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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL BAIL APPLICATION NO. 1922 OF 2025

Shashank Kumar Santoshkumar Dixit .. Applicant (Accused No. 2)

Versus

The State of Maharashtra .. Respondent

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- Mr. Abhishek Yende a/w Mr. Sagar Paspohe & Mr. Rishikesh Dube, Advocates for Applicant.
- Mr. Sukanta A. Karmakar, APP for Respondent – State.
- Mr. Ravindra Ashok Kadam, PSI, Vasai Police Station.

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CORAM : MILIND N. JADHAV, J.

DATE : MAY 09, 2025.

P.C.:

1. Heard Mr. Yende, learned Advocate for the Applicant and Mr. Karmakar, learned APP for Respondent – State.

2. This is an Application under Section 439 of the Code of Criminal Procedure, 1973 (for short, **"Cr.P.C."**) seeking Regular Bail in connection with C.R.No. 407 of 2021 registered with Vasai Police Station, Palghar for offences punishable under Sections 420, 465, 467, 468, 471, 120-B read with 34 of the Indian Penal Code, 1860 (for short 'IPC'). There are in all 13 accused persons out of which Accused Nos. 3, 4 and 5 have been released on bail. Applicant is charge-sheeted as Accused No. 2 in the present crime. He was not named in the FIR filed on 12.11.2021. Applicant is arrested on 28.09.2022 after 10 months and incarcerated since then for the past 2 years 7 months 11 days pending trial.

3. It is prosecution case that for the first time on 29.12.2011 First – Informant came across a public notice in a newspaper and was shocked to see his name mentioned as the purported owner who intended to sell his land to a person. Pursuant to which during his inquiry in the month of February 2021, he then came across a registered Sale Deed dated 31.12.2020 wherein the First – Informant's land was sold to Shreehari Vishnu Builders through its partner Vilasrao Bhavar. According to prosecution person impersonating as First – Informant executed a Power of Attorney in favour of Accused No. 4 who then executed a registered Sale Deed in respect of the said land. First – Informant denied having executed the Power of Attorney and the Sale Deed. Hence the FIR.

4. According to the learned Advocate for Applicant, Accused No.5 is the principal conspirator. He would draw my attention to the order dated 19.07.2024. While drawing my attention to the said order, he would submit that the progress of the trial as recorded in the said order be considered by the Court for the purpose of considering the Bail Application since the Court has made certain observations regarding conduct of the trial by the concerned Investigating Officer in that order. I have perused the said order.

5. By virtue of that order the Court specifically directed the Trial Court to complete the trial within a period of six months. It is seen that it is a conditional order. The Court has stated that if the trial was not completed within a period of six months, then Accused Nos.4 and 5 shall be released on bail.

6. He would submit that since trial has not been completed and is still pending, in compliance of that order Accused Nos.4 and 5 have been released on bail. He would persuade the Court to consider the facet of long incarceration of present Applicant for 2 years, 7 months and 11days and the role of present Applicant for enlarging him on bail.

7. Learned Advocate for the Applicant would submit that Applicant is not named as an accused in the FIR. With regard to the alleged Sale Deed dated 31.12.2020, he would submit that none of the documents bear Applicant's signature. He would submit that on perusal of the chargesheet it is seen that the only role attributed to Applicant is that he was an agent / broker and nothing more, hence prosecution's own case of cheating and forgery falls to the ground. He would submit that Applicant in his capacity as an agent / broker received a commission of Rs. 2.65 lakhs in his account for the said land deal.

7.1. He would submit that the alleged fraudulent person claiming to be the owner of the land had all the necessary Government documents and ID proofs in the said name (real owner's name) and thus under that bonafide impression Applicant facilitated the said land deal as a broker. He would submit that prosecution has failed to demonstrate that Applicant had any knowledge with respect to the fraudulent person claiming to be owner of the said land. He would submit that prosecution has recovered a few documents which are alleged to be bogus / fraudulent, hence no further recovery is pending at the instance of the Applicant. He would submit that prosecution has failed to establish any direct link of Applicant to the crime in question. He would submit that mere facilitation of the land deal, possession of documents and receiving of amount of brokerage as an agent does not constitute an offence under any of the alleged Sections which are invoked.

7.2. He would submit that Applicant is the sole breadwinner of his family, has deep roots in the Society and has no criminal antecedents to his discredit. He would submit that Applicant is incarcerated for the past 2 years 7 months 11 days pending trial. He would submit that investigation is completed, charge-sheet is filed, 12 witnesses out of 13 prosecution witnesses have been examined by prosecution in the trial till date out of the probable 26 witnesses which they had initially stated in the charge-sheet but subsequently reduced to 13 witnesses. Completion of trial in the near foreseeable future being doubtful and co-accused Nos. 4 and 5 having been released on bail, he would urge the Court to consider Applicant's case on the ground of parity also.

8. Mr. Karmakar, learned APP for State has opposed the present Application. He would submit that Applicant in connivance with other accused persons prepared fraudulent documents in the name of First – Informant and thereby prepared a fraudulent Power of Attorney and Sale Deed. He would submit that the crime in question is of a serious nature. He would submit that the present Applicant is one of the beneficiary of the fraudulent transfer / crime in question as he has received an amount of Rs. 2.65 lakhs in his account. He would submit that during investigation few of the forged documents with respect to First - Informant's land were recovered at the instance of the Applicant hence it clearly shows and reflects Applicant's primary role in the present crime. He would submit that if Applicant is released on bail possibility of him re-offending himself, tampering with evidence and influencing First – Informant and witnesses cannot be ruled out. Hence he would urge the Court to reject the Bail Application.

9. I have heard the learned Advocates at the bar and perused the record with the able assistance of the learned Advocates.

10. On perusal of the charge-sheet it is *prima facie* seen that

Applicant is not named as an accused in the FIR. It is *prima facie* seen that Applicant has played a facilitative role in his capacity as an agent / broker in the said deal. The prosecution case appears to rest primarily on the recovery of certain documents, alleged to be forged and a few financial transactions. Insofar as allegation under Sections 467 and 468 of the IPC pertaining to forgery are concerned, no forensic expert report, definitive material or incriminating evidence is placed on record to support the allegation of forgery against Applicant. Prosecution's claim remains unsupported in absence of expert evidence, thereby weakening the case at this preliminary stage. With respect to the offence under Section 420 of the IPC it is *prima facie* seen that there is no element of deception at the stage of inception or fraudulent inducement at the inception of the transaction, which is a necessary ingredient for the constitution of the said offence by the Applicant. Mere alleged possession of documents that are later alleged to be forged, without any material to demonstrate Applicant's knowledge of their fraudulent nature, does not itself constitute an offence under the invoked provisions. It is *prima facie* seen that prosecution has failed to establish a direct link of Applicant to the crime in question.

11. However what intrigues the Court is whether further incarceration of Applicant is required or justified overriding his right to liberty and speedy trial? The reason which impels me to consider the present Application is long incarceration of Applicant, lack of *prima facie* incriminating material and absence of any criminal antecedents. Regarding allegations of receiving money for the said fraudulent transaction undoubtedly that will be a case for trial if proved on the basis of evidence. Needless to state that the complicity of the Applicant in crime can be proved in trial.

12. 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.

13. Argued before me is a case concerning liberty of an undertrial who has been incarcerated for 2 years 7 months 11 days a situation impacting the rights of under-trial conferred by Article 21 of Constitution to speedy justice as also personal liberty. In so far as the power of High Court to grant bail is concerned, when the case is such that involves a question of personal liberty of an undertrial who is incarcerated for a very long period, the powers are wide and unfettered by conditions, the principle rule being that bail is the rule and refusal is the exception, allowing accused persons to better prepare their defence.

14. In the case of ***Emperor vs H.L. Hutchinson***[1] the Allahabad High Court, as far back as in the year 1931 held that power of granting bail conferred on High Court is entirely unfettered by any conditions. It held that legislature has given the High Court and the Court of Session discretion unfettered by any limitation other than that which controls all discretionary powers vested in a Judge, viz. that the discretion must be exercised judiciously. The Court has given primacy to the fact that accused person if granted bail will be in a much better position to defend himself. In this very case, it was delineated that grant of Bail is the Rule and refusal is an exception. This was in the famous Meerut Conspiracy case. Justice Mukherjee writing for the Bench in paragraph No.9 held as under:-

> *"9. Speaking for myself, I think it very unwise to make an attempt to lay down any particular rules for the guidance of the High Court, having regard to the fact that the legislature itself left the discretion of the Court entirely unfettered. The reason for this action on the part of the legislature is not far to seek. The High Court might be safely trusted in this matter and it goes without saying that it would act in the best interests of justice whether it decides in favour of the prosecution or the defence. The variety of cases that may arise from time to time cannot be safely classified and it will be dangerous to make an attempt to classify the cases and to say that in particular classes a bail may be granted but not in other classes."*

15. Thereafter the Supreme Court in a plethora of judgements have discussed the rights conferred by Article 21 qua grant of bail and

1 AIR 1931 ALL 356

that such rights cannot be taken away unless the procedure is reasonable and fair and in cases where there is unreasonable delay in trial it would undoubtedly impact the rights of an undertrial. Some of the important decisions of the Supreme Court and some of the High Courts are discussed hereinunder:-

15.1. In the landmark judgment of ***Maneka Gandhi V. Union of India***[2], Supreme Court held that the right to life and personal liberty under Article 21 is not limited to mere physical existence but includes the right to live with dignity. The court emphasized that the procedure established by law must be fair, just, and reasonable, and it cannot be arbitrary, oppressive, or unreasonable.

15.2. In the case of ***Hussainara Khatoon Vs. Home Secy., State of Bihar***[3] the Supreme Court held as under:-

> *"Now obviously procedure prescribed by law for depriving a person of liberty cannot "reasonable, fair or just" unless that procedure ensures a speedy trial for determination of the guilt of such person. No procedure which does not ensure a reasonably quick trial can be regarded as "reasonable, fair or just" and it would fall foul of Article 21. There can, therefore, be no doubt that speedy trial, and by speedy trial we mean reasonably expeditious trial, is an integral and essential part of the fundamental right to life and liberty enshrined in Article 21. The question which would, however, arise is as to what would be the consequence if a person accused of an offence is denied speedy trial and is sought to be deprived of his liberty by imprisonment as a result of a long delayed trial in violation of his fundamental right under Article 21."*

16. Applicant in present case has been in custody for almost 2 years 7 month and 11 days. There is no possibility of the trial

2 1978 (1) SCC 248
3 (1980) 1 SCC 81

concluding in the near future. Detaining an under-trial prisoner for such an extended period further violates his fundamental right to speedy trial flowing from Article 21 of the Constitution. At this juncture I deem it appropriate to list certain observations of the Supreme Court shedding light on concerns underlying the "Right to speedy trial" from the point of view of an accused in custody whose liberty is affected. In the case of ***Abdul Rehman Antulay & Ors. Vs R.S. Nayak & Anr.***[4] the Supreme Court held as under:-

> *86. In view of the above discussion, the following propositions emerge, meant to serve as guidelines. We must forewarn that these propositions are not exhaustive. It is difficult to foresee all situations. Nor is it possible to lay down any hard and fast rules. These propositions are:*
>
> *(1) Fair, just and reasonable procedure implicit in Article 21 of the Constitution creates a right in the accused to be tried speedily. Right to speedy trial is the right of the accused. The fact that a speedy trial is also in public interest or that it serves the societal interest also, does not make it any-the-less the right of the accused. It is in the interest of all concerned that the guilt or innocence of the accused is determined as quickly as possible in the circumstances.*
>
> *(2) Right to Speedy Trial flowing from Article 21 encompasses all the stages, namely the stage of investigation, inquiry, trial, appeal, revision and retrial. That is how, this Court has understood this right and there is no reason to take a restricted view.*
>
> ***(3) The concerns underlying the Right to speedy trial from the point of view of the accused are:***
>
> ***(a) the period of remand and pre-conviction detention should be as short as possible. In other words, the accused should not be subjected to unnecessary or unduly long incarceration prior to his conviction;***
>
> ***(b) the worry, anxiety, expense and disturbance to his vocation and peace, resulting from an unduly prolonged investigation, inquiry or trial should be minimal; and***
>
> ***(c) undue delay may well result in impairment of the ability of the accused to defend himself, whether on account of death, disappearance or non-availability of witnesses or otherwise."***

4 1992 (1) SCC 225

(4) – (11) -------x------- *(emphasis supplied)*

17. The Supreme Court has held in a series of judgments and orders that in situations where the under-trial prisoner / accused persons have suffered incarceration rather long incarceration for considerable period of time and there is no possibility of the trial being completed within the foreseeable future, Constitutional Courts can exercise power to release the accused under-trial on bail, as bail is the rule and jail is the exception.

18. Considering Applicant's role as emanating from prosecution record without any incriminating material to corroborate the same, absence of criminal antecedents, it is crucial to consider that co-accused Nos. 4 and 5 have already been enlarged on bail, which therefore establishes a clear case of parity also. Applicant is incarcerated for the past 2 years 7 months 11 days pending trial and given that investigation is completed, charge-sheet is filed, 12 witnesses out of 13 prosecution witnesses have been examined by prosecution in the trial till date out of the probable 26 witnesses which they had initially stated in the charge-sheet, but subsequently reduced to 13 witnesses, completion of trial in the near foreseeable future is doubtful. Hence I am of the opinion that Applicant can be released on bail.

19. Hence, 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. 25,000/- with one or two sureties in the like amount;

(ii) After his release from jail, Applicant shall report to the Investigating Officer as and when called for;

(iii) Applicant shall attend the trial Court on first Monday of every month between 11.00 a.m. and 1.00 p.m. to mark his presence. If the first Monday of the said month falls on a holiday and / or non Court working day, the Applicant shall mark presence on the next working day;

(iv) 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;

(v) Applicant shall not leave the State of Maharashtra without prior permission of the Trial Court;

(vi) Applicant shall deposit his passport if any with the Trial Court;

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

(viii) 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;

(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.

20. It is clarified that the above observations in this order are limited for the purpose of granting bail only and I have not made any observations on the merits of the case and the trial shall be adjudicated on the basis of the evidence led by parties uninfluenced by the present order and strictly in accordance with law.

21. Bail Application is allowed and disposed.

[MILIND N. JADHAV, J.]

RAVINDRA MOHAN AMBERKAR Digitally signed by RAVINDRA MOHAN AMBERKAR Date: 2025.05.10 16:01:49 +0530