

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL BAIL APPLICATION NO. 211 OF 2022

Bhushan Gamanrao Shewale ...Applicant
Versus
The State of Maharashtra And Anr. ...Respondents

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Mr. S.T. Pandey a/w Mr. Arvind Singh a/w Anima Mishra, Angela Singha, Anuj Singh, Kajal Upadhyay i/by SBG Law, Advocate for the Applicant.

Mr. P. N. Dabholkar, APP for the Respondent - State.

CORAM : PRAKASH D. NAIK, J.

DATE : 20th OCTOBER, 2022.

P.C.

1. The Applicant is arrested on 17th February, 2016 in C.C. No.33 of 2020 registered with Chhavani Police Station, Malegaon, Nashik for offences under Sections 420, 419, 465, 467, 468, 470, 471, 472, 473, 475, 170 r/w Section 34 of Indian Penal Code (for short 'IPC').

2. Subsequently, Sections 3 and 4 Maharashtra Protection of Interest of Depositors (In Financial Establishment) Act, 1999 (for short 'MPID' Act) and Section 66(c)(d) of the Information Technology Act, 2003 were added.

3. The case of the prosecution is that the complainant was unemployed and was in search of employment. He got introduced to the Applicant through his friend Shekhar Bagul. The complainant was informed that the Applicant is an officer in PWD and would

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provide him job in PWD. Thereafter, there was discussion between the Applicant and the informant wherein the Applicant had allegedly assured the complainant about providing job. The complainant was informed that he will have to pay Rs.15,00,000/- for employment. The informant also learnt that the employees of the office of the Applicant are posted as Election Officers in the election of Grampanchayat and Legislative Assembly. The complainant took loan of Rs.12,00,000/- and borrowed Rs.3,00,000/- from his relatives and parted an amount of Rs.15,00,000/- to the Applicant through Mr. Shekhar Bagul. On 27th May, 2015 the informant was called at office of PWD Web Management Department at Wardhaman Nagar and provided order issued by Mantralaya, Mumbai about employment as Junior Clerk in said department. The applicant had provided employment to several persons in the same office on accepting huge amount. The Applicant had assured that they would get Government work and they should work on computer. The complainant received salary only for one month. On questioning about salary the Applicant gave some excuses. In February, 2016 the Applicant took a press conference and disclosed that he and the workers were cheated. The PWD Web Management Office was fake. It was learnt that applicant, Lalit Shewale and their associates were involved in the crime.

4. The Applicant preferred an application for bail before the Court of Additional Sessions Judge, Malegaon. The said application was rejected vide order dated 11th December, 2020.

5. Learned Advocate for the Applicant submitted that the Applicant is in custody from 17th February, 2016. There is no progress in trial. Charge-sheet has been filed. Further detention of the Applicant is not necessary. The co-accused Lalit Purushottam Shewale and Shekhar Vitthal Bagul were granted bail by this Court vide order dated 8th April, 2022 and 6th May, 2022. The property has been attached and the interest of victim have been secured. The prosecution had failed to proceed with the trial.

6. Learned APP submitted that the offence is of serious nature. The Applicant took money from various persons, even though he was aware that PWD Web Management Department was fake. The Applicant has played active role in the offences. Huge amount was accepted from the victims. Hence, bail may not be granted to the Applicant.

7. During the hearing of the bail application No.684 of 2019 preferred by the co-accused Lalit Purushottam Shewale, this Court vide order dated 3rd April, 2019, had directed the trial Court to complete recording of evidence. The trial Court thereafter, forwarded the letter dated 30th January, 2020 requesting for extension of one

year to dispose of the case. In the request letter it was mentioned that witness summons was issued to the witness. Since witness did not appear, bailable warrant was issued against him. His evidence was partly recorded on 21st February, 2019. The prosecution is not serious in pursuing the matter. The Special Public Prosecutor appointed to conduct the case has retired from the post of APP. This Court vide Order dated 6th March, 2020 extended the time to conclude the trial by one year with a direction that the prosecution shall cooperate with the trial Court in concluding the trial expeditiously. Thereafter, the trial Court once again submitted letter dated 3rd February, 2021 for extension of time to conclude the trial. Vide order dated 17th November, 2021 time to conclude the trial was extended by a period of one year. During the course of hearing of this application this Court by Order dated 20th May, 2022, considered the submission of the Advocate of the Applicant, that the Applicant is in custody for a period of more than six years and directed learned APP to take instructions and submit a report to the Court. The application was heard on 7th July, 2022. Learned APP sought time to comply directions in order dated 20th May, 2022. The application was then listed for hearing on 13th July, 2022. In the Order dated 13th July, 2022, it was observed that despite directions of this Court to expedite the trial thrice, no substantial progress has been made.

This Court has passed orders to expedite the trial considering the period of incarceration of the Applicant and the co-accused. In fact, the co-accused has been released on bail on the ground of long incarceration. In the circumstances, to take a definite view of the matter, it may be expedient to call a report from the learned Sessions Judge seized with the trial in Sessions Case No.66 of 2016, as regards the stage of the trial and the circumstances which impede the expeditious conclusion of the trial.

8. The report dated 15th July, 2022 was submitted by the District Judge and Additional Sessions Judge, Malegaon, Dist. Nashik stating that the evidence of complainant Pravin Dinkar Suryawanshi was partly recorded on 21st February, 2019. The APP has filed an application seeking time to file documents. The prosecution has sought time for filing the hand writing experts report. After receipt of the report of the hand writing expert, original complainant and others filed a complaint application against then APP. Therefore, the matter was assigned to another person. After he appeared in the matter, he sought time for taking inspection and going through the documents. During COVID-19 period the complainant inspite of service of summons remained absent till Court resumes its regular function. Due to SOP no coersive action was taken to secure his presence. On 22nd September, 2021 the complainant moved an

application seeking time for appointment of Special Public Prosecutor in the matter. The said application was rejected. The evidence was partly recorded on 21st March, 2022 and 28th March, 2022. Sometime the Advocate for the Accused Nos. 1, 3 and 4 remained absent, hence the matter could not proceed further. The conduct of the parties was noted by passing the order and also taken note of it in the Roznama. On the application of complainant the DGP by letter dated 5th October, 2021 addressed to Law and Judiciary Department requested appointment for Special Public Prosecutor for conducting the matter. Thereafter, the APP to whom the matter was assigned showed his inability to proceed with the matter, in view of the above letter. The Advocate for the Accused No.2 filed an application to alter the charge. The arguments were heard. Application was rejected on 13th June, 2022. From time to time the Court had requested the DGP and Assistant Director of Public Prosecutor, Nashik to look into the matter and appoint the Public Prosecutor as the accused are in jail since 2016. By giving reference of 16 previous letters again the Assistant Director of Public Prosecutor, Nashik was requested by letter dated 28th June, 2022 to look into the matter and appoint the Public Prosecutor for conducting the matter. In response to the letter, Assistant Director of Public Prosecutor, Nashik, by letter dated 5th July, 2022 directed

the Prosecutor to conduct the matter expeditiously. The matter is posted for further evidence of complainant on 15th July, 2022. The APP has placed on record the letter of Assistant Director of Public Prosecutor, Nashik dated 14th July, 2022 directing him to conduct the matter. On the Application of Shri. A.N. Pagare, Assistant Director of Public Prosecutor, Nashik has assigned the matter to Shri. S.K. Sonawane. Earlier on the complaint of complainant and 45 persons in place Shri. S.K. Sonawane, Assistant Director of Public Prosecutor has assigned the matter to Shri. A.N. Pagare. It is clear from the record and proceedings that the prosecution is not interested to proceed with the matter and cooperate the Court to expeditious hearing of the matter. On one or the other grounds the APP are changed by the Assistant Director of Public Prosecutor, Nashik by passing order by gap of one or two days. One Public Prosecutor is looking after work of two Courts. In spite of several correspondence Special Public Prosecutor has not been provided. Therefore, the matter could not proceed further. On 15th July, 2022 complainant was present at 11:00 a.m. APP sought time to go through file and proceed with matter. Hence, matter was kept back for some time. When the matter was called out complainant was absent. The matter is posted for further evidence of complainant.

9. Subsequently, another report dated 21st September, 2022 was submitted by the learned District Judge-3 and Additional Sessions Judge, Malegaon Dist. Nashik. It was stated that by order dated 19th July, 2022, Assistant Director of Public Prosecution, Nashik has assigned the matter to APP Shri. Anil Bagale. After he appeared in the matter he completed the examination-in-chief of complainant. On 10th August, 2022 the Assistant Director of Public Prosecution had assigned the matter to APP Shri. R.L. Nikam. He appeared in the matter on 5th September, 2022. He moved an application stating that he is not empowered to conduct the MPID cases and sought adjournment. The application was rejected. The Advocate for the Accused No.1 completed the cross-examination of PW-1 complainant, on 16th September, 2022 and the case was adjourned for cross-examination of Advocate for Accused No.2. The next date was 28th September, 2022. Due to frequent change of Public Prosecutor, the smooth functioning is affecting. It is clear from the record and proceeding that the prosecution is not interested to proceed with the matter and cooperate the Court for expeditious hearing of the matter. On one or the other ground the APP are changed by the Assistant Director of Public Prosecution, Nashik. In spite of several correspondence separate/special PP has not been provided. Therefore, the matter could not proceed further.

10. This Court vide order dated 8th April, 2022 granted bail to Accused Lalit Purushottam Shewale vide Bail Application No.698 of 2020. In the said order it was observed that the said Applicant/Accused was arrested on 17th February, 2016. Vide order dated 3rd April, 2019, the application was disposed off with the direction to the trial Court to complete the recording of evidence on or before 31st January, 2020 without granting unwarranted adjournments to the prosecution. It was third bail application of the Accused. The Court then perused Roznama of the proceedings and observed that the Accused was not being presented before trial Court on every scheduled date. Report dated 9th November, 2022 was received from the learned Additional Sessions Judge, wherein it was stated that the complainant filed an application seeking appointment of Special Public Prosecutor to conduct the trial and till that date the Special Public Prosecutor was not appointed. In the order dated 9th March, 2022 this Court has observed how trial is proceedings at snails pace and in fact it is being protracted on the behest of the complainant. There was no positive reply from the Director of Prosecution, Law and Judiciary Department as to the appointment of Special Public Prosecutor in the present case and therefore the prosecutor in the trial Court was conducting the trial. The Court also

referred to the affidavit of the prosecutor. Court thereafter referred to the manner in which the proceedings were adjourned before the trial Court and the fact that the Accused were not produced before the trial Court. Court had called upon prosecution to explain as to how the provisions of MPID Act are attracted in the case. No affidavit is filed to that effect. In the facts of the case, *prima facie*, the Court is of the opinion that only relevant Sections which would be attracted in the present case are 420, 467, 471, 463, 465, 470, 472, 473, 475, 120-B r/w 34 of IPC. All the offences are triable by Magistrate. This Court then made reference to Section 436-A of Cr.PC. It was also observed that the charge-sheet shows that prosecution in the present case has filed the list of proposed 178 witnesses. The complainant has insisted upon appointment of Special Public Prosecutor and protracted the trial by not letting the prosecution to proceed and examine witnesses. As of today, the miniscule evidence is adduced. The properties of the said Accused are attached. Further incarceration of the accused therein will amount to punitive detention of accused on unwarranted ground. On above grounds Lalit Pururshottam Shewale was granted bail.

11. Subsequently, the other Accused Shekhar Vittal Bagul preferred Bail Application No.1099 of 2021. The said application was allowed by this Court by order dated 6th May, 2022.

12. Thus, the co-accused were granted bail on the ground that there is no progress in the trial. The applicant is in custody for six years. The co-accused are granted bail on the ground of long incarceration and considering the circumstances as above. The applicant can be granted bail.

ORDER

- i. Criminal Bail Application No.211 of 2022 is allowed;
- ii. The applicant is directed to be released on bail in connection with C.R. No.33 of 2016 registered with Malegaon Chhavani Police Station, Nashik, on executing P.R. Bond in the sum of Rs.1,00,000/- with one or more sureties in the like amount;
- iii. The applicant shall attend Trial Court regularly on the date of hearing of the case unless exempted by the Court for some reason.
- iv. In the event, there are two consecutive defaults in attending the trial Court, the said fact may be brought to the notice of this Court and in such eventuality, the prosecution will be at liberty to prefer an application for cancellation of bail.
- v. Application stands disposed off accordingly.

[PRAKASH D. NAIK, J.]