2026:BHC-AUG:3315

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

BAIL APPLICATION NO. 2237 OF 2025

SACHIN BABBASAHEB BADE
VERSUS
THE STATE OF MAHARASHTRA

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Advocate for Applicant : Mr. S. S. Tope
APP for Respondents-State : Mr. B. B. Bhise

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CORAM : SACHIN S. DESHMUKH, J.
Date : 22nd January, 2026

ORDER :-

1. The applicant has approached this Court seeking regular bail in connection with FIR dated 28.02.2025 bearing Crime No. 99 of 2025 registered with Vaijapur Police Station, Dist. Aurangabad for the offences punishable under Sections 316(2), 318(2), 3(5) of the Bharatiya Nyaya Sanhita, 2023 and Sections 3 and 4 of the Maharashtra Protection of Interest of Depositors (in Financial Establishments) Act, 1999.

2. The prosecution alleges that in 2022, the accused, operating a registered firm called "Swami Enterprises," convinced informant Sanjiv Matsagar and his wife to invest in the share market. In the process, promised a 10% monthly return on an

investment totaling ₹22,00,000. While the accused initially returned ₹1,53,000, failed to repay the remaining amount of ₹24,00,000 as promised. The accused subsequently issued a post-dated HDFC Bank cheque for ₹28,00,000 on January 3, 2025, towards assurance of payment, which deterred the informant from lodging a report at that time. The cheque was later dishonoured due to insufficient funds. Despite multiple demands, the accused did not return the money. It is further alleged that the accused defrauded eleven other depositors using a similar scheme. Consequently, an FIR was lodged.

3. The learned counsel for applicant submits that the entire dispute arises from a business relationship established in 2022. The initial payment of ₹1,53,000 demonstrates that there was no "dishonest intention at the inception" of the contract, which is a mandatory requirement for a cheating charge under Section 318 of the BNSS. The informant invested in the "share market," which is inherently subject to market fluctuations. A loss of investment or failure to pay promised interest constitutes a civil breach of contract rather than criminal fraud.

4. The learned counsel for applicant further submits that

the prosecution's claim regarding 11 other victims as being vague and intended merely to prejudice the Court and those are many investors still believe the applicant of repayment of their invested money. No separate FIRs have been validated and multiple claims in a single consolidated FIR must be scrutinized for individual merit. The investigation is complete and the charge-sheet is filed. As such, further incarceration of the applicant is unjustified.

5. The learned APP has submitted that the accused lured the informant with an unrealistic 10% monthly interest rate to induce the delivery of property, which squarely falls under Section 318(4) of the BNSS. It is further submitted that the accused issued an HDFC Bank cheque for ₹28,00,000 on 03.01.2025 to prevent the informant from approaching the police. The conduct of accused demonstrates a clear criminal intent to stall legal action rather than a bona fide attempt to repay. The accused failed to return the amount despite several demands and the dishonor of the cheque. In the event of granting bail, it would send a wrong message to society and that custodial interrogation is essential to recover the hard-earned money of the informant and the other 11 depositors so also, several similarly situated depositors. As such, prayed to rejection of the application.

6. Having heard the learned counsel for applicant and learned APP for State, it is evident from the perusal of FIR that the genesis of the prosecution's case is that the accused, operating as "Swami Enterprises," induced the informant, Sanjiv Matsagar, and his wife to invest ₹22,00,000 in the share market with a promise of 10% monthly interest. Out of this, only ₹1,53,000 was returned. To prevent the informant from taking legal action, the accused issued an HDFC Bank cheque for ₹28,00,000 dated 03.01.2025 which was subsequently dishonoured.

7. The Hon'ble Apex Court in case of **Kalyan Chandra Sarkar and Ors. Vs. Rajesh Ranjan and Ors. [(2004)7 SCC 528]**, while laying down the guidelines for grant or refusal of bail in serious offences, has observed as under :

> *"11. The law in regard to grant or refusal of bail is very well settled. The court granting bail should exercise its discretion in a judicious manner and not as a matter of course. Though at the stage of granting bail a detailed examination of evidence and elaborate documentation of the merit of the case need not be undertaken, there is a need to indicate in such orders reasons for prima facie concluding why bail was being granted particularly where the accused is charged of having committed a serious offence. Any order devoid of such reasons would suffer from non-application of mind. It is also necessary for the court granting bail to*

consider among other circumstances, the following factors also before granting bail; they are:

(a) The nature of accusation and the severity of punishment in case of conviction and the nature of supporting evidence.

(b) Reasonable apprehension of tampering with the witness or apprehension of threat to the complainant.

(c) Prima facie satisfaction of the court in support of the charge. (See Ram Govind Upadhyay v. Sudarshan Singh and Puran v. Rambilas.)

8. Similarly, the Hon'ble Apex Court in case of **Pralhad Singh Bhati Vs. NCT, Delhi [(2001)4 SCC 280]**, held that on satisfaction of prima facie evidence establishing the guilt of the accused, the bail can be denied.

9. Moreover, the Hon'ble Apex Court in case of **Ram Govind Upadhyay Vs. Sudarshan Singh [(2002)3 SCC 598]**, has held that a judicial discretion in granting bail must not be exercised whimsically, especially in heinous offences.

10. Equally, the Hon'ble Apex Court in case of **State of UP through CBI Vs. Amaramani Tripathi [(2005)8 SCC 21]**, has held that the Court must evaluate the prima facie evidence showing the applicant's involvement. If such evidence is credible and

supports the accusations, bail may be refused.

11. The Hon'ble Apex Court in case of **Prasanta Kumar Sarkar Vs. Ashis Chatterjee [(2010)14 SCC 496]**, has held that the mechanical grant of bail reflects non-application of mind, and outlined eight crucial factors to be considered, including reasonable ground for belief in guilt, nature of evidence and possibility of justice being thwarted.

12. The Hon'ble Apex Court in the case of **Mahipal Vs. Rajesh Kumar and Ors. (AIR 2020 SC 670)** has laid down the principle that bail can be refused when the material produced by prosecution establishes a clear prima facie case. The Court should not conduct a mini-trial; it should only examine whether the available evidence links the accused to the alleged offence.

13. In the backdrop of aforesaid facts and precedents, this Court finds that the gravity of the accusations and the specific conduct of the applicant necessitate a stringent view. While the applicant contends that the dispute is civil in nature arising from market fluctuations, the gravity of the allegations suggests a systematic exploitation, must look beyond the surface of a

"business transaction" to the nature of the accusation and the manner in which the crime was allegedly committed.

14. It is further revealed during the course of investigation that several persons have invested funds based on the assurances made by the applicant regarding his firm. A total amount of Rs. 1,15,99,000/- has been duped. Though there are statements suggesting that certain amounts were repaid, that does not forsake the applicant of having intentionally duped the investors. There is no record indicating where those funds were actually invested or under what authority the applicant carried out those transactions.

15. Under relevant provisions and SEBI guidelines, even duly registered entities like Portfolio Management Services (PMS) providers and brokers are completely prohibited from offering guaranteed returns to investors. The record prima facie establishes that the applicant enticed investors by promising unrealistically high, and ultimately impossible, returns. He succeeded in defrauding several individuals without fulfilling the promised disbursements. Specifically, these actions were conducted under the guise of a fraudulent enterprise lacking any legal foundation. Hence, the very basis of operation of firm is ex facie illegal.

16. Allowing individuals to establish fictitious entities, amass significant capital amounting to crores of rupees, repay negligible sums, and subsequently claim the defense of enterprise failure. Such defence of business failure is applicable to an enterprise established legally and operating within regulatory compliance. However, in the instant case, the foundation of the establishment of enterprise having no requisite registration and license for carrying out such activities, is demonstrably rooted in fraud.

17. Consequently, the victims various investors entrusted their hard-earned money and savings to the applicant based on the fiduciary relationship established during their interactions. The failure to return the amounts invested / deposited and stopping the promised interest payments, the applicant committed a "misappropriation" of these funds.

18. The essential ingredients of Section 316 of the BNS offence are threefold:

i) There must be entrustment of property or dominion over property by the accused;

ii) The accused must be acting in the capacity of a banker, merchant, broker, attorney, or agent; and

iii) There must be dishonest misappropriation or conversion of such property for his own use, or disposal of it in violation of the law or the contract governing such entrustment.

19. Considering that the applicant acted in the capacity of an investment agent and facilitator, the alleged act squarely attracts Section 316 of the Bharatiya Nyaya Sanhita (BNS), 2023 which pertains to criminal breach of trust by a banker, merchant, or agent.

20. In the case of ***Y.S. Jagan Mohan Reddy Vs. CBI [(2013) 7 SCC 439]***, has held that economic offences involving deep-rooted conspiracies and the massive diversion of public money stand on a different footing. Such offences seriously affect the national economy and erode the trust of the common man in financial systems.

21. It is evident that the applicant was not a mere bystander but the primary orchestrator of a sophisticated and pre-planned financial fraud. By leveraging personal influence and

utilizing the platform of a sham enterprise to lure unsuspecting individuals into a debt trap, specifically by inducing them to invest significant sums, including their hard-earned savings, under the false pretext of guaranteed high-yield returns, the applicant has demonstrated a clear and dishonest intent, at inception resulting into further breach of trust of the victims.

22. Considering the magnitude of the siphoned funds, the lack of any legal authorization and pertinently, the diversion of deposited amount into personal accounts reflect a grave betrayal of financial trust. Thus, keeping in view the severity of the offence and the potential for life imprisonment, this Court finds no merit in the present application.

23. Hence, this bail application stands ***rejected.***

(SACHIN S. DESHMUKH, J.)

Omkar Joshi