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

BAIL APPLICATION NO.1914 OF 2025

VAIBHAV
RAMESH
JADHAV

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Vijay Suresh Bane

... Applicant

V/s.

The State of Maharashtra

... Respondent

Mr. Madhukar P. Dalvi with Shivam S. Dube and
Subhash Bane for the applicant.

Ms. Shilpa G. Talhar, APP for the State.

Mr. Amit Bhosale, API, Kalachowki Police Station is
present.

CORAM : AMIT BORKAR, J.

DATED : JUNE 16, 2025

P.C.:

1. This is an application under Section 439 of the Code of Criminal Procedure, 1973, by which the applicant is seeking his release on bail in connection with Crime No.244 of 2024, registered at Kalachowki Police Station, for the alleged commission of offences punishable under Sections 409 and 34 of the Indian Penal Code, 1860.

2. The brief case of the prosecution is that between the period 23rd September 2022 to 28th May 2024, the applicant, who is stated to be the owner of Siddhivinayak Enterprises, in connivance with the informant's husband, is alleged to have misused the trust

reposed in them by the informant. It is alleged that the informant was made to take a personal loan in her name, and thereafter, she was instructed to transfer the said amount into the account of the partnership firm—Siddhivinayak Enterprises—amounting to a total sum of ₹32,58,886/-, which was purportedly for business purposes. However, the said amount was allegedly misappropriated and not returned, thereby giving rise to suspicion of criminal breach of trust.

3. The applicant was arrested on 16th December 2024. His earlier application for bail came to be rejected by the learned Sessions Court. The applicant has, therefore, approached this Court by filing the present application seeking regular bail.

4. Learned advocate for the applicant has submitted that even if the allegations made by the informant are accepted at their face value, the basic ingredients required to attract the offence under Section 409 of the IPC are not made out. It is contended that the loan was admittedly taken by the informant herself, and the said funds were subsequently transferred into the account of the partnership firm for business purposes. Since the applicant and the informant's husband were both partners in the said firm, the failure to repay the said amount, which appears to be a civil dispute arising out of a business transaction, cannot by itself give rise to criminal liability. It is submitted that mere non-return of money in the course of partnership business, particularly where loss is alleged, cannot be equated with dishonest misappropriation. Thus, there is no criminal intent that can be attributed to the applicant so as to invoke Section 409 IPC, which requires

entrustment coupled with dishonest misappropriation.

5. On the other hand, the learned APP opposing the bail application has submitted that the act of the applicant and the informant's husband shows a clear pattern of breach of trust. It is contended that the money borrowed in the name of the informant was never intended to be returned and was utilized for the benefit of the partnership firm. Despite repeated demands, the amount was not repaid, thereby attracting the ingredients of Section 409 IPC, which deals with criminal breach of trust by a person in a position of trust. Therefore, according to the prosecution, the role of the applicant is serious and his bail application deserves to be rejected.

6. I have carefully considered the submissions made by the learned advocate for the applicant as well as the learned APP for the State. I have also perused the charge-sheet and the relevant material placed on record. At this stage, it is important to note that the dispute arises from a business relationship between the applicant and the husband of the informant, who are stated to be partners in a firm named Siddhivinayak Enterprises. The prosecution does not dispute that the personal loan was obtained by the informant herself, and upon her own admission, the said loan amount was transferred into the account of the partnership firm.

7. The allegation is that the said amount, being to the tune of ₹32,58,886/-, was not returned and thereby the trust reposed in the applicant was breached. However, whether the non-return of

the amount constitutes dishonest misappropriation under Section 409 IPC or whether it is merely a civil liability arising from business loss, is a matter that will require detailed evidence and adjudication during the course of the trial. At this stage, there is no specific material to show that the applicant had dominion over the said amount in a fiduciary capacity or that he had misappropriated the amount for personal gain.

8. Further, it is not the case of the prosecution that the amount was transferred to the personal account of the applicant. It is not disputed that the amount was transferred to the account of a legally constituted partnership firm. It is also not the case that the applicant is a habitual offender or that he has misused his liberty while on bail in the past. The investigation is complete and the charge-sheet has been filed. The applicant is in custody since 16th December 2024, and no fruitful purpose would be served by keeping him behind bars during the pendency of the trial, which may take considerable time.

9. The offence alleged under Section 409 IPC is undoubtedly serious in nature, but whether the same is made out against the applicant in the present factual background is a debatable question, which the Trial Court shall consider on the basis of the evidence led during trial. At this prima facie stage, the applicant deserves the benefit of doubt for the purpose of bail.

10. In view of the above facts and circumstances, and taking into consideration the nature of allegations, the period of custody undergone, and absence of any possibility of tampering with

evidence or fleeing from justice, I am of the opinion that the applicant can be released on bail with appropriate conditions.

11. Order :

(a) The bail application is allowed.

(b) The applicant shall be released on bail in connection with Crime No.244 of 2024 registered with Kalachowki Police Station for offences punishable under Sections 409 and 34 of the IPC, on furnishing a Personal Bond of ₹25,000/- with one or two sureties of the like amount, to the satisfaction of the learned Trial Court.

(c) The applicant shall attend the Trial Court on all dates of hearing and shall not directly or indirectly contact the informant or any of the prosecution witnesses.

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

(e) If the applicant is found misusing the liberty granted to him, it shall be open to the prosecution to move for cancellation of bail.

(AMIT BORKAR, J.)