

MHST010007052024



**IN THE COURT OF ADDITIONAL SESSIONS JUDGE, SATARA
SPECIAL CASE No. 53 of 2024**

State of Maharashtra ...Complainant

Vs.

Sachin Pralhad Pandit

Shital Sachin Pandit ...Accused

Mr. S. V. Mahamulkar, Advocate for accused
Ms. G. M. Lakade, A.P.P. for the State.

**Coram: Mr. S. R. Tamboli,
 The Addl. Sessions Judge, Satara,**

:: ORDER BELOW EXH. 122 ::

01. In this case, accused prayed for bail as per Section 483 of the BNSS.
02. In short, the factual matrix as described in the F.I.R. reveals that Mandar Sharad Wagh, the informant is resident of Phaltan, District Satara. He was running wholesale business of chocolates. In the month of December 2022, he came into contact with accused Nanasaheb Baban Bhosale, who assured him to increase his business. In the month of January 2023, Nanasaheb took him in 'Vishwakarma Super-mart Services Pvt. Ltd.' which is situated at Ganesh Chowk, Kodoli, Satara. He introduced the informant with accused Sachin Pandit, Shital Pandit and Jivan Shirke. They assured him that they were in contact

with various Malls situated at Phaltan, Wai, Pune, Indapur etc. and they would give him orders of chocolates on condition of investment of money in their Company. All assured that if the informant invests in their Company, they would give him handsome returns as well as commission, if he collects other investors. By keeping trust and relying on their assurance, the informant invested Rs.12,00,000/- on his own name as well as on the name of his wife Bhakti. As he was in need of money, he demanded the amount invested. Accused Nanasaheb switched off the phone. Other co-accused gave evasive answers. In May 2023, meeting was called in Hotel 'Sai-Samrat'. At that time, accused Sachin, Shital and Jivan were present. Near about 200 to 300 investors were present. The accused assured to pay the amount after a period of four months. However, they did not pay the amount. Hence, he filed the F.I.R.

03. After registration of the FIR, criminal law was set in motion. During investigation, it is revealed that the accused cheated investors for the amount of Rs. 15,48,37,413/-. The charge sheet is filed for the offence punishable under Section 406, 409, 420 read with Section 34 of the Indian Penal Code, and under Sections 3 and 4 of the MPID Act. As per order below Exhibit 71, this Court has directed for making additional investigation as per Section 193(6) of the BNSS.

04. In the backdrop of these facts, Mr. S. V. Mahamulkar, learned Advocate for the accused submitted that there is no prima facie case against the accused. The

charge sheet does not reveal that the accused did not deny to return the amount. The complaints filed by the investors are premature. There is no prima facie case for the offence under the provisions of the MPID Act. Further, reasons of the arrest were not communicated to the accused. Hence, there is breach of the statutory provisions. The arrest of the accused is illegal. Hence, he prayed to set free accused no. 1 and 2.

05. To support his contention, he placed reliance on the following citations:

- i. Vihaan Kumar v. State of Haryana and Another, AIR 2025 SC 87**
- ii. Ahmed Mansoor and Others v. State, Criminal Appeal No. 4505 of 2025, SLP (Crl.) No. 198 of 2025, decided on 14/10/2025.**
- iii. Mihir Rajesh Shah v. State of Maharashtra, Criminal Appeal No. 2195 of 2025, decided on 06/11/2025**
- iv. Satender Kumar Antil vs. Central Bureau of Investigation and Ors., MANU/SC/0851/2022.**
- v. Sanjay Chandra v. Central Bureau of Investigation AIR 2012 SC 830.**

06. Relying on the ratio laid down in the aforesaid cases, Mr. S. V. Mahamulkar, learned Counsel for the accused, submitted that the aforesaid citations are squarely applicable to the facts of the case of the accused. Hence, he prayed accused be set at liberty.

07. Per contra, the learned APP for the State

submitted that the charge sheet prima facie shows that the accused committed offences punishable under Sections 406, 409, 420, read with Section 34 of the Indian Penal Code and under Sections 3 and 4 of the MPID Act. The statements of the witnesses and the bank record show that the accused cheated for the amount of Rs. 15,48,37,413/-. There is a prima facie case against the accused. The offence has been mentioned in the arrest panchanama. The relatives of the accused were informed. Therefore, the custody of the accused cannot be termed as illegal. The earlier bail applications of accused Nos. 3 has been dismissed on merit. There is no change in circumstances. Hence, accused Nos. 3 is not entitled to bail on any ground. Accordingly, she prayed to reject the application.

Prima facie case:

08. The statements of the witnesses and bank record prima facie show that the accused had no right to take the amount from the investors. Accused did not return the amount as per the promise. The accused had cheated for the amount of Rs. 15,48,37,413/-. Hence, there is a prima facie case against the accused. At this stage of bail, it is not necessary to scrutinize the evidence on record meticulously. So also, this Court has also cancelled the anticipatory bail granted to accused No. 1, Nansaheb Bhosale. This Court observed that there is a prima facie case against the accused. Hence, I find no substance in the contention of the learned Counsel for the accused.

Illegal arrest:

09. The arrest memo and other record of the case do not show that the grounds of the arrest were communicated to the accused in writing.

10. In the case of *Vihan Kumar* (supra), the arrest memo did not contain the grounds of arrest. In the said case, the Hon'ble Apex Court observed that the mere mention of arrest details in the remand report and inclusion in the case diary are not sufficient compliance with the constitutional requirements. The requirement of communication of the grounds of arrest in writing is mandatory.

10. In the case of *Ahmed Mansoor* (supra), the Hon'ble Supreme Court observed that the facts of the case in **State of Karnataka v. Sri Darshan, Criminal Appeal Nos. 3528-3534 of 2025, Supreme Court of India, decided on 14/08/2025**, are quite different and approved the law laid down in the case of *Vihan Kumar* (supra). In this case, the Hon'ble Apex Court observed that written communication of the grounds of the arrest is mandatory.

11. In the case of *Mihir Shah* (Supra), the Hon'ble Supreme Court observed as under:

56. In conclusion, it is held that:

i) The constitutional mandate of informing the arrestee the grounds of arrest is mandatory in all offences under all statutes including offences under IPC 1860 (now BNS 2023);

ii) The grounds of arrest must be communicated in writing to the arrestee in the language he/she understands;

iii) In case(s) where, the arresting officer/person is unable to

communicate the grounds of arrest in writing on or soon after arrest, it be so done orally. The said grounds be communicated in writing within a reasonable time and in any case at least two hours prior to production of the arrestee for remand proceedings before the magistrate.

iv) In case of non-compliance of the above, the arrest and subsequent remand would be rendered illegal and the person will be at liberty to be set free.

12. The ratio laid down in the case of *Mihir Shah* (Supra) clearly shows that in case of non-communication of the grounds of the arrest, the arrest becomes illegal and such persons deserve to be set at liberty. In the present case, the arrest panchanama of accused no. 1 and 2 show that the grounds of the arrest were not communicated to the accused. Column no. 8 of the arrest panchanama has been kept blank. Even the remand report does not show that the grounds of the arrest were communicated to the accused. The arrest of the accused is illegal. It is in contravention of Section 47(1) of the BNSS.

Duty of the I.O.:

13. As per Section 41(1)(b)(ii) of the Cr.P.C. which is pari materia with Section 35(1)(b)(ii) of the BNSS, a police officer can arrest the accused only on the satisfaction of the conditions mentioned in that provision. In the case of **Arnesh Kumar v. State of Bihar, (2014) 8 SCC 273**, the Hon'ble Supreme Court observed as under:

“13. Our endeavour in this judgment is to ensure that police officers do not arrest accused unnecessarily and Magistrate do not authorise

detention casually and mechanically. In order to ensure what we have observed above, we give the following direction:

(2) All police officers be provided with a check list containing specified sub-clauses Under Section 41(1)(b)(ii);

(3) The police officer shall forward the check list duly filed and furnish the reasons and materials which necessitated the arrest, while forwarding/producing the accused before the Magistrate for further detention;

(7) Failure to comply with the directions aforesaid shall apart from rendering the police officers concerned liable for departmental action, they shall also be liable to be punished for contempt of court to be instituted before High Court having territorial jurisdiction.”

14. Aforesaid judgment is referred to by the Hon'ble Supreme Court in the case of **Satender Kumar Antil vs. Central Bureau of Investigation and Ors., MANU/SC/0851/2022** and observed as under:

“100. In conclusion, we would like to issue certain directions. These directions are meant for the investigating agencies and also for the courts. Accordingly, we deem it appropriate to issue the following directions, which may be subject to State amendments:

100.1. The Government of India may consider the introduction of a separate enactment in the nature of a Bail Act so as to streamline the grant of bails.

100.2. The investigating agencies and their officers are duty-bound to comply with the mandate of Sections 41 and 41-A of the Code and the directions issued by this Court in Arnesh Kumar [Arnesh Kumar v. State of Bihar, (2014) 8 SCC 273 : (2014) 3 SCC (Cri) 449]. Any dereliction on their part has to be brought to the notice of the higher authorities by the court followed by appropriate action.

15. In the present case, the arrest panchnama of accused No. 1 and 2 do not show that the Investigating

Officer complied with the provisions of Section 35(1)(b)(ii) of the BNSS, and therefore, the IO has not followed the mandate of the said section as well as the directions given by the Hon'ble Supreme Court in the case of *Arnesh Kumar* (Supra). This means he is liable for departmental action as per the ratio laid down in the case of *Satendra Kumar Antil* (Supra). The dereliction of duty on the part of the IO has to be brought to the notice of the higher authorities for appropriate action. Hence, the matter needs to be reported to the higher authorities of the IO for appropriate action.

Dismissal of earlier bail application:

16. No doubt, the bail application of the accused no. 3 has been dismissed on merit. However, today this court has come to the conclusion that the arrest of the accused no. 2 is illegal. The arrest memo of the accused no. 3 is same as like accused no. 2. The arrest memo of the accused no. 3 shows that the column for the reasons of the arrest has been kept blank. It means that the IO has not satisfied the need of the arrest of the accused no. 3. The reasons of the arrest have not been communicated to her. As this court has come to the conclusion to set accused no. 2 at liberty on the ground of illegal arrest. The principle of parity is also applicable to the case of the accused no. 3. The arrest of the accused no. 3 is also illegal. Hence, accused no. 3 deserves to be set at liberty.

17. In view of the above discussion, it is clear that there is a prima facie case against the accused no. 2 and 3.

However, the IO has not complied with the provisions of Section 47(1) of the BNSS. Hence, the arrest of the accused no. 2 and 3 is illegal. They deserve to be set at liberty.

18. I hold that the arrest of accused No. 2 and 3 is in contravention of Section 47(1) of the BNSS. Hence, accused Nos. 2) Sachin Pralhad Pandit and 3) Shital Sachin Pandit be set at liberty. They be released from jail forthwith.

19. The accused nos. 2 and 3 to execute PR bond of Rs. 50,000/- with like amount of surety separately for their appearance before the Court.

Date- 12/11/2025

(S.R.Tamboli)
District Judge-2 &
Addl. Sessions Judge, Satara