

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIRCUIT BENCH AT KOLHAPUR
CRIMINAL APPELLATE JURISDICTION
BAIL APPLICATION NO.1471 OF 2025

Sushant Rajendra Gurav,
Age: 27 Years, Occu.: Service,
R/o. Patan, Taluka : Patan,
District : Satara (At present
Satara District Prison, Satara)Applicant

Vs.

State of Maharashtra,
(Through Patan Police Station
Satara Vide C.R.No.150/2024).Respondent

Mr. Priyal G. Sarda (Through VC) with Mr. Onkar Bajaj, for the Applicant.

Mr. Shrikant H. Yadav, APP, for the Respondent-State.

Mr. V. R. Pujari, HC/2166, Patan Police Station, District Satara is present.

CORAM : MRS. VRUSHALI V. JOSHI, J.

DATED : 3rd FEBRUARY 2026

ORDER :-

1. The Applicant/accused No.2 is arrested in Crime No.150 of 2024 for the offences punishable under Sections 420 and 406 read with Section 34 of the Indian Penal Code and under Section 3 of The Maharashtra Protection of Interest of Depositors (in Financial Establishments) Act, 1999 (**'MPID Act'**).

2. It is the case of the prosecution that the informant and the

accused persons were actively involved in trading activities and were earning substantial returns. Accused Nos.1 and 2 assured the first informant that upon investing in their share market scheme, they would provide a 10% of return while also securing the invested amount. The first informant made periodic investments to the tune of amount totaling to Rs.59,57,500/- only. Out of the said sum, the first informant received only Rs.8,65,000/-. It is alleged that accused Nos.1 and 2 by employing similar deceptive tactics induced other individuals also to invest in their scheme, thereby collecting a total sum of Rs.4,24,92,000/-. The first informant has lodged the complaint against the accused Nos.1 and 2. Accordingly, the other informant Yugandhar Suryakant Shedge also lodged the complaint and the First Information Report is registered.

3. The Applicant has preferred an application for bail under Section 187(3)(ii) of the Bharatiya Nagarik Suraksha Sanhita, 2023 ('BNSS') before the learned Judicial Magistrate First Class Court, Satara on 26th December 2024 in Crime Registration No.150 of 2024. The Applicant has pointed out that his 60 days judicial custody got over on 22nd December 2024 and till 26th December 2024, the

chargesheet was not filed. The JMFC Court directed the Assistant Superintendent to submit a report. As per the report, till 26th December 2024, the chargesheet was not submitted by Patan Police Station. The JMFC Court has rejected the application filed by the Applicant on 26th December 2024 observing that Section 3 of MPID Act was added in said crime and Investigating Officer has filed his report on 19th December 2024 before the JMFC, Patan and thus, the said JMFC was not having jurisdiction to entertain and decide the bail application filed on 26th December 2024.

4. The Applicant has preferred an application for bail below Exhibit 3 in Special Case No.90 of 2024 before the learned Additional Sessions Judge, Karad under Section 187(3)(ii) of BNSS. The Sessions Court has rejected the said bail application.

5. It is argued by the counsel for the Applicant that the Investigating Officer has not informed the learned Special Court about addition of Section 3 of the MPID Act in the present crime and admittedly, the detention has not been authorized by the Special Judge (MPID Act) after 19th December 2024 and hence, there was no detention order passed by the Special Court from 19th December

2024 till 30th December 2024 and during the said period, the detention of the Applicant was illegal. Since 19th December 2024 till 29th December 2024, there was no order for authorizing detention of the Applicant from the Special Court and thus, the Applicant is entitled to be released on bail. The learned JMFC Court did not ask the Investigating Officer to produce the Applicant before the Special Court after registration of crime under the MPID Act on 19th December 2024 and also did not pass any appropriate order and passed the cryptic order as 'Seen'. The application for bail under Section 187(3)(ii) of BNSS was filed on 64th day of the arrest and till that date, chargesheet was not filed before the JMFC Court, Patan. Hence, prayed to release the Applicant on bail.

6. The learned APP opposed the application stating that the offense under Section 3 of the MPID Act was registered and report to invoke Section 3 of the MPID Act was submitted before the JMFC Court on 19th December 2024. The endorsement on the report was made as 'Seen'. Till 19th December 2024, Section 3 of the MPID Act was not added.

7. The learned APP in support of his contention that provision of

Section 167(2) of the Criminal Procedure Code is not applicable to the case as the prosecution was for an offense under Section 3 of the MPID Act, has relied on the judgment of ***Uday Mohanlal Acharya v. State of Maharashtra***, particularly partly descending portion of the Judgment of Hon'ble Shri. Justice B. N. Agrawal.

8. The learned counsel for the Applicant has pointed out by tendering the complete copy of entire Judgment of Full Bench on record, in which as per majority it is observed that “the accused has an indefeasible right to be released on bail when investigation has not been completed within the specified period. In order to avail this right, the accused has to file an application before the Magistrate stating that he may be released on bail as the period of investigation has expired and he is prepared to offer bail being directed by the Magistrate. The Magistrate has to dispose of this application forthwith. The Magistrate is obliged to grant bail, even when the police files chargesheet after filing of said application. Even when the application of accused is erroneously rejected by the Magistrate and he moves to the higher forum and the chargesheet is filed in that forum, the indefeasible right of accused is not affected.”

9. The counsel for Applicant has placed reliance on the judgment of this Court in *Irfan Moiuddeen Saiyyed & ors. v. The State of Maharashtra*,¹ wherein the issues involved are the illegality of extension of remand, application for default bail and sufficiency of material to support the added charges.

10. In the case in hand, the Investigating Officer has not informed the learned Special Court under MPID Act about addition of Section 3 of MPID Act in said crime. The detention has not been authorized by the learned Special Court under MPID Act after 19th December 2024. Hence, there was no detention order passed by the Special Court from 19th December 2024 till 30th December 2024 and during the said period, the detention of the Applicant was illegal. Thus, the Applicant is entitled to be released on bail.

11. This Court in case of *Irfan Moiuddeen Saiyyed (supra)* has observed in paragraph Nos.15, 16 and 18 as under:

“15. In view of the aforesaid rival contentions, the question is whether barely addressing a letter to the Court and adding further sections for which the punishment is death/imprisonment for life or imprisonment for a term of

1 2023 Supreme (Bombay) 697.

not less than ten years is sufficient to believe that the period of judicial custody has been automatically extended?

16. The Bombay High Court has dealt with a similar issue in the case of Alnesh Akil Somji Vs. The State of Maharashtra (supra). In that application also, the default bail was claimed. The Special Judge rejected it on the ground that section 409 of IPC is applicable, and the prosecution had filed an application invoking section 409 of the Indian Penal Code. The Special Judge held that the period for filing the charge sheet was ninety days, not sixty days. In the said case, the applicants were in the Magistrate custody remand till 11.11.2021 after their arrest on 03.11.2021. The investigating officer, by remand application dated 31st December 2021 (filed on 3.1.2022) intimated to the Special Judge about adding/invoke of section 409 of the Indian Penal Code. The Special Court had passed an order "Seen, note be taken". Considering these facts, the Bombay High Court held that in paragraph No.13 read thus:-

"13. There is no manner of doubt that the investigation is within the province and domain of the investigating agency. However, that does not mean that the Court, in almost all cases, would be bound by the invocation of a particular section against the accused by the prosecuting agency. This is because the label of the section or the provision

invoked would not be decisive. To hold otherwise, would amount to placing the said right at the mercy of the investigating agency and would indirectly result in the Magistrate abdicating the duty to enforce the right wherever necessary. Thus, the Court would be required to look into the generality of the allegations made and the material collected. In a given case where ex facie the provision is not attracted the Court may not be bound by the same. Although there is no requirement for the investigating officer to obtain permission from the Magistrate for such addition, as held by the Calcutta High Court in Sayantan Chatterjee (supra), the Magistrate is not precluded from looking into the facts and the material collected, whether the offence is ex facie made out or not. The matter depends on the facts and circumstances of each case. For instance, where the investigating officer invokes section 326 of IPC, however the medical report does not ex facie show that the victim has suffered a grievous injury, within the meaning of Section 320 of IPC OR a case where section 409 of IPC is invoked and admittedly the accused does not fall under any of the seven categories mentioned in the said section namely the accused is neither a public servant, a banker etc. I would hasten to add that where however the facts and the material collected prima facie indicate the ingredients of a particular offence the Court obviously cannot

examine or appreciate the same at that stage in order to arrive at a different conclusion."

18. The police custody or judicial remand is not a bare formality. Suppose the Investigating officer brings new material constituting a new offence under a particular section during the judicial custody of the accused before the charge sheet. In that case, the Police must bring it to the notice of the accused by submitting fresh remand papers before the Court. So the accused may have an opportunity to oppose the further extension of the judicial custody for the new offence on the basis of the material brought during his judicial custody."

12. In this case, the Applicant was not informed about addition of said charge. He was neither in custody of Judicial Magistrate First Class nor in custody of the Special Court under MPID Act. Therefore, the custody of the Applicant during the said period was illegal. The Applicant is entitled for the default bail. Hence, the Application is allowed on the following terms and conditions:

ORDER

- i) The applicant, namely, Sushant Rajendra Gurav shall furnish personal bond of Rs.25,000/- with his recent self-attested photograph and surety of the like amount on the

following conditions at the satisfaction of the investigating officer;

- ii) The applicant shall cooperate with the investigation and make himself available for interrogation whenever required;
- iii) The applicant shall not directly or indirectly make any inducement, threat or promise to any witness acquainted with the facts of the case so as to dissuade him from disclosing such facts to the court or to any police officer;
- iv) The applicant shall not obstruct or hamper the police investigation and not to play mischief with the evidence collected or yet to be collected by the police;
- v) The applicant shall not leave the territory of Patan, District Satara without prior permission of the Court, till trial is over;
- vi) The applicant shall maintain law and order;
- vii) The applicant shall, at the time of execution of the bond, furnish his address and mobile number to the investigating officer, and the court concerned, and shall not change the residence till the final disposal of the case;
- viii) The applicant shall surrender his passport, if any, before the investigating officer within a week and, if he does not possess any passport, he shall file an affidavit to that effect before the investigating officer;

- ix) The applicant shall regularly remain present during the trial, and cooperate with the Hon'ble court to complete the trial for the above offenses.

(MRS. VRUSHALI V. JOSHI, J.)

Digitally
signed by
RAJU
DATTATRAYA
GAIKWAD
Date:
2026.02.04
18:59:44
+0530