

Santosh

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO. 3998 OF 2025

Shankar Ravji Patole ...Applicant
Versus
State of Maharashtra ...Respondent

AND

BAIL APPLICATION NO. 4015 OF 2025

Sushant Surve ...Applicant
Versus
The State of Maharashtra and ors. ...Respondents

AND

BAIL APPLICATION NO. 4032 OF 2025

Omkar Ram Gaikar ...Applicant
Versus
The State of Maharashtra ...Respondent

Mr. Aabad Ponda, Senior Advocate, a/w Saurabh Butala and
Manvi Sharma, for the Applicant in BA/3998/2025.

Mr. Sudeep Pasbola, Senior Advcoate, a/w Waqur Pathan, for
the Applicant in BA/4015/2025.

Mr. Harshad Sathe, a/w Jayesh Tikhe, i/b Shubham Gangan
and Aishwarya Hinge, for the Applicant in BA/4032/
2025.

Mr. P. P. Mulshe, APP for the State in BA/3998/2025.

Mr. Kiran Shinde, APP for the State in BA/4015/2025 and
BA/4032/2025.

Mr. Suhas Shinde, Addl. S. P., Anti Corruption, Thane, present.

CORAM: N. J. JAMADAR, J.

DATED: 17th OCTOBER, 2025

Order:-

1. The applicants, who are arraigned in CR No.671/2025
registered with Naupada Police Station, Thane, for the offences

SANTOSH
SUBHASH
KULKARNI

Digitally signed by
SANTOSH SUBHASH
KULKARNI
Date: 2025.10.17
22:05:48 +0530

punishable under Sections 7, 7-A and 12 of the Prevention of Corruption Act, 1988 (“the PC Act, 1988”), have preferred these applications to enlarge them on bail.

2. The gravamen of indictment against the applicants runs as under:

2.1 The first informant is a builder by profession. The first informant was developing a property at Arjun Madhavi. There were unauthorized structures on the said property. The first informant was introduced to Shankar Patole (A1), the public servant, then posted as the Deputy Municipal Commissioner, at Thane Municipal Corporation.

2.2 Shankar Patole (A1) initially demanded Rs.20,00,000/- for initiating action in regard to the said unauthorized structures. At the instruction of Shankar Patole (A1), a sum of Rs.10,00,000/- was transferred to the account of Sushant Surve (A3). Yet, apart from issuing two notices, no action was taken in respect of those unauthorized structures.

2.3 The first informant again approached Shankar Patole (A1). The latter demanded a further bribe of Rs.50,00,000/-. The first informant approached ACB and lodged the complaint.

2.4 After verification of the demand of bribe on 30th September, 2025, a trap was laid. However Shankar Patole (A1) did not call the first informant on 30th September, 2025. On the next day, Shankar Patole (A1) made a WhatsApp call to the first informant. The conversation was recorded in a voice recorder. Accused No.1 reiterated the demand of bribe. A trap was laid. The complainant carried a bag containing currency notes of the value of Rs.10,00,000/- and dummy notes of Rs.15,00,000/-. Shankar Patole (A1) asked the complainant to come alone to his chamber. After discussion, Shankar Patole (A1) instructed Omkar Gaikar (A2) to collect the cash. First informant returned to the spot where the car in which the currency notes were kept. Omkar Gaikar (A2) followed the accused on a motorcycle. After Omkar Gaikar (A2) collected the bag containing the currency notes, pursuant to the pre-decided gesture, the raiding party swooped in and Omkar Gaikar (A2) was apprehended. The tainted currency notes were seized. All accused were arrested.

2.5 By an order dated 10th October, 2025, the learned Special Judge rejected the bail applications preferred by the applicants. The learned Special Judge was, *inter alia*, of the view that the investigation was in progress and there was possibility of discovery of more grave offences and complicity of the public

servant for an offence punishable under Section 13(1)(b) of the PC Act, 1988.

3. I have heard Mr. Aabad Ponda, the learned Senior Advocate for the applicant in BA/3998/2025, Mr. Sudeep Pasbola, the learned Senior Advocate for the applicant in BA/4015/2025, Mr. Harshad Sathe, the learned Counsel for the applicant in BA/4032/2025, Mr. P. P. Malshe, the learned APP for the State in BA/3998/2025 and Mr. Kiran Shinde, the learned APP for the State in BA/4015/2025 and 4032/2025. I have also perused the material on record and the investigation papers tendered for the perusal of the Court.

4. Mr. Ponda would urge that there is clear non-compliance of the mandate contained in Section 35(3) of the Bharatiya Nagarik Suraksha Sanhita, 2023 ("BNSS") (Section 41A of the Criminal Procedure Code, 1973), as no notice was given to the applicants though none of the offences for which the applicants have been arraigned entails punishment exceeding seven years. The learned Special Judge has also not adverted to the aspect of the necessity of the arrest and the non-compliance of the statutory mandate. On this count of illegal arrest itself, the applicants deserve to be enlarged on bail. To lend support to this submission, Mr. Ponda placed reliance on the judgment of

the Supreme Court in the case of *Satender Kumar Antil vs. Central Bureau of Investigation and another*¹.

5. On the merits of the matter, Mr. Ponda would urge, where the allegations are that a public servant has been apprehended red-handed, while accepting the bribe, the prosecution case can be said to be an open and shut case. The further detention of the public servant in judicial custody serves no purpose. Where the entire material has already been collected by the investigating agency, the accused could not have been deprived of their liberty as it would amount to pre-trial punishment. To buttress these submissions, Mr. Ponda placed reliance on the judgments of this Court in the cases of *Khemlo Sakharam Sawant vs. State*² and *Dipak Desai vs. State though Police Inspector, CID, Crime Branch, Dona Paula, Goa and another*³ both arising out of the prosecution of a public servant for the offences under PC Act, 1988.

6. Mr. Pasbola, the learned Senior Advocate for Sushant Surve (A3), submitted that Sushant Surve (A3) has no concern with the core incident of demand of bribe of Rs.50,00,000/- and alleged acceptance of Rs.25,00,000/- by way of undue

1 (2022) 10 Supreme Court Cases 51.

2 2001 SCC OnLine Bom 395.

3 2014 SCC OnLine Bom 330.

advantage. It was submitted that the first informant had deposited the sum of Rs.10,00,000/- in the account of the Sushant Surve (A3), in the month of July, 2025 towards the consultancy charges. At that point of time, no grievance was made by the first informant within a period of seven days of the said deposit, as warranted by the provisions contained in Section 8 of the PC Act, 1988.

7. Mr. Sathe, the learned Counsel for Omkar Gaikar (A2), submitted that the accused had no inkling that the bag, which the accused collected, contained the alleged bribe amount. In a sense, the accused was not privy to the alleged offences. The accused has no antecedents. Therefore, the accused deserved to be enlarged on bail.

8. Mr. Malshe, the learned APP, stoutly resisted the prayer of bail. It was submitted that the public servant had indulged in the offences punishable under Sections 7 and 7-A of the PC Act, 1988 in a disingenuous manner so as to conceal his involvement. The accomplices were made to receive bribe amount. The evidence on record firmly establishes both the ingredients of demand and acceptance. In these circumstances, when the investigation is at the nascent stage, the applicants do not deserve to be release on bail.

9. Mr. Malshe further submitted that yesterday, at the instance of the public servant, the first informant was threatened out of his life by one of the public servant's unknown associate. The first informant had lodged a report being FIR No.642 of 2025 with Thane City Police Station for an offence punishable under Section 351(3) of the Bharatiya Nyaya Sanhita, 2023 ("BNS"). As the public servant is highly influential person and there has been an attempt to intimidate the first informant, the release of the public servant would hamper the investigation.

10. Mr. Shinde, the learned APP, supplemented the submission of Mr. Malshe. It was urged that the involvement of Omkar Gaikar (A2) and Sushant Surve (A3) in the offences is clearly established. Omkar Gaikar (A2) was apprehended red-handed. The first informant credited the bribe amount in the account of Sushant Surve (A3). In such circumstances they do not deserve to be enlarged on bail.

11. I have given careful consideration to the submissions canvassed on behalf of the parties. The factors which are required to be kept in view while considering a prayer for bail are well recognized. The gravity of the offence and the severity of the punishment are of significance. Indisputably, the

offences entail punishment which may extend to seven years. In the case of ***Satender Kumar Antil*** (supra), the Supreme Court observed that offences punishable with imprisonment of seven years or less, not falling in categories B and D, one would expect a better exercise of discretion on the part of the Court in favour of the accused.

12. In the case at hand, undoubtedly the material on record makes out a *prima facie* case against the accused. However, the Court cannot lose sight of the fact that it is essentially a trap case. The conversation containing the alleged demand of bribe has been recorded. The demand of bribe has been allegedly verified. Omkar Gaikar (A2) was allegedly apprehended with the bribe amount, which he collected for and on behalf of the public servant. The credit of amount of Rs.10,00,000/- to the account of Sushant Surve (A3) is documented. The statements of the first informant and witnesses to the pre-trap panchnama and the trap panchnama seem to have been recorded.

13. In the aforesaid context, the objection of the prosecution on the grounds of progress of investigation and the likelihood of tampering with evidence and threatening the witnesses is required to be appreciated. The public servant, the Court was informed, has been suspended from service. This factor

disables the public servant, to a large extent, from tampering with the official record which bears upon the guilt of the public servant. The investigation into the alleged amassing of wealth disproportionate to the income of the public servant would also substantially revolve around documents. A permission for open enquiry in that regard is awaited. In this backdrop, the Court *prima facie* finds that the further detention of the accused is not warranted to facilitate unhindered investigation.

14. In the case of ***Khemlo Sawant*** (supra), a learned Single Judge of this Court, observed that bail is rule and jail is an exception, particularly when the offence in question is not an offence which involves life or death sentence. In the context of the apprehension of tampering with evidence, the learned Single Judge observed that, in that case, the said apprehension was totally misplaced for the simple reason that, having regard to the nature of the allegations in the complaint, the crucial evidence was that of the complainant himself. Therefore, in case the applicant is released on bail, and attempts to bring any pressure on the complainant, that would be a good case for cancellation of bail, but it will result in miscarriage of justice to keep the applicant in custody on the basis of mere apprehension.

15. In the case of *Dipak Desai* (supra), following the aforesaid decision, another learned Single Judge exercised the discretion to grant bail to the accused, who were arraigned for the offences punishable under PC Act, 1988 by observing that no purpose would be served by keeping the accused in custody as they were remanded to judicial custody and there was no possibility of any further custodial interrogation.

16. On the aspect of the alleged threatening of the first informant by an unknown person, at the instance of the public servant, the matter would warrant investigation to establish the nexus between the unknown person, who allegedly threatened the first informant, and the public servant.

17. In the totality of the circumstances and especially having regard to the nature of the accusation, the further detention of the applicants appears wholly unwarranted. The applicants appear to have roots in the society. None of the applicants is stated to have such antecedents as to put the Court on guard. In the context of the nature of the accusation, the possibility of tampering with the evidence appears to be remote. Nonetheless, having regard to the fact that the first informant has lodged a report to the effect that an unknown person had threatened the first informant, stringent conditions are required to be imposed.

18. Hence the following order:

: O R D E R :

- (i) BA/3998/2025, BA/4015/2025 and BA/4032/2025 stand allowed.
- (ii) Shankar Ravji Patole (A1), the applicant in BA/3998/2025, Sushant Surve (A3), the applicant in BA/4015/2025 and Omkar Ram Gaikar (A2), the applicant in BA/4032/2025, be released on bail in CR No.671/2025 registered with Naupada Police Station, Thane, on furnishing a PR Bond in the sum of Rs.1,00,000/-, each, with one or more sureties in the like amount to the satisfaction of the learned Special Judge.
- (iii) The applicants shall mark their presence at the ACB, Thane, on every Monday between 10.00 a.m. to 2.00 pm. till the filing of the charge-sheet.
- (iv) The applicants shall not tamper with the prosecution evidence. The applicants shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing the facts to Court or any police officer.
- (vi) The applicants shall not enter the limits of Thane District

for the period of two months or till the filing of the charge-sheet, whichever is earlier, except for the purpose of attending the office of ACB, Thane.

- (vii) On being released on bail, the applicants shall furnish their contact numbers and residential address to the investigating officer and shall keep him updated, in case there is any change.
- (viii) By way of abundant caution, it is clarified that the observations made hereinabove are confined for the purpose of determination of the entitlement for bail and they may not be construed as an expression of opinion on the guilt or otherwise of the applicants and the trial Court shall not be influenced by any of the observations made hereinabove.

Applications stand disposed.

[N. J. JAMADAR, J.]