

PUNE
BAIL
VISHRAMBAUG

VISHRAM - 135
BAIL - 13/11/2002

IN THE COURT OF J. M. F. C. PUNE

AT PUNE

In Vishrambaug Police Station

CR No. I - 65 / 2002



STATE OF MAHARASHTRA
Through Vishram Baug P. S.

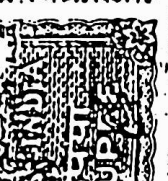
] Complainant

V/s.



MR. SANJAY H. AGARWAL
Adult, Occupation : Business,
Residing at - Kusum Apartment,
Flat No. 702, Plot No. 70,
Sector 17, Vashi, Navi Mumbai.

] Accused



Application on behalf of the Accused
for Bail U/s 167 (2) of Cr. P. C. is as
under --



MAY IT PLEASE YOUR HONOUR



1. That an offence has been registered with Vishram Baug Police Station on the basis of the complaint lodged by the Chief Auditor of Government Department Mr. Daclabhau Vilobha Kale at their CR No. I - 65/2002 has been registered w/s 406, 409, 420, r/w 34 of IPC.
2. That the Prosecution story in brief as alleged in F. I. R. is as under --

It is alleged that the accused persons conspired among themselves and have cheated the depositors and members of Suvarnyug Sahkari Bank to the tune of Rs. 5 Crore 65 Lakhs and as M/s. Home Trade Ltd., has not delivered the physical delivery of the concerned securities and their exist only contract note and other transaction however the entire money has been paid to M/s. Home Trade Limited. It also appeared that the above transaction has been done in collusion with the higher rank officers of concerned bank.

S. D. Patil
Agarwal
Patil

Therefore the offence has been registered with Vishrambaug Police Station.

3. In this connection the applicant was arrested by Crime Branch, Pune on 21/8/2002 and was produced before this Hon'ble Court on 22/8/2002 and the applicant was remanded to PCR till 26/8/2002 and on this day the applicant was taken in Magisterial custody.
4. It is submitted that thereafter regular bail application u/s 437 of Cr. P. C. was filed on behalf of the present applicant and the same was posted for say of the prosecution and after filing of the say the matter was posted for argument however thereafter till today only partial arguments were canvassed before this Hon'ble Court and the matter was time to time adjourned for further arguments.
5. It is submitted that since the production of the accused after arrest and thereafter remand to Judicial Custody the present applicant / accused has been remanded to Magisterial Custody and the police authorities have time and again extended his Magisterial custody without any proper, valid or sufficient reasons. The Police authorities ought to have complied with the requisites of the provisions of Section 167 (2) (i) of Cr. P. C. however the police have miserably failed to comply with the same thereby giving an indefeasible right to the accused for getting him enlarge on bail in the above captioned crime as the custody of the accused as on today is illegal therefore the applicant is entitled to be released on bail as a matter of right hence this application.
6. Under above mentioned circumstances the present applicant / accused prefers this application for bail by invoking the provisions of Section 167(2) (i) of Cr. P. C. on following amongst the other grounds --

GROUND

- a) That the applicant is innocent and has been falsely implicated in the present crime.
- b) That there is no positive or cogent evidence to implicate the present applicant in the present crime.
- c) That the Vishram Baug Police have arrested the present applicant on 21/8/2002 and was produced before this Hon'ble Court on 22/8/2002 therefore under the provision of Section 167 (2) (i) the Police authorities ought to have filed the chargesheet before the evening hours of 19th November, 2002 however the Police authorities have not filed the chargesheet even after completion of 90 days and therefore an indefeasible right has occurred in the favour of the present applicant for his release on bail and any further custody of the applicant is illegal and in view of the provisions of Section 167 (2) the applicant is entitle to release on bail as a matter of right as the applicant is ready and will to furnish surety to the satisfaction of this Hon'ble Court.

That as per Section 167 (2) (i) of Cr. P. C. the police have not file chargesheet within the span of 90 days therefore the accused person should not be detained in custody beyond the said period of 90 days hence the provision being mandatory the present applicant is entitle to release on bail.

- d) That even other accused persons have released on bail
- e) That the present applicant is permanent resident of Navi Mumbai and have immovable property in his name and therefore is not likely to abscond or jump the bail therefore there is no possibility of the present applicant being not available to face the trial.
- f) That the present applicant has co-operated with the investigation machinery during the span of police custody and shall further co-operate if released on bail.

- g) That the present applicant shall not tamper with the prosecution evidence.
 - h) That the applicant is ready and willing to furnish adequate surety to the satisfaction of this Hon'ble Court.
7. That the present applicant craves leave to add, amend or alter Bail Application, ground mentioned in bail application.
8. Under these circumstances it is humbly prayed that this Hon'ble Court be pleased to release the applicant on bail on such terms and conditions as this Hon'ble Court deems fit, just and necessary.

Filed in the Court
 On 19/11/2002
 At - 5.30 p.m.
 Place - Pune

[Signature]
 Advocate for Applicant
 Mr. Jaideep V. Thakkar

R/Submitted.
The time giving say is 5:20 p.m.
Hence at this stage this
application is premature. Hence
it may be rejected.
dt 19/11/02 *[Signature]*

ORDER

As the charge-sheet is not filed within 90 days, the accused be released on P.R. Bond of Rs.1500000 (Rs. Fifteen Laks) and two solvent sureties of the amount of Rs.7,50,000/- each. The accused should not leave India, without the prior permission of this Court, and he should not tamper with the evidence of prosecution.

Punc.
 Dt./- 19.11.2002.

[Signature]
 (F.K. MULTAIKAR),
 M.F.C., - Et.No.4, Pune.

TRUE COPY

Asstt. Commr.
 J. M. F. C. Court No. 4 Pune



Typed by
 Compared by

Order.. below Exh.1 in Cri. N.A.No.812/:

VISHRAM RAM - Pune
Reduction of Bond
- 16.7.2003.

Read the application and Say of the prosecution. Perused the papers and heard learned counsel for the applicant and the learned P.P. for the State.

In this case though the Magistrate granted bail to the applicant, the Magistrate has directed the applicant/accused to execute bond of Rs.1500000/- (fifteen lacs) with two solvent sureties of Rs.750000/- each. In view of the material on record, it appears that the accused is facing trial in different Courts in the State. No doubt alleged offence is of a serious nature, but it is well settled that while fixing the amount of the bond, affordability of the prisoner needs to be considered and as per Section 440(1), Criminal P.C. it is clear that the amount of bond should not be excessive. In view of the decisions of the Honourable Supreme Court cited by the learned counsel for the applicant, that is, :-----

- 1) Jagroop Singh v. K. Chatterjee, 2000 All MR (Cri) 1898,
- 2) Keshab N. Banerjee v. The State of Bihar, AIR 1985 Supreme Court 1666,
- 3) Motiram v. State of M.P. AIR 1978 Supreme Court 1594.

It is clear that fixing the excessive amount of bail virtually amounts to denial of bail itself.

In such circumstances, taking into consideration provisions of section 440(1) of the Criminal P.C. and the decisions of the Supreme Court cited by the learned counsel for the applicant, in my opinion, the amount of bond and surety fixed by the Trial Court needs to be reduced in exercise of powers under Section 440(2), Criminal P.C.

Hence, I proceed to pass the following order:---

ORDER

Application is allowed.

The amount of bond and surety is reduced to Rs.50,000/-.

The applicant be released on bail on executing P.R. Bond of Rs.50,000/- with 2 solvent sureties of Rs.25,000/- each.

Pune, Dt. 16/7/2003.

B.N. Deshpande
16-7-2003
(B.N. Deshpande)

Add. Sessions Judge, Pune.

जिल्हा न्यायालय
पुणे न्यायालय

3/25
8/27



TRUE COPY

P. H. Deshpande
Registrar,
District and Sessions
Court, Pune

30 JUL 2003

July 03



IN THE COURT OF HON'BLE DISTRICT & SESSIONS JUDGE, PUNE AT PUNE

Shri./Smt. Visay Nahar Adv.

Cri. Bail Appln. U/s ⁴⁴⁰ ~~(430/439)~~ Cr.P.C.

Vishrambaug Police Station, Dist. Pune.

C.R.No. 65/02 U/s. 420 34 IPC.

Appln for Reduction of amount

C17

CRIMINAL BAIL APPLN. NO. 812 OF 2003

Examined and ordered be Registered.

[Signature]
Superintendent,
Sessions Court,
Pune.

[Signature]
Registrar,
Sessions Court,
Pune.

Allowed
16/7/03

Date: 8 JUL 2003

O R D E R

Issue notice to State.
R/O. 14.7.03

[Signature]
Addl. Sessions Judge
Pune. 8.7.03

8 JUL 2003

Notice Received on 8-7-03

[Signature]
Public Prosecutor, Pune