R.C.C No.112/2024
State Vs Mallikarjun Patil and Others
CNR No.MH-YA-190011142024.

Order below bail application at Exh-181.

The applicant, accused No. 7 Kishor Gangaram Athave seeking bail in connection with Crime No. 285/2024 registered with Police Station, Ralegaon for the offence punishable under Sections 420, 465, 468, 471 and 473 read with Section 34 of the IPC

2. The supplementary charge sheet implicating the present applicant accused No.7 is filed on 03.03.2025, subsequent to the initial charge sheet against the other co-accused.

3. The applicant accused, through his learned advocate, has articulated several grounds for seeking his release on bail. It is the applicant's primary contention that the FIR, which set in motion the investigation of this alleged fraud and forgery, contains no direct accusations against him. It is contention of applicant accused No.7 that, allegation of cheating and forgery against him are baseless. Furthermore, the applicant asserts that there is no allegation that he personally provided the fake appointment order to the complainant, nor that the initial defrauded amount was directly transferred into his bank account. Denying any involvement in the alleged fraud, the applicant claims false implication and a complete lack of connection, either direct or indirect, to the commission of the purported offences. Another significant ground on which applicant accused No.7 seeking bail is that the matter has been settled with the complainant. The applicant also points to the fact that material witnesses in the case have already been examined by the prosecution, potentially diminishing the scope for any interference by the applicant accused

No.7. Further it is contended that, the investigation, insofar as his role is concerned, stands concluded with the filing of the supplementary charge sheet. Moreover, reliance is placed on the fact that all co-accused, have already been granted bail. Finally, the applicant has unequivocally undertaken to abide by any terms and conditions that this court may deem fit to impose should he be granted the relief of bail. Based on these grounds, the applicant earnestly prays for his release on bail.

4. **Per contra,** the learned Special A.P.P has filed a reply at Exh**-184** opposing the bail application. He contends that the accused is involved in a serious offence of fraud and forgery. These charges are non-bailable and of a grave nature. He further asserts that the charge sheet clearly shows the accused's involvement in the crime. It is further stated that the accused committed fraud by creating forged documents to deceive the complainant. It is further stated that the investigation is still not complete. It is revealed during investigation that the accused fabricated 149 fake orders from various departments. There is also a likelihood that if released on bail, the accused may abscond or fail to appear for trial. Additionally, there is a possibility that he may commit a similar offence. Hence, on the ground of gravity of offence and for purpose of investigation and recovery, the prosecution has strongly urged to reject the bail application.

5. **The prosecution's case**, as per the report lodged on 24.07.2024 by the complainant Parag Mankar, is that he had appeared for an examination, for the post of Assistant Engineer in the Public Works Department, in January 2024. After the results, his name was placed on the waiting list, and he was called to the Mumbai for document verification. Accordingly, in April 2024, he went to Mumbai with his brother-in-law for document verification, where he met accused Nos. 1, 5, and 6. These accused told him that they would remove his name from the waiting list and provide him with an appointment order in consideration of Rs.21 lakh.

6. Relying on promise of accused, the complainant arranged Rs.18 lakh through his father and brother-in-law's bank accounts and transferred it to the accused. The accused gave him an appointment order, but later, he realized it was fake. When the complainant confronted the said accused, they told him that the original order would only be given after paying the remaining amount. Subsequently, the said accused took complainant to the Public Works Department office in Nagpur, where accused No. 2 met him and took him inside the office. There, accused No. 3, who introduced himself as "Yogesh," was sitting beside the Chief Executive Engineer's chair. He provided information about the post and showed appointment order with signature and seal, assuring the complainant that he would be appointed after making the payment. But later on, complainant realized that applicant accused and other co-accused in collusion defrauded him by issuing fabricated and fake appointment order.

7. Based on these facts, an FIR was registered at Ralegaon Police Station for aforesaid offences. During the investigation, accused Nos. 1 to 6 were arrested between 6.8.2024 to 12.08.2024, and it was found that accused No. 1 had transferred Rs.5 lakh out of the complainant’s money to accused No. 7's bank account. Further, accused No. 7 transferred Rs.4 lakh to applicant accused No. 2's account, who in turn transferred Rs.1 lakh to accused No. 3’s account. It was also discovered that accused Nos. 2 and 3, with the help of accused No. 4, prepared a fake appointment order. It was also found that, accused No. 3 impersonated a government officer and issued the fake order. During the investigation, cash amount was seized from accused No.1, 2, 3 & 7 and the C.P.U used for creating fake orders was seized from possession of accused No.4, which contained 149 other forged orders.

8. On completion of investigation, the charge sheet against accused Nos. 1 to 6 came to be filed on 3.10.2024. Thereafter, Charges were framed against them on 21.12.2024. It also appears that, evidence of three witnesses including complainant and his father have been recorded. Later, a supplementary charge sheet against present applicant accused No. 7 was filed on 03.03.2025. It appears that, present accused is arrested on 22.01.2025. Since then, he is in jail.

9. It is to be noted that, the Hon’ble Bombay High Court, at Nagpur Bench in its order dated 27/02/2025 in Criminal Application (BA) No.85 of 2025 granted bail to accused No.3 Arvind Mohadikar and Hon’ble Additional Sessions Court vide its order dated 21.03.2025 passed in Cri. Bail Application No. 4/2025 granted bail to accused No.4 Rahul Rangariya. It is to be noted that, the Hon’ble Sessions Court have also granted bail to accused No.6. Also accused Nos. 1, 2, and 5, have already been granted bail by this court. Therefore, except the present applicant accused no.7, all other co-accused have already been released on bail.

10. It is argued by learned advocate of applicant accused that, all other co-accused who played vital role in alleged crime have already on bail. Therefore, present accused also entitled for bail on the ground of parity. It is further argued that, since the main witnesses have already been examined, keeping applicant accused in jail for a longer period is not justified. It is further argued that, the charge sheet has already been filed, and no further investigation is pending against present accused. In such circumstances, keeping them in jail would not be justified. It is also submitted that, none of the offences charged against accused are punishable with life imprisonment or the death penalty, in fact, none of the offences carry a sentence of more than ten years. Hence, on above facts and circumstances the applicant accused No.7 crave for release on bail.

11. In support of his submission learned advocate of accused relied in the case of **Sanjay Chandra vs. CBI (2011) ALL SCR 2939** wherein the Hon’ble Supreme Court, laid down the principle that bail is the rule and jail is the exception, emphasizing that detention should not be punitive. Further, learned advocate of accused relied on the principles laid down by Hon'ble Supreme Court in **Satender Kumar Antil vs. CBI** (2021) ALL MR (Cri) 4330 (SC), particularly the emphasis on the presumption of innocence and the need to avoid pre-trial detention as punishment. Further, accused relied in **P. Chidambaram vs. Directorates of Enforcement,** (2020) ALL SCR (Cri) 1068, wherein the Hon'ble Supreme Court reiterated that bail should be granted unless there are compelling reasons to deny it, such as the risk of the accused absconding or tampering with evidence. Also, in **Arnesh Kumar vs. State of Bihar** (2014) ALL SCR 2542, where the Hon'ble Supreme Court laid down guidelines to prevent unnecessary arrests and detention in cases where the offense is punishable with imprisonment of seven years or less.

12. ***Contrary***, it is argued by learned Special A.P.P that, there is direct involvement of accused in alleged fraud and forgery. It is further argued that, offences levelled against accused is serious and grave. Hence accused is not entitled for bail.

13. Heard both sides. Perused application, say and record.

14. The accused's primary ground for seeking bail rests on the principle of parity. It dictates that, individuals similarly situated should be treated alike unless there are compelling reasons to differentiate. The principle of parity, as rightly emphasized by the learned advocate for applicant accused, holds considerable weight in the present scenario. Accused Nos. 1, 2, and 5, who were allegedly at the forefront of the inducement and facilitation of the fraudulent transaction, have already been granted bail by this court. Accused No. 3, who played a crucial role in impersonating a government official and presenting forged appointment order, has granted bail by the Hon'ble High Court. Accused Nos. 4 and 6, involved in the creation of forged documents and the initial inducement respectively, have been granted bail by the Hon’ble Sessions Court.

15. Comparing the applicant's alleged role such as primarily handling a portion of the defrauded money, with the roles attributed to the released co-accused, particularly those involved in the direct acts of deception and forgery, it becomes difficult to justify the continued detention of the applicant accused no.7 while others with debatably more central roles are at liberty. The financial transactions, while significant, do not necessarily place the applicant on a footing substantially different from the co-accused who have already been deemed fit for release on bail.

16. The learned A.P.P objected the present bail application on the grounds that, investigation is still in progress and therefore the custodial detention of accused is necessary for its completion, further there is a chance of pressurizing by the accused to material witnesses if released on bail and on the ground of seriousness of the economic offences, particularly fraud and forgery.

17. Contrary, the applicants counsel argues that one months have passed since the filing of the charge sheet, but the prosecution has failed to specify what investigation remains pending against accused. He asserts that there are no recoveries or discoveries pending against present accused, indicating that the investigation is effectively complete. Therefore, he submits that, prosecution’s claim of ongoing investigation lacks substance and does not justify continued detention. The applicants’ advocate further argues that the material witnesses, including the complainant and his father, have already been examined, therefore, the question of pressurizing material witnesses does not arise. He further argues that, though there is serious charges of cheating and forgery levelled against accused, but none of the offences are punishable with death or life imprisonment, or for more than seven years. He highlights that the complainant, his father and accused have arrived at compromise and accordingly they filed joint pursis therefore he submits that, the fact of compromise goes to the roots of the matter and cannot be overlooked at the stage while deciding bail application.

18. It is pertinent that, though learned APP took objection to grant bail on the ground that, the investigation is ongoing, however, mere assertions to that regard without specific details are insufficient. In present case, one month have elapsed since the filing of the charge sheet, but the prosecution has failed to articulate what investigation remains pending against accused. Further, record shows that, cash amount has already been recovered and seized from accused therefore nothing remain to recover or discover from present accused. The absence of any pending recoveries or discoveries from accused and non-providing specific detail by prosecution regarding necessity of accused for custodial interrogation strongly suggests that the investigation is completed.

19. Further, though APP shown his anxiety in respect of tampering of material witnesses by accused if he released on bail, but that allegation of witness tampering is not supported by any material. Therefore, mere allegation is not sufficient.

20. So far as regarding to the seriousness of the offence, no doubt the allegation of fraud and forgery are grave and serious, but at the same time it is necessary to consider the nature and severity of the punishment while deciding the bail application. It is to be noted that, the offences charged against the accused do not carry life imprisonment or the death penalty. The maximum punishment for these offences is less than ten years. Furthermore, in present case already material witnesses including the complainant and his father who are victims are examined by prosecution. The record shows that, the complainant, his father and accused moved joint compromise pursis, but being the offences non-compoundable compromise was rejected. Though compromise was rejected, but that aspect is very vital and goes to the root of the matter and cannot be overlooked at this stage while deciding bail application.

21. Therefore, after a meticulous examination of the prosecution's objections, I find them to be devoid of sufficient legal and factual grounding to justify the continued detention of accused. The prosecution's assertion of an ongoing investigation, unsupported by any specific articulation of pending investigative steps, is rendered untenable by the lapse of one months since the filing of the charge sheet and the absence of any pending recoveries or discoveries.

22. Similarly, the apprehension of witness tampering, in light of the fact that the material witnesses, including the complainant and his father, have already been subjected to examination, appears to be a hypothetical fear rather than a concrete threat.

23. No doubt the alleged economical offence is very serious in nature, however, the fundamental principle that bail is the rule and jail is the exception must always guide judicial discretion, especially when the investigation is complete, material witnesses have been examined, and other similarly situated accused have been released. It is to be noted that, the applicant has also expressed his willingness to abide by any conditions imposed by this court.

24. Therefore, after a careful and considered evaluation of the facts, the arguments advanced by both sides, the relevant provisions of law, completion of investigation and the principle of parity, I find sufficient grounds to grant bail to the applicant. Resultantly, I pass the following order.

<u>ORDER</u>

1. Application is allowed.
2. The applicants **accused No. 7 Kishor Gangaram Athave** be released on bail on executing a P.R. bond in the sum of **Rs.1,00,000/- with one**

solvent surety, in the like amount, on the following terms and conditions:

i.) He shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of present case.

ii.) He shall not tamper with the prosecution witnesses.

iii.) He shall attend the Police Station Ralegaon once in month i.e on 1^{st} day of every month between 10.AM to 1 PM, till conclusion of trial.

iv.) He shall attend all court hearings regularly falling which his bail liberty shall be treated as cancelled.

v.) Accused not to indulge in any illegal activities or in committing the offence like nature.

vi.) He shall cooperate with any further investigation, if required.

vii.) He shall surrender his passports, if he having, to the court.

3. The accused and surety to provide their mobile numbers to the court.

4. The contravention of any of the condition imposed by this court would lead to the cancellation of bail.

KULKARNI DATTATRAYA RAMESH

Digitally signed by KULKARNI DATTATRAYA RAMESH
Date: 2025.04.10 17:44:57 +0530

Dated: - 10.04.2025
Place: - Ralegaon.

(D.R. Kulkarni)
Judicial Magistrate F.C.
(Court No.02), Ralegaon.