

MHAU030067172025



RCC No.790/2025
State Vs. Harshkumar and others.

ORDER BELOW EXH.229 BAIL APPLICATION OF ACCUSED NO.1
HARSHKUMAR ANIL KSHIRSAGAR, AT JAWAHAR NAGAR
POLICE STATION, AURANGABAD.

Read application and say. This is the bail application filed by accused No.1 releasing him on bail.

2. The Ld. Advocate for accused submitted that, only accused No.1 and 3 are in jail. The remaining accused already released on bail. This is the first application for bail by accused No.1. After filing the charge-sheet, charge was framed and informant evidence was recorded. Then, one of the panch witness was called. She was panch for various seizure and search. So, the evidence was recorded for examination in chief, but the panch witness remains absent due to illness, cross examination could not be conducted.

3. Ld. Advocate further submitted that, the offence was registered against the accused are punishable under Section 316(2)(5), 318(4), 336(2)(3), 338, 340(2), 61(2), 45, 3(5) of BNS, 2023, and Section 66(c) of IT Act, 2000. Accused was arrested on 01.01.2025 and since thereafter accused is in jail. The most of the evidence are in the form of documentary evidence. More than 90 witnesses cited and huge documents were produced

by prosecution. In near future as early as possible trial would not be concluded as the evidence is in the voluminous documentary material. The allegations was made against this accused that, he prepared the letter by which the present accused got connected with internet banking of the account of Divisional Sports Committee and thereafter he withdraw the amount and misappropriated the amount. However, the evidence of informant was recorded and the allegations against accused No.2 and the present applicant are same. Accused No.2 was released on bail, while releasing the bail Hon'ble High Court observed in Bail Application No.1381/2025 that, "A transfer of Rs.20,00,00,000/- from a Government account prima facie requires multiple layers of authorization (Digital Signatures, OTP's or Physical checks) by permanent Class-I or Class-II officers. The application may have been acting under the orders of superiors without knowledge of the fraudulent nature or the instructions. It is also observed that, "fraud allegedly took place over six months, (June to December 2024), the fact that, the Indian Bank and the Department Internal Auditors failed to flag a discrepancy prima facie indicates systematic failure rather than conspiracy localized to a junior contract clerk".

4. So, considering this observations Ld. Advocate for accused submitted that, accused No.1 and 2 were working as a Junior Clerk on contract basis and prosecution alleged both did the main role. So, on the same parity of which accused No.2 released on bail, the present accused shall also be release on bail. However, Ld. Advocate for accused also submitted that, the Section 66(C) of

IT Act, 2000 was also there, but, necessary digital foot prints and logs already in the custody of prosecution. The accused cannot altered any digital trail even if released on bail. There are huge documents produced. There are huge witnesses cited. In such situation it will take such time to conclude the trial. Accused had no past criminal antecedents and first time arrested in any criminal case. Most of the evidence is such a nature that, nobody can tampering. If accused kept in jail, then it will be conviction to the accused without any trial. So, this accused is entitled for bail. He will abide all orders. He will not tamper the prosecution evidence. So, application may kindly be allowed.

5. Ld. Advocate for accused placed his reliance on the following judgments;

a. Nagraj V. v. Ut of J & K (Nov 2025), Bail is the Rule, held that, *“magnitude of fraud is not a sole ground for bail denial once the investigation is complete”*,

b. V. Senthil Balaji v. Deputy Director, (2024 SCC OnLine SC 2626), Article 21 & Delay, *“Prolonged incarceration (over 1 year) without trial progress violates the right to a speedy trial”*,

c. Sagar v. State of UP (Dec 2025) [2025 INSC 1370], Role Based Parity, *“Bail must be considered if a co-accused with a similar role (e.g. Accused No.2) has been released”*,

d. Niklesh Patil v. State of Maharashtra (Bail App. 1208/2025), Prison Overcrowding, *“Incarceration beyond one year and trial delays favor the presumption of innocence”*,

e. Anandraj v. State of Rajasthan (Oct 2025), Sec 480(6) BNS, *“Mandates bail if a Magistrate’s trial isn’t concluded within 60 days fo the first evidence date”*.

6. Ld. A.P.P. and I.O. strongly objected the arguments and bail application. Ld. APP submitted that, this accused No.1 is the main master mind of the act by which the amount of Rs.21,78,00,000/- was misappropriated by using the forged documents. After investigation accused No.1 was arrested and he found to be involved in the offence. This accused prepared a letter for getting the account statement for audit from the bank and on that letter this accused change the e-mail ID, got access of the internet banking of the account maintained by Divisional Sport Committee. Thereafter, this accused transferred the amount and the said amount was utilized to purchased the flats, vehicles, and luxury items. All vehicles and luxury items were seized. Technically the flats were seized. The accused No.1 purchased all these things in the name of accused No.4 or other accused i.e. his mother, father and maternal uncle.

7. The Ld. A.P.P. submitted that, though huge documents and witnesses produced or cited in evidence, the informant was examined and the witness No.2 i.e. panch was called. There were total 11 accused and all of them took there time for one and other reason. It was not the case that, due to the prosecution, witnesses yet to be examined. The accused also gave chance to consult with his advocate through video conferencing. So, accused every right for the trial was protected. This accused did everything and

knowing this he did not file bail application. However, the general rule is that, bail is rule and jail is an exception, but this will not be applicable to the present case of this accused and recently Hon'ble Supreme Court held that, though the case is of misappropriation or cheating and triable by Judicial Magistrate First Class, then also it is very serious case. Here in this case, the amount misappropriated is Rs.21,78,00,000/-. I.O. still in the investigation as to recover the amount involved in this offence. In fact the accused working on a contract basis, purchasing flats in the name of his girlfriend or parents, accused purchasing huge gold ornaments and giving loan of Rs.90,00,000/- as a hand loan to accused No.11, this accused also purchased the various luxury items, including cars and other things, however, this is not possible to purchase the person who was working on a contract basis. However, this was also not case that, accused had his other income source. So, no explanation from accused from where this amount came. Hence, the prima facie case clearly made out that, that this accused prima facie withdraw the amount from the account of Divisional Sports Committee and utilized that amount for purchasing the property, cars and other luxury items. So, prima facie case made out. In such situation if this accused released on bail, he may tamper the prosecution evidence. Further, the punishment provided for this offence shows the seriousness. So, accused not entitled for bail. Thus, application may kindly be rejected.

8. Ld. A.P.P. placed her reliance on the following judgments;

- a. Pralhad Sing Bhati Vs. NCT Delhi, SC 280 200/SCC,
- b. Sudeep Kumar Bafna Vs. State of Maharashtra, 2014, 16 SCC 623,
- c. Harshad Mehta Vs. State of Maharashtra, AIR 2020, Bom 729,

It was held that, *“There is no jurisdiction to grant bail is punishable with imprisonment to life”*. (However, Ld. A.P.P. though placed her reliance on the following judgments did not produced or cited any judgment.)

9. Ld. A.P.P. submitted that, in this case the offence registered against the accused is punishable under Section 338 of BNS, 2023, in which punishment provide with imprisonment for life or imprisonment for either description for a term which may extent to 10 years or shall also liable for fine. Considering the punishment, misappropriation of government money with forge documents prepared by this accused, being the master mind. So, present accused No.1 cannot claim any parity. So, application not tenable and deserves to be rejected.

10. The case of the prosecution was that, accused No.1 was working on contract basis in Divisional Sports Complex under Divisional Sports Complex/Committee. Under the leadership of Guardian Minister and Divisional Commissioner Government of Maharashtra to develop the infrastructure for sports, sports complex was raised and committee was formed. The government also transferred the fund in the account of said committee maintained in Indian Bank. However, the work of the said complex

was administered by Deputy Director. The said deputy director sent one letter to the bank to demand the account statements through accused No.1. The accused No.1 changed e-mail ID by hand on the said letter. The accused No.1 also attached his mobile number to the said account and got internet banking facility in his name. For this accused No.2 and 3 helped this accused. Accused No.8 and 9 are the bank employee, they did not properly verified to facilitate internet banking facility of the account of the Divisional Sports Committee to accused No.1. The accused no.4 is the friend of accused No.1. Accused No.5 and 6 are the father and mother of accused No.1. Accused No.7 is the maternal uncle of accused No.1. Accused No.1 misappropriated the amount from the account of Divisional Sports Committee/Complex by withdrawing it through internet banking and transferred it to various accounts. The accused No.4 to 7 purchased the properties and other items with that amount which they received from accused No.1 and tried to dispose of that misappropriated amount. Accused No.10 is the person real government employee who helped accused No.1 to change the e-mail ID and mobile number to get the internet banking facility and accused No.11 also the beneficiary of the amount who received Rs.80,00,000/- from accused No.1. Accused No.1 to 3 with the helped of accused No.8 to 10 change the e-mail ID given to bank, also they changed the mobile number given to bank of the responsible person to operate the account. Accused No.1 to 3 and accused No.8 to 10 used internet facility of banking and misappropriated amount of Rs.21.59 Cr. Accordingly, the properties purchased from that amount in Aurangabad, Navi Mumbai and Malegaon. The accused also purchased the gold,

household items, vehicles. This came to knowledge of the office bearer of Divisional Sports Committee/Complex when, the bank statements received for audit and when they inquired regarding the amount for issuing the tender for making astro turf in the stadium. So, FIR was lodged and after investigation, charge-sheet filed against accused.

11. During the course of trial, firstly, charge was framed, then, the evidence of (PW-1) i.e. informant was recorded. Thereafter, (PW-2) panch witness was called. In fact huge muddemal was there and all necessary muddemal for trial was deposited by I.O. and then, panch witness was called. The examination in chief of (PW-2) was recorded and case is pending for cross examination of the said witness. However, except accused No.1 and 3 all accused released on bail and so, accused No.1 claiming bail on the ground of parity of which accused No.2 released on bail and other ground.

12. After considering the entire evidence, as per the prosecution case accused No.1 appears to be main accused and he did everything with the help of other accused to misappropriated the amount by making forged letter to sent to bank for getting internet banking facility of the account of Divisional Sport Complex/Committee maintained in Indian Bank. It clearly appears prima facie that, the amount withdrawn and transferred to the account and accused No.1 received the amount. Further, it appears that, from the evidence that, property purchased from that money at Navi Mumbai, Aurangabad and Malegaon in the name of

accused no.4, 5, 6 and 7. It also appears that, the gold also purchased by accused No.1. As per the evidence prima facie appears that, the expensive spectacles and goggle priced more than Rs.15,00,000/- purchased by accused No.1. In entire evidence, there was no record from where this money came to this accused No.1. So, it clearly appears that, accused No.1 is the main accused and master mind of this offence.

13. The offence is very serious, though it is triable by Judicial Magistrate First Class. It doesn't make difference that, if the offence triable by Judicial Magistrate First Class is not serious. The offence which charged against the present accused is having punishment life, which may extent to 10 years or fine. This shows the severity of this offence. The amount which misappropriated is a government fund and definitely this accused knows everything which I.O. and investigator did not know. If this accused released on bail, then this accused may tried to dispose of the amount or any other evidence which yet to be known to the investigator. Huge amount of gold recovered. The properties technically seized, but this accused if released on bail, then, considering the nature of offence, there is possibility that this accused may fled away. This would create hamper in trial. The trial till continue due to the accused is in jail, otherwise if accused released on bail it would be hurdle to proceed the trial.

14. Definitely there is a rule that, bail is a rule and jail is an exception. However, in this case huge amount of government fund misappropriated. This accused is the main accused and he may fly

away if released on bail. He may tried to tamper the prosecution evidence, considering the nature of offence. So, here in this case, this rule would not be applicable. Definitely, the fraud is not the sole ground for denial of bail, but the nature of fraud is very high and considering the evidence, this accused would be fly away, if released on bail. The trial is in progress and it was not delayed due to the prosecution.

15. This accused was working on a contract basis. The person working on a contract basis would not get more than Rs.20,000/- salary per month. However, this accused purchased expensive goggles for the price more than Rs.15,00,000/-. This accused purchased the luxury vehicles and properties. There was no proper explanation from where this amount came. So, considering the evidence, this clear prima facie that this accused No.1 is the main accused who did everything and distributed the amount or purchased the properties or other items in others name.

16. Accused also claim the ground of parity as per the observations made by Hon'ble High Court in bail application No.1381/2025. However, there is evidence against this accused and definitely this accused is the main accused who did everything. So, considering the evidence and role of this accused, this accused is not entitled for the same parity. So, considering the nature of the offence and gravity of the offence, the judgment of Hon'ble Supreme Court or Hon'ble High Court in which, the Ld. Advocate for accused placed his reliance not helpful.

17. Hence, considering the entire evidence by prosecution it appears clearly that, this accused is the main accused who did everything with other accused and misappropriated the government amount, purchased the properties, household items, luxury vehicles and gold in the name of other accused. So, considering the entire evidence, I do not found just to release this accused on bail. Hence, contentions of accused cannot be accepted to enlarge this accused on bail. Accordingly, I proceed to pass the following order -

ORDER

Application for bail by accused No.1 is rejected.

Date:- 02/03/2026.

(R. S. Jambotkar)
Chief Judicial Magistrate,
Aurangabad.