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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL APPLICATION NO.70 OF 2021

Shri Vijaykumar Deshraj Sethi

.... Applicant

Versus

1. Senior Police Inspector,
Malegaon Camp police station, Malegaon

2. State of Maharashtra, &

3. Vilas Asaram Chordia

.... Respondents

Mr. Rajat Vinod Dighe, Advocate for the Applicant.

Smt. A.A. Takalkar, APP for the Respondent-State.

CORAM : SARANG V. KOTWAL, J.

DATE : 05th MAY, 2021
[Through Video Conferencing]

P.C. :

1. The Applicant has filed this application for modification of the bail condition imposed by Additional Sessions Judge-3, Malegaon in Criminal Bail Application No.12/2020 in connection with C.R. No.113/2019 registered

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with Malegaon Camp Police Station, District-Nashik. That order was dated 8.1.2020. Vide that order, the Applicant was directed to be released on bail on P.R. bond of Rs.1 Lakh with two separate solvent sureties in the like amount. More importantly the Applicant was directed to deposit Rs.25 Lakhs as a pre-condition for being released on bail. The Applicant is aggrieved by such condition.

2. The Applicant was arrested on 26.11.2019 and since then he is in custody. The investigation is over and the charge-sheet is filed.

3. Heard Shri Rajat Dighe, learned Counsel for the Applicant and Smt. A.A. Takalkar, learned APP for the State.

4. The FIR is lodged by one Vilas Chordia. He has stated that he was in the medical profession. He wanted to purchase an MRI machine. The Applicant represented to him that he was in a position to import an MRI machine and he had quoted the price of Rs.1,15,00,000/-. The informant entered into an agreement with the Applicant on 15.1.2012.

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The informant initially paid Rs.20 Lakhs in the Applicant's bank account and thereafter paid Rs.5 Lakhs for that purpose. Inspite of getting that amount, the machine was not supplied by the Applicant and the informant was deprived of his money. Therefore, this FIR is lodged.

5. Learned Counsel for the Applicant invited my attention to the agreement executed between the Applicant and the informant in the year 2012. In that agreement itself there are various terms and conditions. The agreement also mentions receipt of Rs.25 Lakhs by the present Applicant.

6. Learned Counsel for the Applicant, therefore, submitted that, at the highest, it is a case of breach of contract for which the informant has civil remedy and no offence of cheating and misappropriation of property is made out.

7. He further submitted that the Sessions Court has reached a conclusion that the Applicant deserves to be released on bail and thereafter it was not permissible to impose the condition which was impossible to perform

thereby practically denying him bail.

8. Learned A.PP, on merits, opposed this application. She submitted that the informant is deprived of his legitimate amount. However, she did not support imposition of the onerous condition in the operative part of the order granting bail to the Applicant based on various Supreme Court judgments. She made this submission fairly as an Officer of the Court.

9. I have considered all these submissions. I have perused the charge-sheet.

10. At this stage, there is no denial that the informant had paid Rs.25 Lakhs and has not received the machine. However, it was subject matter of an agreement. If there is breach of any of the terms in the agreement, obviously the civil remedy is very much available with the informant. There is some force in the submission that it is purely a civil dispute. However, this can be examined during trial.

11. Learned Counsel for the Applicant submitted that

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the amount received from the informant was given to the supplier from USA and the Applicant has not misappropriated it.

12. The Applicant is already in custody since 26.11.2019. The Applicant was granted bail by the Additional Sessions Judge vide order dated 8.1.2020. Therefore for more than one year and three months the Applicant was unable to avail of that order because of the onerous pre-condition of depositing Rs.25 Lakhs.

13. Learned Judge had granted bail to the Applicant that means he had reached a conclusion that the Applicant deserves to be released on bail. In such a situation, imposing Rs.25 Lakhs as a pre-condition in the operative part was not permissible. There is absolutely no discussion in the order as to why such condition was imposed.

14. It appears that since the FIR mentions that Rs.25 Lakhs were paid by the informant, the condition was imposed that Rs.25 Lakhs should be deposited. This is prejudging the

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issue without trial. It is well settled in different judgments of Hon'ble Supreme Court that such conditions should not be imposed.

15. In the case of **Dataram Singh Vs. State of Uttar Pradesh and another**, as reported in (2018) 3 SCC 22, the Hon'ble Supreme Court has observed that the conditions for the grant of bail ought not be so strict as to be incapable of compliance, thereby making the grant of bail illusory.

16. In the case of **M.D. Dhanapal Vs. State represented by the Inspector of Police**, as reported in (2019) 6 SCC 743, the Hon'ble Supreme Court in Paragraph-6 has observed that it is well settled that bail cannot be made conditional upon heavy deposits beyond the financial capacity of an Applicant for bail.

. In this case the bail order was passed on 8.1.2020 and the Applicant could not avail of it for more than a year.

17. In another case of **Dilip Singh Vs. State of Madhya Pradesh and another**, as reported in (2021) 2 SCC 779, the

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Hon'ble Supreme Court in Paragraph-4 has held that a Criminal Court, exercising jurisdiction to grant bail/anticipatory bail, is not expected to act as a recovery agent to realise the dues of the complainant, and that too, without any trial.

18. In this view of the matter, the condition of imposition of Rs.25 Lakhs at this stage, cannot be sustained. Learned Counsel for the Applicant stated that the Applicant is ready and willing to furnish local solvent sureties. Therefore, the following order is passed:

ORDER

- (i) The operative part of the order dated 8.1.2021 passed by the Additional Sessions Judge-3, Malegaon in Criminal Bail Application No.12/2020 is set aside. Instead, the Applicant shall be released on bail on following conditions.
- (ii) The Applicant is directed to be released on bail in connection with C.R.No.113/2019 registered with

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Malegaon Camp Police Station, District-Nashik on his furnishing a PR bond in the sum of Rs.50,000/- (Rupees Fifty Thousand Only) with one or two local solvent sureties in the like amount.

- (iii) The Applicant shall deposit his passport, if any, with the investigating officer before being released on bail.
- (iv) The Applicant shall furnish his residential address and contact number before being released on bail.
- (v) The Applicant shall attend the concerned police station on first Monday of every month to mark his presence before the concerned police station, till framing of the charges.
- (vi) The Applicant shall attend the trial Court on every single date except when prevented by a reasonable cause.
- (vii) The Application is disposed of accordingly.

(SARANG V. KOTWAL, J.)

Deshmane (PS)