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

BAIL APPLICATION NO.721 OF 2025

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Nitin Vijya Masmar	... Applicant
V/s.	
The State of Maharashtra	... Respondent

Mr. Rahul Arote with Mr. Jay N. Suryawanshi for the applicant.

Mr. Prasanna P. Malshe, APP for the State.

CORAM : AMIT BORKAR, J.

DATED : JUNE 26, 2025

P.C.:

1. This is an application for bail filed by the accused–applicant under Section 483 of the *Bharatiya Nagarik Suraksha Sanhita, 2023* in connection with Crime No.292 of 2024 registered with Manikpur Police Station for the offences punishable under Sections 406, 409, 420 read with Section 34 of the *Indian Penal Code, 1860* and Sections 3 and 4 of the *Maharashtra Protection of Interest of Depositors (in Financial Establishments) Act, 1999* (MPID Act). The applicant is seeking his release on regular bail.

2. As per the submission of the applicant, he came to be arrested on 14th September 2024 and has been in custody since then. He states that the investigation is over and the charge-sheet has already been filed, and hence, his further custody is not

required.

3. The prosecution case is that the main accused Mukesh Bhoje had established a company named *M-Trade*. The present applicant was working in the said company as an accountant and was also looking after the financial records of the company. It is alleged that the accused persons, in connivance with each other, lured the informant and other witnesses to invest money in the company with the false assurance of receiving high returns. Thereafter, they misappropriated the invested amount and cheated the investors. The total amount allegedly defrauded comes to around ₹65,29,000/-.

4. The learned advocate appearing for the applicant submitted that the applicant was merely an employee of *M-Trade Company* and was not actively involved in the decision-making process of the company. It is submitted that the applicant was receiving only his salary for the services rendered as an accountant and was not the beneficiary of the alleged misappropriated funds. It is further submitted that the applicant has roots in society, is ready to abide by any conditions imposed by the Court, and therefore deserves to be enlarged on bail.

5. On the other hand, the learned APP opposed the bail application by submitting that the statements of certain witnesses show that some of the investors had directly handed over cash amounts to the present applicant. This, according to the prosecution, indicates his active involvement and connivance with the prime accused Mukesh Bhoje. It is therefore argued that the

applicant is not a mere employee but played a direct role in the alleged cheating, and hence, the bail application deserves to be rejected.

6. I have carefully considered the submissions made by both learned counsel for the applicant as well as the learned APP. I have also perused the case papers and material placed on record.

7. The investigation in the present case appears to be complete and the charge-sheet has already been filed. The applicant is in judicial custody since 14th September 2024 and no further custodial interrogation is required.

8. Prima facie, the role attributed to the present applicant is that he was an employee of *M-Trade Company* and was working in the capacity of an accountant. There is no material to show that the applicant was one of the promoters or a beneficiary of the investments made by the victims. The allegation that some investors handed over amounts to the applicant, even if accepted at face value, does not by itself establish that he had dominion over the funds or that he had misappropriated the same for personal gain.

9. It is also a settled position of law that bail is the rule and jail is the exception, particularly when the investigation is complete, the charge-sheet is filed, and the applicant is not shown to be a flight risk or likely to tamper with evidence. In the present case, there is nothing on record to indicate that the applicant would abscond or interfere with the prosecution witnesses if released on bail.

10. This Court is mindful of the seriousness of the allegations and the impact on the victims. However, the role of each accused has to be considered individually. In the absence of any cogent material showing that the applicant was directly and personally involved in the misappropriation of funds, and considering the length of custody already undergone, I am of the view that a case is made out for grant of bail, subject to appropriate conditions.

11. Hence, the following order is passed:

12. The applicant Nitin Vijya Masmar is directed to be released on bail in connection with Crime No.292 of 2024, registered with Manikpur Police Station for offences punishable under Sections 406, 409, 420 read with 34 of the Indian Penal Code, 1860 and Sections 3 and 4 of the MPID Act for releasing on bail, upon furnishing a personal bond of Rs.25,000/- (Rupees Twenty Five Thousand Only) with one or more solvent sureties in the like amount, to the satisfaction of the Trial Court, subject to the following conditions:

- i.** The applicant shall not tamper with the evidence or attempt to influence any witness.
- ii.** The applicant shall appear before the Trial Court on every date of hearing unless prevented by sufficient cause.
- iii.** The applicant shall not leave the territorial jurisdiction of the Trial Court without prior permission.
- iv.** The applicant shall not indulge in any criminal activity during the pendency of the trial.

13. At this stage, it is important to record that this Court, on multiple occasions, has issued directions to the State Government to ensure that the concerned Investigating Officer (IO) remains personally present at the time of hearing of bail applications. The purpose behind such directions is to ensure that the Court receives timely and accurate assistance in matters involving the liberty of an individual.

14. A perusal of the Government Resolution dated 23 January 2023 clearly mandates that Investigating Officers must remain present during bail hearings. In furtherance of this, the Deputy Commissioner of Police, Mumbai Commissionerate, also issued an Office Order dated 11 December 2023, instructing investigating officials to attend Court proceedings concerning their cases.

15. Further, the learned Additional Public Prosecutor (APP) has placed on record a communication issued by the Public Prosecutor, addressed to the Director General of Police, Commissioner of Police, and the Superintendents of Police of the State, calling for the establishment of an effective mechanism to provide proper assistance to Public Prosecutors in Court matters.

16. It is noted with concern that despite these repeated instructions, some Investigating Officers continue the practice of deputing only a constable with the case file, without remaining present themselves. This approach is wholly unsatisfactory and non-compliant with directions issued by the Court and the State authorities. The communication dated 6 March 2025 also records that Co-ordinate Benches of this Court have warned that in cases

of repeated default, they may impose costs or other appropriate directions against superior officers, including imposition of penalty up to ₹25,000/-.

17. From the records and submissions, it appears that despite the Government Resolution dated 23 June 2023, the Office Order dated 11 December 2023, and the communication dated 6 March 2025, the directions have not been followed in their true letter and spirit by the Investigating Officers. This consistent failure defeats the very object of judicial scrutiny in bail matters.

18. This Court has further observed that since at least 8 January 2025, Investigating Officers, even after receiving communications from the concerned APPs, have failed to remain present in Court during the bail hearings. As a result, valuable judicial time is lost, and more seriously, the liberty of undertrial prisoners is jeopardised. This not only affects the efficiency of the judicial system but also infringes upon the fundamental right to speedy justice, enshrined under Article 21 of the Constitution of India.

19. It is, therefore, imperative that the directions already issued by the Government are institutionalised through a dedicated mechanism. The communication dated 6 March 2025, issued by the Public Prosecutor, deserves to be acted upon without further delay to ensure that the prosecution machinery assists the Court effectively and meaningfully.

20. In view of the aforesaid discussion, it is hereby directed that the Principal Secretary, Home Department, State of Maharashtra, shall take immediate steps to constitute a robust mechanism to

ensure the presence of the Investigating Officers before the concerned Courts in all matters where their presence is necessary. This mechanism shall aim to streamline coordination between Investigating Agencies and Prosecutors, thereby enabling meaningful assistance to the Court.

21. The Principal Secretary, Home Department shall ensure that such mechanism is constituted and operationalised within a period of four weeks from today. The compliance of this direction shall be reported to this Court.

22. Accordingly, the present bail application stands disposed of in the aforesaid terms.

23. List the matter for compliance on 24 July 2025 as “First on Board.”

24. Let a copy of this order be forwarded to the Principal Secretary, Home Department, State of Maharashtra for immediate action and necessary compliance.

(AMIT BORKAR, J.)