatte a/w. Mr. Bhavya Shah i./by ANP Partners for Applicant.
- Ms. Savita M. Yadav, APP for Respondent – State.

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CORAM : MILIND N. JADHAV, J.
DATE : APRIL 28, 2025.

P.C.:

1. Heard Mr. Thatte, learned Advocate for Applicant and Ms. Yadav, learned APP for Respondent – State.

2. This is an Application under Section 439 of the Code of Criminal Procedure, 1973 seeking Regular Bail in connection with C.R. No.143 of 2022 registered by Economic Offences Wing (EOW), General Cheating – 3 (initially registered as C.R. No.961 of 2022 registered with Santacruz Police Station) for offences under Sections 406, 409, 420 readwith 34 of the Indian Penal Code, 1860 readwith Section 3 of the Maharashtra Protection of Interest of Depositors Act, 1999 (for short "**MPID Act**"). There are two accused in the present crime. Applicant before me is indicted as Accused No.1. He is incarcerated since 23.01.2023 i.e. 2 years, 3 months and 6 days.

3. Briefly stated prosecution case is that Applicant and co-accused own M/s Adarsh Industrial Private Limited and Ahuja Properties Private Limited and are into construction business and they induced First Informant and his family to make investments with them by promising good returns. It is alleged that initially they kept their promise by paying the assured returns however thereafter when First Informant and his family members invested huge amounts, Applicant and co-accused duped them by not paying the promised interest amounts. It is the prosecution case that between 2015 and 2016, First Informant and his family members were induced by Applicant and co-accused to invest a total amount of Rs.4 crores at intermittent intervals and were not paid the promised returns namely principal amount alongwith interest as also 3 flats as promised.

4. Mr. Thatte, learned Advocate for Applicant would submit that Applicant was declared insolvent 2 months prior to the filing of FIR which was filed on 10.08.2022. He would argue that Applicant has fully co-operated with the prosecution case and he was arrested on 23.01.2023 which is after almost 5 months after the registration of the FIR. He would submit that though charge of prosecution is with respect to an amount of Rs.580 Crore, substantial properties of Applicant have been attached by the EOW.

4.1. He would submit that perusal of the material on record shows that there was no intention to dupe or deceive on part of Applicant and that he is a renowned businessman having successfully completed more than 50 construction projects in Mumbai. He would submit that the First Informant being conscious of the fact that Applicant was declared insolvent 2 months prior lodged the criminal case for cheating and criminal breach of trust thereby giving a criminal colour to an essentially civil dispute. He would submit that no offence as sought to be alleged is made out against the Applicant.

4.2. He would submit that investigation of the matter is completed and charge-sheet is filed and there is no possibility of the trial completing in the near foreseeable future. He would submit that Applicant is a senior citizen aged 73 years suffering from multiple age related ailments and his prolonged incarceration is unwarranted considering the facts of the present case wherein he has fully co-operated with the investigation conducted by the prosecution. Hence he would urge the Court to enlarge the Applicant on bail.

5. Ms. Yadav, learned APP has vehemently opposed the Bail Application and drawn my attention to the Affidavit-in-Reply dated 03.03.2025 filed by prosecuting agency and would submit that Applicant is the principal accused in the crime and his firm accepted huge investments to the tune of Rs.580 Crore and as against that till date only an amount of Rs.42 Crore has been secured by the prosecution. She would submit that there are more than 2500 investors out of whom only 166 have come forward pursuant to registration of the FIR. She would submit that co-accused Gautam Ahuja is still absconding and in the event if present Applicant is released on bail there is every possibility that he may abscond. She would submit that apart from the present crime Applicant has 9 criminal antecedents to his discredit. She would submit that Applicant being an influential person, there is every possibility of him tampering with evidence and influencing witnesses thereby creating a hurdle in the trial. In view of her above submissions she would urge the Court to reject the Bail Application.

6. I have heard the learned Advocates appearing for the respective parties and with their able assistance perused the record of the case.

7. It is settled law that a Court while deciding a Bail Application has to keep in mind the principal rule of bail which is to ascertain whether the Accused is likely to appear before the Court for trial. There are other broad parameters also like gravity of offence, likelihood of Accused repeating the offence while on bail, whether he would influence the witnesses and tamper with the evidence, his antecedents are required to be considered in such cases.

8. In the present case it is seen that Applicant who is a senior citizen aged 73 years is behind bars since 2 years, 3 months and 6 days pending trial. The transactions between the Applicant and First Informant *prima facie* appear to be business transactions wherein First Informant and his family members invested their monies with Applicant's firm and received assured returns initially since the year 2015 onwards owing to which they invested more amounts. Hence *prima facie* it is not a case where Applicant since inception had intended to dupe the First Informant, however owing to various reasons his business faced many setbacks and eventually Applicant's firm was declared insolvent by an order of this Court which was passed 2 months prior to filing of the present FIR.

9. It is trite law that offence of cheating and criminal breach of trust cannot co-exist. Perusal of the record *prima facie* reveals that there is no intention of deception since inception on part of Applicant considering the business record of Applicant as submitted by Mr. Thatte. The investigation is completed and trial is pending before the Court which would not be completed in the near foreseeable future. The argument of Ms. Yadav that Applicant cannot be granted bail as co-accused is absconding cannot be countenanced as it is the personal liberty of an under-trial accused i.e. Applicant in the present case which is at stake and he cannot be kept behind bars indefinitely. Hence *prima facie* considering the facts of the case, in my opinion

Applicant can be released on bail.

10. Assistance is drawn from the decision of the Supreme Court in the case of ***Sanjay Chandra Vs. Central Bureau of Investigation***[1] wherein the Supreme Court has held 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*).

11. Next, the decision of the Supreme Court in the case of ***P. Chidambaram Vs. Directorate of Enforcement*** [2] 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

1 (2012) 1 SCC 40
2 (2020) 13 SCC 791

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 accused to stand trial.

12. In view of the above *prima facie* observations on facts as also considering the observations of the Supreme Court in the above decisions and long incarcerattion of Applicant for 2 years 3 months 6 days pending trial a fit case for bail has been made out by Applicant before me. Needless to state that complicity of Applicant can be proved by prosecution at trial.

13. 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.50,000/- with one or two sureties in the like amount;

(ii) Applicant is permitted to furnish provisional cash bail of Rs.50,000/- for his release immediately and file undertaking that he will provide one or two sureties in the like amount of Rs.50,000/- 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.

14. 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.

15. Bail Application No.620 of 2025 is allowed and disposed.

[MILIND N. JADHAV, J.]

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