

Common Bail order in RCC No.513/2021 below Exh.88. 90 & 93

These are three bail applications connected together and as such have been heard together and are being decided together by a common order.

02. These applications filed by applicants namely Rahul Sukhdeo Gaikwad, Dattatray Bhausahab Yadav and Vikas Prakash Thite for bail. The learned advocate appearing on behalf of accused contended that applicants have not committed any offence punishable with death sentence or imprisonment for life. The applicants are not concern with any offence and have been falsely implicated in the crime. He further contended that, the investigation has been completed and charge-sheet has been filed. All the evidence is documentary evidence and has been recovered. He further contended that the informant has filed Civil Suit bearing no. Spl. Case. No.1255/2021 before Hon'ble Civil Judge for cancellation of sale deed and power of attorney. In said civil dispute main accused also approached before the Civil Court and was ready to settle dispute and filed pursis for the same. It is further stated that as per the instruction of relative of applicant the disputed property has been sold by the complainant. He stated that complainant himself approached for compromised but it did not happen. Therefore, he has filed case.

03. He further contended that co-accused Shubham Govind Pacharne has been granted ad-iterim bail by Hon'ble Bombay High Court vide B.A. No.14/2022 dtd 11/01/2022, further Vijay Bhausahab Ghavate and Arun Kailas Gawali have been released on bail on order of Hon'ble High Court vide Cri. B.A.No.2648/2022 and 2883/2022. Whereas co-accused Somnath Fakkad Borade released on bail vide B.A. No.776/2022 dtd 04/06/2022 by Hon'ble Sessions Court. He further contended that co-

accused Mahesh Dhamdhere granted bail by Hon'ble JMFC Court. He contended that if applicants are being kept behind the bar for a long time they may become hardened criminal and their career will be spoiled. He further contended that applicants are ready and willing to abide by any terms and conditions as deem fit by this Court. That apart, the applicants are ready to attend each and every date. Moreover, applicants are having landed property at their village. Hence, they will not flee from justice and will not tamper the prosecution evidence in any manner. Therefore, prayed to release the accused persons on bail.

04. The say of APP was called. Ld. APP filed his say and resisted present applications. He stated that accused Rahul Gaikwad and Vikas Thite have filed second bail application after filing of the charge-sheet. He stated that as per the observations in judgment *Virupakshappa Gauda Vs. State (2017) 5 SCC 406* filing of charge-sheet does not in any manner lessen allegations. He further stated that present accused are beneficiary of the fraud transactions. They have played active role in the deceiving informant and thereby fraudulently transferred his land in their name. The FIR specifically curve out the role played by the present accused. He further contended that prima-facie case made out against the present accused. There is ample documentary evidence available on record against them. He further stated that accused are habitual offenders, 11 offences are pending against the Rahul Gailwad, 3 offences are pending against the Vikas Thite and 3 offences are pending against the Dattatray Yadav. Possibility of threatening prosecution witnesses cannot be denied. Therefore, prayed to reject the bail application.

05. I have considered the rival submissions made by learned advocate for the accused and learned APP. I have gone through the entire record including the papers submitted by learned advocate for the

accused. The learned advocate for accused filed on record bail application no.2883/2022 of Vijay Bhausahab Gawate, Bail application no.2648/2022 of Arun Kailas Gawali, anticipatory bail application no.14/2022 of Shubham Govind Pacharne. Apart from it, he filed on record copy of order of Cri.Bail. Application no.776/2022 of Somnath Borhade and copy of bail of accused Mahesh Dhamdhere. Moreover, accused filed on record copy of registered sale deed executed by Rabhaji Doke in favour of Babu Yellappa More, copy of compromise pursis in Spl.Civil Suit no.1296/2022, copy of pursis filed by wife of accused Rahul Gaikwad in Spl. Civil Suit no.1255/2021 and copy of power of attorney Rahul Gaikwad executed by his wife. To buttress his contentions the learned advocate for the accused placed his reliance on the following judgment -

- 1] **Ishan Vasant Deshmukh @ Prasad Vasant Kulkarni Vs. State of Maharashtra** 2011 (2) MhLJ
- 2] **Vinod Bhavarlal Mohata Vs. State of Maharashtra** 2010 ALL MR (Cri) 1793.

06. While granting bail it is mandatory on court to consider the nature and gravity of accusation, severity of punishment, danger of the accused, absconding if released on bail, and likelihood of the offence being repeated. Also it is necessary to see whether there is a possibility of the accused being available to the trial. As per section 437 of Cr P.C. The Magistrate has discretionary power to grant the bail. Except offences punishable with death or imprisonment for life. In case cited supra in the case of ***Ishan Vasant Deshmukh V/s State of Maharashtra 2011(2) M.L.L.J 361*** in which Hon'ble Bombay High Court held that the Magistrate would be entitled the grant bail in cases triable by him even though punishment prescribed extent to imprisonment for life. In case of ***Vinod Mohata Vs. State of Maharashtra*** the Hon'ble Bombay High Court held that role of applicant accused in the alleged crime cannot be set to be

greater than the role of co-accused had been granted bail.

07. I have gone through record of the case. The learned advocate for the applicants stated that charge-sheet has been filed and co-accused were released on bail.

08. I have gone through the all the documents filed by learned advocate for the applicants in support of their contentions. The grant of bail is not a mechanical act. The parity cannot be sole ground for bail as well as filing of charge-sheet is not enough ground to grant bail. The continued incarceration of the applicants does not appear to be necessary as the investigation against them has been completed and the charge-sheet filed. The IO has cited a total 20 witnesses in charge-sheet and filed numerous document alongwith charge-sheet. Admittedly, the trial will take for considerable length of time. Accused Dattatray Yadav since 24/08/2021 is languished in jail, accused Rahul Gaikwad since 19/07/2022 is languished in jail and accused Vikas Thite is languished in Jail since 02/11/2022. Recovery is not pending. Moreover, accused persons are not previously convicted. The other accused already enlarged on bail. No doubt, there are criminal antecedents of the present applicants. However, without getting influenced by criminal antecedents the matter in which bail is sought deserves to be judged independently.

09. Further, there are no allegations against applicants in charge-sheet that accused threatened and abused informant or other witnesses. On last date, learned APP filed copy of NC dtd 05/04/2022, 18/04/2022 and dtd.27/03/2023. Perusal of the same reveals that on 27/03/2023 unknown person threatened informant. The learned advocate for the applicants submits that informant sold lands in question to the third party. The main dispute between complainant and the accused is of civil nature

for which informant knocked the doors of civil courts. All the incriminating materials against the applicants were documentary in nature and has already been seized by the investigating agency. The application is decided as per the observations made in cases cited supra.

10. In view of aforesaid discussion, I am of the view that applying the relevant principles to the facts of present case, further incarceration of the applicants, pending conclusion of the trial, is unnecessary and they are liable to be released on bail, albeit with stringent conditions to ensure their presence at the trial and to minimize the risk of prejudice to the prosecution. Hence, I proceed to pass following order-

ORDER

- 1) The bail applications are allowed.
- 2) Accused/Applicants Rahul Sukhdeo Gaikwad, Dattatray Bhausahab Yadav and Vikas Prakash Thite are arrested in Cri. No.665/2021 of Shikrapur Police Station for the offence punishable under Section 420, 465, 467, 468, 386, 120B, 504, 506 r/w. 34 of I.P.C. be released on executing P.R. bond of Rs.15000/- each with two sureties of the like amount on following terms and conditions :-
 - i) At least one of the sureties will be from the spouse or blood relative of the concern applicant.
 - ii) Applicants to provide permanent address to this Court with documentary proof and should not change it without prior intimation to the Court. Applicants are directed to provide their mobile number to the investigating officer and keep the same

operational at all times.

- iii) Accused 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 them from disclosing such facts to the court or to any police officers.
- iv) Accused are directed not to indulge in any sort of criminal activities. Moreover, accused shall maintain law and order.
- v) Accused will attend the Court on each and every date of hearing, unless exempted by this Court by this exceptional circumstances and co- operate the court to complete the trial.
- vi) Accused are directed not to leave jurisdiction of this court without prior permission of this court.
- vii) Their passport, if any, will be surrendered to the Court. In the event of the applicants passport's is already in custody of any court in connection with any other proceedings, an affidavit to that effect will filed before the Court.
- viii) Failure to abide by the terms and conditions, would entail for cancellation of his bail.

Date :- 10/04/2023.

(P. S. Sonkamble)
Judicial Magistrate First Class,
Ghodnadi-Tq.Shirur, Dist. Pune

CERTIFICATE

I affirms that the contents of this P. D. F. file order are same word for word as per original order.

Name of the Court :- P. S. Sonkamble
Jt.C.J.J.D.
Ghodnadi (Shirur) Pune

Name of the Steno :- M.B.Marathe.

Date :- 10/04/2023

Signed by
presiding officer :- 10/04/2023

Uploaded on :- 11/04/2023