

Bombay High Court

Hanumant Jagannath Nazirkar vs The State Of Maharashtra on 30 April, 2022

Bench: C.V. Bhadang

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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL BAIL APPLICATION NO. 3466 OF 2021
WITH
CRIMINAL BAIL APPLICATION NO. 3977 OF 2021

Hanumant Jagannath Nazirkar ..Applicant
V/s.
The State of Maharashtra ..Respondent

Mr. Sanjeev Kadam a/w Mr. Anil Shitole a/w Ms. Varsha
Thorat a/w Mr. Mayur Sanap i/b Prashant Raul for the
Applicant.

Mr. Raja Thakare, Spl. P.P. a/w Mr. Siddharth Jagusthe a/w
Mr. Kanishk Waghmare a/w Mr. A.R. Kapadnis, APP for the
Respondent/State.

Mr. Vishal Shirsat a/w Mr. K.H. Holambe Patil a/w Mr. Sunil
Holambe Patil for the intervenor.

PI Mr. Girish Sonawane (ACB) and API Mr. Mukund Palve,
Baramati City Police Station.

CORAM : C.V. BHADANG, J.
RESERVED ON : 7 APRIL 2022
PRONOUNCED ON : 30 APRIL 2022
(Through Video Conferencing)

ORDER

1. In both these applications, the Applicant(accused No.1) is seeking release on bail.

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2. The Applicant is working as Deputy Director, Town Planning, Amaravati. The allegation is that the Applicant during the period from 23.01.1986 to 18.06.2020 had amassed wealth in his name and family members and other entities to the tune of Rs.82,38,34,941/- which is disproportionate to the known sources of income.

3. One Nitin Sahebrao Patil had filed a complaint with the Anti-Corruption Bureau (ACB) Pune alleging that the Applicant was possessing disproportionate assets to the known sources of income.

It appears that on the basis of the same, initially a discrete inquiry was conducted by P.I. Patange and Smt. Kanchan Jadhav which was followed by an open inquiry by ACP Seema Mehendale. After inquiry, ACP Seema Mehendale filed a FIR dated 18.06.2020 with Police Station Alankar, Pune City against the Applicant, on the basis of which an offence at Crime No. 736 of 2020 is registered against the Applicant and others for the offence punishable under Section 13(1)(b) and 13(2) of the Prevention of Corruption Act and Section 109 of IPC. In this case after investigation, a chargesheet is filed.

4. In Criminal Bail Application No. 3466 of 2021, the Applicant is seeking release on bail in Crime No. 736 of 2020.

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5. In Criminal Bail Application No. 3977 of 2021, the Applicant is seeking release on bail in Crime No. 644 of 2020 with Police Station Baramati City registered on 27.12.2020 under Section 417, 468, 471, 477 read with Section 34 of IPC. That offence is registered on the basis of the complaint lodged by Mr. Wajid Chhotu Bagwan dated 27.12.2020. The complainant Wajid Bagwan is a fruit vendor. He claims that the co-accused Rahul Khomane had come to him proposing sale of mangos and chikooos from his orchid and Wajid Bagwan had purchased fruits worth Rs.1,00,000/- to Rs.1,25,000/- from Rahul Khomane. He states that Rahul Khomane obtained his signature on blank stamp papers and also obtained blank cheques which well used to show inflated amount of sale proceeds of the fruits from the informant and other vendors to assist the present Applicant in the inquiry into the allegations of disproportionate assets by the ACB.

6. In this case, the Applicant was arrested on 24.03.2021 in Crime No. 644 of 2020 of Police Station Baramati and was shown to be arrested in Crime No. 736 of 2020 by ACB with Police Station Alankar, Pune city on 30.03.2021.

7. The courts below have refused to release the Applicant on bail.

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8. I have heard Mr. Kadam, the learned Counsel for the Applicant and Mr. Raja Thakare, learned Special P.P. for the Respondent State and assisted by the learned Counsel for the intervenor. With the assistance of the learned Counsel for the parties, I have gone through the record.

9. It is submitted by the learned Counsel for the Applicant that the Applicant is in custody for more than a year. The investigation is complete and the chargesheet is filed by the ACB. It is submitted that the allegation in Crime No. 644 of 2020 of Police Station Baramati (about showing of inflated consideration in respect of purchase of fruits by Wajid Bagwan and others) are part of the allegation/investigation in Crime No. 736 of 2020 as they initially pertained to the allegations about disproportionate assets. It is submitted that Wajid Bagwan and others in Baramati offence are also witnesses in Crime No. 736 of 2020. It is submitted that the Applicant and his family members have sufficient income to justify the assets. The learned counsel pointed out that ACB has wrongly

rejected the total income/sources of the Applicant and his family members worth Rs.14,69,93,995/- and has also over valued the agricultural assets. It is also pointed out that the land value has been taken as per the current market price which is impermissible. The learned counsel pointed out that except Crime No. 736 of 2020 and 644 of 2020, the Applicant has been released on bail in all Sneha Chavan page 4 of 15 1 ba 3466-21 @ 3977-21.doc other offences. In some of the offences, the Applicant is not arrayed as an accused.

10. It is submitted that Gulab Dhavade, who is the father- in-law of the Applicant was in Government service and had independent assets and sources of income. It is pointed out that Saangita Nazirkar, who is the wife of the Applicant was the only daughter of Gulab Dhavade and has inherited the assets of Gulab Dhavade. It is submitted that the allegations about the forged and fabrication of Will of Gulab Dhavade are incorrect and in any event, the Applicant had no reason to forge or fabricate the Will of Gulab Dhavade as the assets would be inherited by Sangita Nazirkar, the daughter of Gulab Dhavade in absence of any other heirs. Gulab Dhavade has expired on 26.09.2011. It is submitted that the investigation is complete and the chargesheet is filed. The prosecution has cited more than 80 witnesses and trial would take its own time and there is no justification to detain the Applicant behind the bars.

11. It is submitted that the income tax returns in respect of the income of the Applicant have been accepted by the department and there was no reason for ACB not to go by the income as shown.

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12. On behalf of the Applicant reliance is placed on the following decisions.

(i) Khemlo S. Sawant v/s. State (2002 (1) Bom.C.R.689)

(ii) Sanjay Chandra v/s. CBI (2012 Cri. L. J. 702 (SC))

(iii) P. Chidambaram v/s. CBI (Cri. Appeal No. 1603/2019 on 22.10.2019)

(iv) Prabhakar Tewari v/s. State of U.P. (Cri. Appeal No. 153/2019 on 24.01.2020)

(v) Moti Ram v/s. State of M.P. ((1978) 4 SCC 47)

(vi) Sanjay @ Bablu @ Keja v/s. State of Gujarat (2002 AL MR (Cri) 468 (SC))

13. The learned Spl. P.P. has submitted that the Applicant is found to be in possession of assets which are substantially in excess of his known sources of income and which the Applicant could not justify. It is pointed out that the disproportionate assets are to the extent of 1151.99% of the known sources. The Applicant through the co-accused has amassed wealth and assets which in excess of known source of income. It is submitted that the co-accused Rahul Khomane has assisted the Applicant in the matter of collection of evidence to justify the income as Rahul Khomane has obtained documents from the fruit vendors showing inflated consideration for sale of fruit. It is

submitted that 14 out of 20 notarised documents were not notarized by the notary.

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14. The learned Special P.P. has referred to the statement of witnesses including Sudhir Kumar Babare and several others, in order to show as to how the Applicant was running various entities. A reference is made to the statement of Arun Bulbule to show that after the demonetization, the Applicant had deposited an amount of Rs.98 lakhs in bank account. It is submitted that Gulab Dhavade had entered in Government Service as a class-IV servant and retired as Class-III servant and it is unlikely that his income can be reckoned by the Applicant to justify the assets. On behalf of the State reliance is placed on the following decisions:

(i) Nimmagadda Prasad v/s. CBI¹

(ii) Fida Hussain Yahyabhai Bohra²

(iii) The State of Bihar and Ors. v/s. Amit Kumar³

15. I have given my anxious consideration to the rival circumstances and submissions made. At the outset, it is necessary to note that although extensive arguments were made on behalf of the either side with reference to the material collected by the prosecution, it is neither necessary nor appropriate at this stage to examine or to appreciate the material in depth in view of the fact that for the present, I am only concerned with prayer for grant of bail by the Applicant.

1 (2013) 7 SCC 466

2 2009 ALL MR (Cri) 3315

3 (2017) 13 SCC 751

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It is necessary to ensure that such appreciation may not result into any prejudice to either of the parties at the trial.

16. The Applicant had joined Government service as Assistant Town Planner in 1986. He got married with Sangeeta Dhawade, the only daughter of Gulab Dhavade in the year 1991. The Applicant was promoted and was posted as Deputy Director Town Planning at Amaravati at the time of registration of the offence.

17. On 18.12.2017 a confidential inquiry was directed as to the assets of the Applicant, which was followed by an open inquiry which was ordered on 19.09.2019. The explanation of the Applicant was sought for and the statement of the Applicant came to be recorded on 17.02.2020 the followed by the FIR dated 19.06.2020 in Crime No. 736 of 2020, which appears to be the principal offence.

18. The offence at crime No. 644 of 2020 is regarding the complaint of Wajid Bagwan to the effect that documents showing inflated amount of consideration for sale/purchase of fruits were obtained from Wajid Bagwan and other fruit vendors to justify the assets before the ACB. It is true that Wajid Bagwan and others in Crime No. 644 of 2020 are the witnesses in Crime No. 736 of 2020 also. The allegation of the prosecution in Crime No. 736 of 2020 is that the Sneha Chavan page 8 of 15 1 ba 3466-21 @ 3977-21.doc Applicant is found in possession of disproportionate assets to the extent of Rs. 82,38,34,941/- which he could not justify. The assets have been found to be in excess of the income by about 1152% (as per chart at page 152 of the compilation).

19. The contention on behalf of the Applicant is that i) the assets have been over valued on the current market price and there is also double valuation, ii) Income of the Applicant and his family members including the wife of the Applicant has not been considered properly and ACB has rejected the total income of the Applicant and his family members worth Rs.14,69,93,995/-, (iii) The fact that Sangita Nazirkar, the wife of the Applicant was the only daughter of Gulab Dhavade and would have otherwise inherited his property after his death on 26.09.2011 has not been properly considered. Reference in this regard is made to the affidavit filed by Komal Dhawade, who is the widow of Gulab Dhawade, iv) Lastly, it is submitted that the investigation is complete and the chargesheet is filed and there is no material to justify the apprehension that the Applicant would tamper with or influence the prosecution witnesses.

20. In my considered view, the investigating agency has collected material to show that there is substantial difference between the assets and the sources of income found by the investigating agency against the Applicant. It is not possible Sneha Chavan page 9 of 15 1 ba 3466-21 @ 3977-21.doc at this stage to consider threadbare the allegations about the valuation of assets and the sources of income which can only be done at the trial. There are statements of witnesses as referred to by the learned Spl. P.P., prima facie showing the complicity of the Applicant in the offence. Such witnesses referred to are Sudhirkumar Babare, Chandrakant Nivruti Garad, Arun Bulbule, Nitin Patil, Sangram Sorte, Santosh Dhavade, Dada Dhavade, Shrikrushana Gangurde, Pravin Shorte, Ajit Patil, Sanjay Kulkarni, Jaydeep Kothwal, Vijay Nigol, Nitin Deshmukh, Sopan Kale, Nandkumar Bhondave, Sunil Komane, Hemant Dabholkar, Deepak Sasar, Vijay Singh Dhumal, Dr. Mahendra Nazirkar and Ganesh Mule.

21. The contention that the wife of the Applicant is the only daughter and therefore, there was no reason to fabricate any Will as the daughter would have otherwise inherited the property of Gulab Dhawade cannot prima facie be accepted as Gulab Dhawade is left behind his widow Komal Dhawade as well who was one of the legal heirs.

22. A brief reference may be made at this stage to the cases cited on behalf of the Applicant. In Sanjay @ Bablu, the Supreme court found that bail could not have been refused to the Appellant on the ground that he was hailing from Alahabad and was likely to abscond from the court in Gujarat. There cannot be any manner of dispute that the Sneha Chavan page 10 of 15 1 ba 3466-21 @ 3977-21.doc residence of the Applicant may not alone be decisive in the matter of consideration of an application for bail.

23. In P. Chidambaram, the Supreme Court found that the apprehension expressed that the appellant-accused could influence the witnesses was not made out and the bail could not have been refused on that ground. The appellant-accused in that case was a member of the parliament and a senior member of the bar. On facts, it was found that the appellant-accused was not a "flight risk".

24. In Khemlo Sakharan Sawant, an allegation was made about an offer to the MLAs of BJP to support Congress(I) to form Government in Goa and an amount of Rs.15 lakhs in cash and ministerial birth was offered to BJP MLAs.

It can thus be seen that the case clearly turned on its own facts.

25. In Prabhakar Tiwari, the order granting bail by the High Court was subject matter of challenge before the Supreme Court. That was a case involving an offence under Section 302 read with Section 120-B/34, 147, 148 and 149 of IPC. The Supreme Court found, on facts, that there was no wrong or improper exercise of discretion on the part of the High Court, in granting bail to the accused.

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26. The case of Moti Ram also turned on its own facts. In that case Supreme Court was concerned with the question of demanding large sum of security, from those who are of ordinary means and propriety of insisting that surety is from the same district.

27. In Sanjay Chandra, the prosecution arose out of the 2G scam. In para 25 of the judgment the Supreme court held that in determining whether to grant bail, both the seriousness of the charge and the severity of the punishment should be taken into consideration. It has been held that the grant or refusal to grant bail, lies within the discretion of the court. The grant or denial is regulated, to a large extent by the facts and circumstances of each particular case. However, at the same time, right to bail is not to be denied merely because the sentiments of the community is against the accused.

In that case, the Supreme Court found that there were 17 accused and the statement of the witnesses ran into several hundreds pages and the documents on which reliance was placed by the prosecution was voluminous. The Supreme Court found that the trial may take considerable time and the accused would be required to spend time longer than the sentence in the event of their conviction. It was in these circumstances found that the accused cannot be detained in jail for an indefinite period. In my humble opinion the facts in the present case are clearly distinguishable.

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28. On behalf of the State, reliance is placed on the following observations of Supreme court in Nimagadda Prasad:

"26. Unfortunately, in the last few years, the country has been seeing an alarming rise in white-collar crimes, which has affected the fiber of the country's economic

structure. Incontrovertibly, economic offences have serious repercussions on the development of the country as a whole. In State of Gujarat v/s.Mohanlal Jitamali Porwal and Anr, (1987) 2 SCC 364 this Court, while considering a request of the prosecution for adducing additional evidence, inter alia, observed as under:-

"5.....The entire Community is aggrieved if the economic offenders who ruin the economy of the State are not brought to book. A murder may be committed in the heat of moment upon passions being aroused. An economic offence is committed with cool calculation and deliberate design with an eye on personal profit regardless of the consequence to the Community. A disregard for the interest of the Community can be manifested only at the cost of forfeiting the trust and faith of the Community in the system to administer justice in an even handed manner without fear of criticism from the quarters which view white collar crimes with a permissive eye unmindful of the damage done to the national economy and national interest...."

29. Considering the overall circumstances, I do not find that the Applicant can be released on bail in Crime No. 736 of 2020 of Police Station Alankar, Pune City. Consequently, Sneha Chavan page 13 of 15 1 ba 3466-21 @ 3977-21.doc Criminal Bail Application No. 3466 of 2021 is liable to be rejected.

30. Insofar as, Crime No. 644 of 2020 of Police Station Baramati is concerned, the allegation is of the co-accused Rahul Khomane having obtained blank stamp papers and cheques from informant Wajid Bagwan and other fruit vendors showing inflated amount towards sales/purchase of fruits by these vendors. This according to the prosecution was with a view to assist the present Applicant in the matter of the inquiry into disproportionate assets. The complaint by Wajid Bagwan principally refers the role of accused Rahul Khomane. In such circumstances, I am inclined to release the Applicant on bail in Crime No. 644 of 2020 of Police Station Baramati, District Pune.

31. In the result, the following order is passed:

ORDER

(i) Criminal Application No. 3977 of 2021 is hereby allowed.

(ii) The Applicant Hanumant Jagannath of 2020 of Police Station Baramati, District Pune, on execution of a PR Bond in sum of Rs.50,000/- with one or two solvent sureties in the like amount.

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(iii) The Applicant shall undertake to remain present during the course of the trial, unless exempted.

(iv) The Applicant shall not tamper with the prosecution evidence/witnesses.

(v) The bail bonds to be furnished before the Trial Court.

(vi) Criminal Application No. 3466 of 2021 (arising out of Crime No. 736/2020) stands rejected.

(C.V. BHADANG, J.) Digitally signed by ANDREZA ANDREZA PEREIRA PEREIRA Date: 2022.04.30 17:00:46 +05'30' Sneha Chavan page 15 of 15