Amberkar

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL BAIL APPLICATION NO. 184 OF 2025

Mohammed Farooq Mohammed Hanif Shaikh .. Applicant
Versus
The State of Maharashtra .. Respondent

WITH
INTERIM APPLICATION NO. 211 OF 2025
WITH
INTERIM BAIL APPLICATION NO. 461 OF 2025

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- Mr. Aabad Ponda, Senior Advocate a/w. Mr. Sandeep Karnik and Vishwajeet Nimbalkar, Advocates for Applicant.
- Ms. Komal Kandharkar, SPP a/w. Ms. Rajeshree Newton, APP for Respondent – State.
- Mr. Santosh Musale i./by Mr. Pravin Dasale, Advocates for Intervenor.

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CORAM : MILIND N. JADHAV, J.

DATE : FEBRUARY 14, 2025

P. C.:

1. Heard Mr. Ponda, learned Senior Advocate for Applicant; Ms. Kandharkar, learned SPP for Respondent – State and Mr. Musale, learned Advocate for Intervenor.

2. The Applicant is arraigned as Accused No.4 in Crime No.7 of 2024 for offences under Sections 403, 409, 420, 465, 467, 468, 471, 477-A and 109 of Indian Penal Code, 1860 read with Sections 7, 12, 13(1)(a) and 13(2) of Prevention of Corruption Act, 1988. There are a total of nine accused out of which Accused Nos.1 and 5 have been released. Accused No.1 has been directed to be released by the Division Bench of this Court for non-compliance of provisions of Section 50 of the Code of Criminal Procedure, 1973 while accused No.5 has been released on bail by this Court on 09.01.2025. There are three absconding Accused namely Yusuf Khan, Swami and Samir Shaikh. Applicant is arrested on 02.07.2024. Charge-sheet is filed on 14.08.2024 followed by a supplementary Charge-sheet on 30.11.2024.

3. According to prosecution, Accused have benefited illegally from refund of Input Tax Credit under Maharashtra Goods and Service Tax Act, 2017 (for short "**MGST Act**") Act by wrongfully availing the same allegedly with the connivance of a GST officer namely Accused No.1 who allowed 16 companies / firms to claim such Input Tax Credit to the tune of Rs. 1,75,93,12,622/- in total. Applicant is indicted as accused based on the statement of one Zabi-ur-Rehman Kamruddin Salmani dated 23.03.2024 appended at page No.556 of the Application who claimed such Input Tax Credit on behalf of one of the 16 entities namely M/s. S. K. Fashion Exports which claimed and got Input Tax Credit refund of Rs. 26,08,10,658/-. On the basis of the aforesaid statement of proprietor of M/s. S. K. Fashion Exports role of Applicant according to prosecution is that one of the absconding co-accused Faizan took him to Karnataka Bank, Fort branch where he met the Applicant and Accused No.2 – Kiran Bhanushali; from there they all proceeded to the Karnataka Bank branch at Koparkhairane, Vashi. Applicant's name is appearing in the charge-sheet in respect of one incident dated 29.11.2021 when he was accompanied by one police constable and at around 06:45 p.m. Applicant reached outside Karnataka Bank branch at Koparkhairne, Vashi and without the police constable’s consent, entered the said branch office alone and returned back after 15 to 20 minutes. It is prosecution case that during that time, Applicant threatened the Branch Manager of the Bank Mr. Satish Gaikwad to transfer / allow withdrawal of the Input Tax Credit received in the bank account of M/s. S. K. Fashion Exports and he therefore conspired for receiving the illegal Input Tax Credit illegally and caused loss to the State’s exchequer to the tune of Rs. 26 crores.

4. *Prima facie* before I proceed with the submissions and record of the case, the case of prosecution is not borne out from the record. Allegation against Applicant is for giving threat to the Bank Manager and allowing M/s. S. K. Fashion Exports to withdraw Rs. 26 Crores received by it as Input Tax Credit. The alleged case however throws a different picture rather which is *prima facie* seen.

5. Mr. Ponda, learned Senior Advocate has addressed me on two counts namely merits for securing regular bail and on medical grounds also. On the merits of the matter he would submit that case of the prosecution is completely belied *prima facie* by the statement of

the bank manager Mr. Satish Gaikwad recorded by the prosecution. That statement is appended at page No.558 and it states that the proprietor of M/s. S. K. Fashion Exports Mr. Zabi-ur-Rehman Kamruddin Salmani opened and maintained the bank account in the said branch after compliance was effected and the said account had normal transactions. It further states that an amount of Rs.1,14,87,412/- was credited into that account and some individual came to transfer that amount on 26.11.2021 through RTGS. It further states that the documentation brought by the said person was incomplete and therefore he was asked to bring complete documentation since the amount was huge. It further states that on that same evening at around 6:00 p.m. the person who had come in the morning came to the bank and after about one hour, some other persons joined him and informed the Manager that they were the Chartered Accountants of the Company M/s. S. K. Fashion Exports and they along with the proprietor furnished the documentation to the Manager. It further states that the Manager scrutinized the documents and informed him that on that date, depending upon the documentation provided, he could allow transfer of Rs. 75,00,000/- through RTGS to the bank account of a Company called Flowways Private Limited. He further states that on 01.12.2021, the balance amount of Rs. 38,84,000/- was also transferred by RTGS to the bank account of another Company called Outsource Optimization Private Limited after documentation was submitted to the bank.

5.1. Mr. Ponda would vehemently submit that no trail of money has been established to have been received by the Applicant from the said bank account of M/s. S. K. Fashion Exports which is evident from the material placed in the charge sheet. He would submit that the second statement relied by the prosecution to indict the Applicant is of the escort guard of the Applicant which is appended at page No.560. This statement is dated 04.09.2024 recorded after three months after recording that statement of the Bank Manager. It states that on 29.11.2021 he was on guard duty with the Applicant and while proceeding to the hospital along with the Applicant, they stopped at the ATM of Karnataka Bank branch at Koparkhairane at about 6:45 p.m. It states that both the guard and the Applicant came out of the car and Applicant proceeded to the ATM kiosk for effecting withdrawal but since there were 3 - 4 persons waiting in the queue, Applicant decided to enter the office of the said branch. The said statement states that the guard objected and precluded the Applicant from entering the bank which was not listened to by the Applicant. Thereafter the Applicant came out after 15 minutes. He would submit that save and except the aforesaid statements, there is nothing more to indict the Applicant's role. He would submit that Applicant has not been named by the Bank Manager. In anticipation of the submission on antecedents of the Applicant, Mr. Ponda would refer to and rely upon the decisions of the Supreme Court in support of Applicant's case for grant of bail and would contend that the Court will have to only consider *prima facie* case and no other circumstances. He would submit that Supreme Court has repeatedly held that merely on the basis of criminal antecedents case for bail cannot be rejected without considering *prima facie* nexus. Mr. Ponda has referred to and relied upon the following decisions of the Supreme Court and this Court in support of his case:-

(i) ***Bhagirathsinh s/o Mahipat Singh Judeja Vs. State of Gujarat.[1];***

(ii) ***Maulana Mohammed Amir Rashadi Vs. State of Uttar Pradesh and Another[2];***

(iii) ***Abdulmajid Abdulsattar Memon Vs. State of Gujarat[3];***

(iv) ***Kishor Raman Yadav Vs. State of Maharashtra and connected matter[4];***

(v) ***Amit Harish Dave Vs. State of Maharashtra[5];***

(vi) ***Sanjay Chandra Vs. Central Bureau of Investigation[6]; and***

(vii) ***Neeraj Triyuginarayan Mishra Vs. The Union of India and Ors[7].***

1 (1984) 1 SCC 284.
2 (2012) 2 SCC 382.
3 Criminal Appeal No(s).3525 of 2024 decided on 27.08.2024 (Supreme Court).
4 Bail Application No.2917 of 2024 decided 05.09.2024 (Bombay HC).
5 Bail Application No.2994 of 2024 decided on 09.01.2025 (Bombay HC).
6 (2012) 1 SCC 40.
7 Public Interest Litigation No.105 of 2019 decided on 09.05.2024 (Bombay HC).

5.2. He has drawn my attention to the decision of the SC in the case of ***Sanjay Chandra*** (*supra*) which holds that the object of bail being neither punitive nor preventive is applicable to the present case. Paragraph Nos.21 to 24 of the said Judgment read thus:-

> "*21. In bail applications, generally, it has been laid down from the earliest times that the object of bail is to secure the appearance of the accused person at his trial by reasonable amount of bail. The object of bail is neither punitive nor preventative. Deprivation of liberty must be considered a punishment, unless it is required to ensure that an accused person will stand his trial when called upon. The courts owe more than verbal respect to the principle that punishment begins after conviction, and that every man is deemed to be innocent until duly tried and duly found guilty.*
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> *22. From the earliest times, it was appreciated that detention in custody pending completion of trial could be a cause of great hardship. From time to time, necessity demands that some unconvicted persons should be held in custody pending trial to secure their attendance at the trial but in such cases, "necessity" is the operative test. In this country, it would be quite contrary to the concept of personal liberty enshrined in the Constitution that any person should be punished in respect of any matter, upon which, he has not been convicted or that in any circumstances, he should be deprived of his liberty upon only the belief that he will tamper with the witnesses if left at liberty, save in the most extraordinary circumstances.*
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> *23. Apart from the question of prevention being the object of refusal of bail, one must not lose sight of the fact that any imprisonment before conviction has a substantial punitive content and it would be improper for any court to refuse bail as a mark of disapproval of former conduct whether the accused has been convicted for it or not or to refuse bail to an unconvicted person for the purpose of giving him a taste of imprisonment as a lesson.*
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> *24. In the instant case, we have already noticed that the "pointing finger of accusation" against the appellants is "the seriousness of the charge". The offences alleged are economic offences which have resulted in loss to the State exchequer. Though, they contend that there is a possibility of the appellants tampering with the witnesses, they have not placed any material in support of the allegation. In our view, seriousness of the charge is, no doubt, one of the relevant considerations while considering bail applications but that is not the only test or the factor: the other factor that also requires to be taken note of is*

> *the punishment that could be imposed after trial and conviction, both under the Penal Code and the Prevention of Corruption Act. Otherwise, if the former is the only test, we would not be balancing the constitutional rights but rather "recalibrating the scales of justice*".

5.3. Next he would submit that statement of Zabi-ur-Rehman Kamruddin Salmani recorded 17.03.2022 under Section 70 of the MGST Act during investigation two years prior in point of time does not mention the name of the Applicant having been present *qua* the alleged incident. Hence the statement of Mr. Salmani in respect of the same incident given now is a clear suspect and improvisation. *Prima facie* this should be considered. He has also placed on record statement of Accused No. 2 Kiran Bhanushali recorded on 12.04.2022 under Section 70 of the MGST Act to submit that the said statement also does not refer to the Applicant or any role played by the Applicant in opening of the bank accounts in the name of any of the 16 companies or the transferee companies alleged to have received monies by transfer from M/s. S. K. Fashion Exports.

5.4. Apart from the aforesaid merits Mr. Ponda has submitted that Applicant is suffering from serious medical ailment and requires immediate medical attention also. He would submit that the medical report is on record. It is dated 30.01.2025 issued by the State Government run Hospital viz. King Edward Memorial Hospital (KEM Hospital). The Applicant was admitted in the the hospital between

23.01.2025 to 30.01.2025 where he underwent rehabilitation and evaluation for various medical ailments. He was evaluated and underwent tests for UGI Scopy and colonoscopy wherein colonoscopy showed internal hemorrhoids. He underwent CT IVU and CTKUB and his urine routine microscopy examination repeatedly showed field full of RBCs i.e. blood in the urine. He was advised phlebotomy but since he refused and gave negative consent, he is now advised with serum Erythropoietin and pulmonary tests on OPD basis regularly. He was found to have dried blood and clots in his external ear and rhinitis and mucosal mouth and palatal ulcers in the mouth and throat. He was found to have multiple caries, advised extraction of teeth and replacement of missing teeth. His 2D Echo Test has been stated to be unremarkable and is advised surgery due to external hemorrhoid in his rectum with STIZ bath, high fiber diet, plenty of oral fluids etc. That apart he is prescribed to consume 10 antibiotic tablets at least once or twice a day for his medical ailments. I have perused the medical report and *prima facie* it is seen that the medical condition of the Applicant is such that he requires medical care immediately.

6. ***PER CONTRA*** Ms. Kandharkar, learned Special Public Prosecutor appearing on behalf of the State has vehemently objected to the grant of bail. On merits she would submit that appended at page No. 554 is the statement of one Mr. Ajay Kumar Nishad, proprietor of M/s. Eric Fashion and from that statement. Applicant has been identified as the "other" person along with absconding accused – Faizan. I have perused that statement. Applicant is nowhere named in the said statement hence *prima facie* the said statement *per se* cannot be considered unless corroborated. It is a general statement referring to some person. She would submit that Applicant has been indicted in a customs scam of Rs. 2000 Crores in the past and therefore cannot be shown any leniency in the present GST Scam.

6.1. She has referred to the compilation of statements submitted by Mr. Ponda and drawn my attention to page No.15 of the said compilation and more particularly to the answer given to Question No.89 therein which refers to 'Boss (with Mercedes)'. She would submit that the alleged reference is to the Applicant and none other. She would submit that at page No.132 of the Application in the charge-sheet, Applicant has been identified as one of the person in the CCTV footage therein wherein he has posed to be the Chartered Accountant of M/s. S. K. Fashion Exports to the Bank manger and threatened him to transfer the money from M/s. S. K. Fashion Exports's Bank account through RTGS to the transferee accounts. She would submit that the offence occurred when Applicant was under house arrest which is supported by the statement of his own escort guard.

6.2. On Medical grounds pleaded by the Applicant, she would submit that the Applicant will be provided adequate medical care and treatment and will be taken to the hospital as per his needs and prescription as directed by the Doctors. Hence, she would urge the court to dismiss the present application.

7. At the request of Mr. Musale, I have permitted the intervenor one Mr. Neeraj T. Mishra to address the Court. He has filed Intervention Application being Interim Application No.461 of 2025. He would submit that the present Bail Application should not be heard by this Court in view of the Court's administrative notice dated 08.02.2024. However it appears that Mr. Musale is not aware of the subsequent notice dated 04.02.2025. He would submit that the captioned Bail Petition should be heard by the bench comprising of the previous Judge (Coram : Mr. Manish Pitale, J.) before whom Bail Application of one of the co-accused was listed earlier but it came to be withdrawn due to the charge-sheet being filed. He would submit that therefore the Bail Application of the present Applicant should be heard by the same bench. I have perused the order of withdrawal appended at page No.40 of his Intervention Application. Submission of Mr. Musale cannot be countenanced. It is rejected *in limine*. Order dated 07.10.2024 is not on merits, it is an order allowing withdrawal of the Bail Application of another accused on mentioning by *praecipe* with liberty to approach Sessions Court. He would persuade the Court to consider that Applicant is the mastermind of the GST scam and an indirect beneficiary from the 16 companies / firms who have received Input Tax Credit refund which is taxpayers' money. I cannot take cognizance of this submission either because it is unsubstantiated and there is no material produced before me *prima facie*.

8. I have heard submissions from Mr. Ponda, learned Senior Advocate for Applicant, Ms. Kandharkar, learned SPP for State and Mr. Musale, learned Advocate for Intervenor and with their able assistance perused the charge-sheet and the record placed before me. From perusal of the record it is *prima facie* derivated that case of prosecution about Applicant's role of threatening the Bank Manager Mr. Satish Gaikwad is not borne out from the statements recorded and placed on record. It is seen that the 2nd statement of Zabi-ur-Rehman Kamruddin Salmani itself states that he was standing outside the Bank when Applicant entered into the Bank and what transpired between the Applicant and the Manager is not confirmed by his statement. Bank Manager's statement which is recorded neither names the Applicant. All statements relied upon by prosecution are prior to arrest of Applicant. Nothing prevented the prosecution from conducting a Test Identification Parade (for short '**TIP**') all this while for the purpose of identifying the Applicant being one of the person alleged to have been involved in the alleged crime. *Prima facie* linkage of Applicant is not established with the 16 entities. Prosecution is unable to show the said linkage. If that be the case then all other offences against Applicant would be punishable for imprisonment for upto 7 years since offence of forgery may not be applicable in the case if the statement of the Bank Manager relied upon by prosecution is considered *prima facie* since it does not name the Applicant at all. That apart statement of Zabi-ur-Rehman Kamruddin Salmani, the proprietor of M/s. S. K. Fashion Exports recorded on 17.03.2022 does not name the Applicant, however that statement is *prime facie* contradictory to his own statement recorded on 23.03.2024 placed at page No.556 which refers to the Applicant by name. When such prima facie dichotomy is noticed by the Court then it is a suspect. Trail and tracing of funds to the Applicant from the bank account of M/s. S. K. Fashion Exports is *prima facie* not borne out from record. Needless to state that prosecution can prove the same at trial in accordance with law.

9. Apart from the merits, the report given by Dr. Milind Y. Nadkar, Professor and Head of Department of Medicine of Seth G. S. Medical College and KEM Hospital, Mumbai which is the discharge summary of Medicines duly endorsed by him and two other doctors of the same hospital is exhaustive and deserves immediate consideration.

It shows and states that Applicant's Medical condition is precarious and he requires Medical Treatment. Another important factor which impels me to consider the case of Applicant for grant of Bail is the long incarceration in all matters wherein Applicant is indicted. It is almost six and half years to date.

10. In view of my above observations the present Application for Bail therefore stands allowed in the following terms:-

(i) Applicant is directed to be released on bail on furnishing P.R. Bond in the sum of Rs. 1,00,000/- with one or two sureties in the like amount. Applicant is permitted to be released on provisional cash bail initially and he shall furnish sureties as directed within four weeks;

(ii) Applicant shall report to the Investigating Officer of concerned Police Station once every month on every first Sunday between 10:00 a.m. to 12:00 noon for the first six months and thereafter as and when called until completion of investigation;

(iii) 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;

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

(v) Applicant shall not influence with any of the witnesses or tamper with the evidence in any manner. He shall deposit his passport with the Special Court within a period of one week from his release from jail;

(vi) Applicant shall keep the Investigating Officer informed of his current address and mobile contact number and / or change of residence or mobile details, if any, from time to time;

(vii) Any infraction of the above conditions shall entail prosecution to seek cancellation of this order.

11. It is clarified that the 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.

12. In view of the above directions, Bail Application stands allowed and disposed.

13. Interim Application No. 211 of 2025 and Interim Application No.461 of 2025 also stand disposed accordingly.

Amberkar

[MILIND N. JADHAV, J.]

HARSHADA HANUMANT SAWANT

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