Ashish

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO. 1165 OF 2025

Prasanjeet Bera ... Applicant
V/s.
State of Maharashtra ... Respondent

Mr.Satyaram Gaud for the Applicant.

Ms.Supriya Kak, APP for State-Respondent.

Mr.Harsh Ramchandane i/b Rajendra Rathod for informant.

Mr.Rauf Inamdar, PSI, Kalachowki Police Station.

CORAM : AMIT BORKAR, J.

DATED : JULY 9, 2025

P.C.:

1. This is an application filed by the applicant under Section 439 of the Code of Criminal Procedure, 1973 seeking regular bail in connection with Crime Register No.132 of 2024 registered with Kalachowki Police Station, Mumbai for the offence punishable under Section 409 of the Indian Penal Code, 1860.

2. As per the case of the prosecution, the applicant was earlier working as an employee in the company of the complainant for the last ten years. In the year 2022, the applicant expressed his desire to start his own business and requested the complainant to support him financially. It is alleged that the complainant agreed to extend such help. Accordingly, the applicant started a proprietary concern by the name of “J B Silver” at Sewri. It is alleged that for starting his business, the applicant was given an amount of ₹60,85,192/- through bank transfers and, in addition, 49,564.16 grams of silver was handed over to him with a mutual understanding that both the loan amount and the silver would be returned after the business started generating profits. It is not in dispute that the applicant has repaid an amount of ₹7,20,000/-. However, the core allegation in the First Information Report is that on 16th April 2024, the applicant suddenly shut down his business without settling the remaining dues and left for his native place in West Bengal. In such background, the present FIR came to be lodged alleging commission of criminal breach of trust.

3. The learned counsel appearing for the applicant has drawn attention of the Court to the supplementary statement of the complainant, wherein it is stated that the silver in question was in fact sold to the applicant. In support of this argument, the applicant has produced copies of invoices which, according to him, show that the goods were sold to his proprietary concern, J B Silver. It is his submission that if the transaction was in the nature of a sale, then the basic ingredients of Section 409 IPC—especially of entrustment—are not made out, and at the most the dispute is of civil nature. He further submits that although there was a breach of condition earlier imposed by the Magistrate not to leave Mumbai, the same can be addressed by imposing stricter and more stringent conditions. He therefore prays that the applicant be released on regular bail.

4. On the other hand, the learned APP for the State, assisted by the counsel for the complainant, opposes the bail application. They submit that the silver was entrusted to the applicant with a clear understanding that it would be returned, and the ownership of the said silver remained with the complainant. It is argued that there was no outright sale, and the invoices relied upon by the applicant are disputed and do not reflect a genuine transfer of ownership. According to the prosecution, the applicant misappropriated the said amount and silver for his own benefit, and thus committed criminal breach of trust as defined under Section 409 IPC. Furthermore, it is submitted that the applicant violated the bail condition earlier imposed by the Magistrate and was found and arrested at his native place in West Bengal. Therefore, there is a real and reasonable apprehension that if released on bail again, the applicant may once again abscond and delay the trial. Hence, the prosecution strongly opposes the grant of bail.

5. I have considered the submissions made by the learned counsel for the applicant, the learned APP for the State, and the learned counsel for the complainant. I have also perused the material placed on record, including the FIR, the supplementary statement of the complainant, and the invoices relied upon by the applicant.

6. The primary allegation against the applicant is of misappropriation of money and silver articles that were allegedly handed over by the complainant for the purpose of starting a business. It is an admitted position that the applicant and the complainant shared a long-standing employer-employee relationship of nearly a decade. The FIR itself suggests that the complainant willingly assisted the applicant in starting his own business and that some part of the financial assistance extended has already been repaid. These facts indicate that the transaction was not entirely without consent or trust.

7. Further, the applicant has relied upon invoices issued in the name of his proprietary concern "J B Silver" which, at this stage, raise a debatable issue whether the goods were entrusted for safekeeping or were sold outright as part of a business transaction. This aspect would require detailed scrutiny of evidence at the time of trial. Prima facie, therefore, there appears to be some uncertainty regarding the exact nature of the transaction and the issue of "entrustment," which is a core ingredient of the offence under Section 409 IPC.

8. It is also to be noted that the applicant has already undergone custodial interrogation, and further custodial detention may not serve any additional purpose. The apprehension of the prosecution that the applicant may abscond can be adequately safeguarded by imposing strict conditions, including restriction on movement outside Mumbai and regular attendance before the Investigating Officer.

9. It is well settled that bail is the rule and jail is an exception. The applicant does not have any past criminal antecedents, and the offence in question, though serious in nature, arises out of a transaction having civil colour. In such circumstances, continued detention of the applicant is not warranted.

10. Hence, in view of the aforesaid discussion, I am inclined to allow the present application.

ORDER

(i) The applicant is directed to be released on regular bail in connection with Crime Register No.132 of 2024 registered with Kalachowki Police Station for the offence punishable under Section 409 of the Indian Penal Code, on his executing a personal bond of ₹50,000/- (Rupees Fifty Thousand Only) with one or more sureties in the like amount.

(ii) The applicant shall attend the concerned police station on every Monday between 10:00 a.m. and 12:00 noon for a period of six weeks from the date of his release.

(iii) The applicant shall not leave the jurisdiction of Mumbai without prior permission of the Trial Court.

(iv) The applicant shall furnish his permanent and current residential address and mobile number to the Investigating Officer and shall not change the same without prior intimation.

(v) The applicant shall not tamper with the prosecution evidence or try to influence the witnesses in any manner.

(vi) If it is found that the applicant is misusing the liberty granted, it shall be open for the prosecution to seek cancellation of bail.

11. Application is accordingly allowed and disposed of.

(AMIT BORKAR, J.)