

MHTH170014822022



RCC 225/2022
State vs. Rajesh & Ors.

ORDER BELOW EXH. 13
(Passed on 28th April, 2022)

The present is a regular bail application filed by accused No. 1 to release him on bail for offence punishable under sections 406, 465, 468, 471, 411 of the Indian Penal Code. I have perused say filed by the Ld. APP. Heard both sides at length.

2] The learned APP submitted that the offence is serious in nature and accused No. 1 may tamper evidence, if released on bail. He further submitted that misappropriation of property of an amount of Rs. 2,41,31,176/- is appeared to be made by present accused and interest of the society may affected on release of accused No. 1. According to him, act of accused No. 1 is against interest of the public at large. Prosecution has also expressed chances of absconding of accused No. 1. Therefore, prayed to reject this application.

3] On the other hand, learned advocate appearing on behalf of accused No. 1 submitted that accused No. 1 is innocent and falsely implicated in this crime. He has also submitted that charge sheet has now filed in the Court and accused No. 1 has co-operated for investigation in all possible ways without tampering any kind of evidence. Also, custody of accused No. 1

is not required either of investigation or for interrogation. He further submitted that accused No. 1 being law abiding citizen, is ready to abide all conditions, if imposed while considering this application positively. Therefore, he prayed to release accused No. 1 on bail.

4] After hearing both sides and on perusal of material available on record, the first thing is clear that charge-sheet is filed and investigation has been completed. The offence is non-bailable and involve fraud relating huge money affecting public interest.

5] As per case of prosecution, accused No. 1 is the prime suspect for the instant crime. Since, 10.02.2022 he is in Magisterial Custody. Therefore, it seems that further custody of accused no. 1 is not required.

6] The learned advocate of accused No. 1 during his argument referred ratio laid down in the case of **Sanjay Chandra Gupta Vs. CBI, 2012 (1) SCC 40**, in which the Hon'ble Supreme Court has observed that grant or refusal to grant bail lies within the discretion of the Court, but at the same time right to bail is not to be denied merely because sentiments of the community against the accused No. 1. It has also been observed that any imprisonment before conviction has a substantial punitive content and it would be improper for the Court to refuse bail as a mark of disapproval of former conduct.

7] To the contrary, ld. A.P.P. argued that earlier bail application filed by accused No. 1 is already rejected by this

Court and now, merely filing of charge-sheet in the Court would not amount to change in circumstances for seeking bail. In support of his argument, Ld. A.P.P. has referred ratio laid down in case of **Virupakshappa Gouda and other Vs. State of Karnataka and Anr., (2017) CRI. L.J.(SC) 2769.**

8] In this regard it is worth to state here that, that grant or refusal to grant bail lied within the discretion of the Court, but at the same time right to bail is not to be denied merely because sentiments of the community against the accused No. 1. It has also been observed that any imprisonment before conviction has a substantial punitive content and it would be improper for the Court to refuse bail as a mark of disapproval of former conduct.

9] Although, there is no quarrel with respect to legal prepositions canvas by the learned advocate of accused No. 1, it should be noted that, there is no straight jacket formula for consideration of grant of bail to accused No. 1. It all depends upon facts and circumstances of each case. The provisions regarding bail, place responsibility upon the Court to uphold procedural fairness before a person liberty is abridged. Though, '*Bail is the Rule and Jail in an Exception*' is well established in our jurisprudence, the Court had to major competing forces present in facts and circumstances of each case before releasing a person on bail.

10] In the instant case, offence leveled against accused No. 1 is not punishable with death or imprisonment of life. Moreover, recovery to the great extent is done. Accused No. 1 is

in jail since last around 2.5 months. As accused No. 1 is taken into MCR is sufficient to show that primary investigation is completed and custody of accused No. 1 not required by the Police. Moreover, the charge-sheet is filed in the Court. However, it could not be ascertained that trial would be concluded in near future. In such situation, keeping accused No. 1 behind bars would be like pre-trial conviction. Fine balance is required to be maintained between the societal interest vis-à-vis personal liberty of accused No. 1 while adhering to the fundamental principle of criminal jurisprudence that the accused No. 1 is presumed to be innocent until found guilty. Considering all aforesaid discussion, it will not be justifiable to keep accused No. 1 behind bars and curtail his liberty. Therefore, in order to secure presence of accused No. 1 during trial certain conditions, in view of provision laid down under Section 437 of the Code of Criminal Procedure, need to be imposed. Hence, following order;

ORDER

1. accused No. 1, Rajesh Yamuna Pandey be released on P.R. and S.B. of Rs. 15,000/- subject to following conditions -
 - a) accused No. 1 shall not tamper with the prosecution evidence and witnesses.
 - b) accused No. 1 shall make himself available as and when required by the investigation machinery.
 - c) accused No. 1 shall not indulge in like offenses.
 - d) accused No. 1 shall file verified copies of his permanent as well as current residential address proof and identity card.

e) accused No. 1 shall make himself available before the Court in order to expedite trial.

f) accused No. 1 shall not leave India without prior permission of Court.

2. In addition to surety mentioned in clause no.1 of this order, accused No. 1 shall deposit Rs. 30,000/- as a cash surety forthwith.
3. If accused No. 1 commits any default in obeying the conditions supra, the prosecution will be at liberty to apply for cancellation of the bail as well as forfeiture of cash surety.

Palghar
Date 28/04/2022

Sd/-
(Smt. A. A. Kale)
Judicial Magistrate First Class
Court No.02, Palghar.