Hand Deliver

BAIL ORDER
29 April 2003
HIGH COURT

GPK.-J 54-1,99,300-6.98 (S. 4)
G. R. J. D., No. 4398, dated 3-7-16]

IN THE HIGH COURT OF JUDICATURE, APPELLATE SIDE AT
Bench at Aurangabad.

CRIMINAL ~~APPLICATION~~ APPEAL No. 688/2003. of 199

A. D. Cri. No. 2730 of 199
2-5-03

Review No. of 199

The 29th day of April, 2003. 199

To

The ~~Sessions Judge,~~ 2nd Additional Sessions Judge, Osmanabad.
The Magistrate,

Upon reading the petition of Appeal / for Revision of the convict / Petitioner named in the margin presented through Advocate Mr. Joydeep Chatterji submitted through the Superintendent of Prison, the WRIT issued by this COURT on the day of 199 No. and the Return No. thereunto made by Sessions Judge / Chief Presidency Magistrate of on the day of 199 in the case marginally noted and upon reading the RECORD and PROCEEDINGS in the case, and hearing Mr. Shri. Joydeep Chatterji, Adv. for the Appellant / Applicant accused and Shri. V.S.Ghatge, Addl. Public Prosecutor for the State, the High Court passes the following Order :—

~~Name~~ Sanjay s/o Hariram Agrawal. ..Applicant.

V/s

The State of Mah. ..Respondent.

~~Common~~

Applicant prays that he may be released on bail in connection with Crime No. 106/02 registered against him at ~~xxxxx~~ City Police Station Osmanabad for the offence u/s 218,406,409,420,468,47?, 120(B) of IPC.

His similar prayer for bail had been rejected by the ~~X~~ 2nd Addl.Sessions ~~Xxxxxxxxx~~ Judge, O'bad on 6.1.03 below Exh.1 in Cri. bail appln.No. 616/2002.

~~Original Court~~

~~Conviction~~

Passed by

Date of order in Appeal

(Coram : N.V.Dabholkar, J)

(True copy of the Court's order dtd. 29.4.2003 is enclosed herewith).

P. T. O.

By the

For Additional Registrar and Sealer.

The 02nd day of May, 03. 199

Through the Chief Metropolitan Magistrate of / Sessions Judge of

A.B.Cri. /2003. 199
Despd.

14933/03
2-5-03

Copy forwarded with compliments for information and necessary action to :

1) The S Police Station Officer/Investigation Officer, City Police Station, Osmanabad.
2) The Superintendent of District Prison, Osmanabad.
3) The Police Station Officer, Vashi Police Station, Bombay.
4) The Chief Judicial Magistrate, Osmanabad.

sd/-
For Addl.Registrar(Judl).

For Addl.Registrar(Judl).

Note 1.—The within mentioned order (and the judgement accompanying it, if any) should be communicated to the Court which originally tried the case after proper execution of the order (*vide* Circular No. 1667 of 15th July 1910).

Note 2.—When the Writ is addressed to a First Class Magistrate who disposed of the accused's appeal, he should communicate the order noted within (and the judgment accompanying it, if any) after proper execution thereof to the Magistrate who originally tried the case (*vide* Circular No. 1667 of 15th July 1910).

Note 3.—Returns should be made to all Writs issuing from the High Court, if possible within a fortnight, in the form of an endorsement on the Writ certifying its execution, or the reasons which may have prevented its execution (*vide* Circular No. 128 of the High Court Criminal Manual, Chapter XVII, Rules 11 to 13 of Criminal Manual, 1960).

J-2632—ARHCB—7-91—5,14,000 A4•

[Spl.—H.C.,A.S.,C.D. 79e.

FARAD CONTINUATION SHEET No.

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

DISTRICT :

Appeal / Application No. of 199 .

Office Notes, Office Memoranda of Coram, appearances, Court's orders or directions and Registrar's orders	Court's or Judge's orders
cra688-03	CRI. APPLICATION NO. 688/2003 Coram : N.V. Dabholkar J. 1. Heard Adv. Shri Joydeep Chatterji for petitioner and APP Shri V.B.Ghatge for respondent. 2. Petitioner seeks regular bail in connection with Cr.No. 106/2002 registered against him & others with City Police Station, Osmanabad, for offences punishable under Sections 218,, 406, 409, 420, 468, 471, 120(B) of IP Code. It may be stated here itself, as submitted by two counsel, Chairman of Osmanabad District Central Cooperative Bank [ODCC Bank, for short] viz. Shri Pavanraje @ Bhupaising Naik Nimbalkar is accused no. 1 in

[P. T. O.

Office Notes, Office Memoranda of Coram, appearances, Court's orders or directions and Registrar's orders	Court's or Judge's orders

[2]

the matter and Shri Sunil Kedar, Chairman, Nagpur District Central Cooperative Bank [NDCC Bank, for short] is also accused in the said case. Present petitioner, who is Chairman of Home Trade Securities Ltd. [Home Trade, for short], and one of the employees of Home Trade viz. Subodh Bhandari are also impleaded as accused persons in the said case. Some bank employees from ODCC Bank are also co-accused.

According to Adv. Shri Jcydeep Chatterji, Chairman of ODCC and NDCC Banks are enlarged on bail, so also, the bank employees. This court granted bail to the employee of Home Trade vide its order dt. 22/4/2003 in Criminal Application No. 555/2003 and thus, according to him, oniy his client is undertrial prisoner.

N-J-2632—ARHCB—7-91—5,14,000 A4*

[Spl.—H.C.,A.S.,C.D. 79e.

FARAD CONTINUATION SHEET No.

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

DISTRICT :

Appeal / Application No. of 199 .

Office Notes, Office Memoranda of Coram, appearances, Court's orders or directions and Registrar's orders	Court's or Judge's orders
	{3 }
	3. Crime is registered on the basis of transaction of rupees thirty crores. This amount was transferred by NDCC Bank to ODCC Bank on 31/1/2002. On 1/2/2002, ODCC Bank transferred the amount to Home Trade for the purpose of purchasing Govt. Securities. However, since the said agency did not hand over Govt. Securities purchased from the said amount to ODCC Bank till April end, on 29/4/2002, Chairman of ODCC Bank viz. Pavanraje @ Bhupalsing Naik Nimbalkar lodged a complaint against Home Trade with Economic Offences Wing, Crime Branch, CID, Bombay, on 29/4/2002. Eventually, this was

[P. T. O.

Office Notes, Office Memoranda of Coram, appearances, Court's orders or directions and Registrar's orders	Court's or Judge's orders
	the date on which Special Audit of ODCC Bank was carried out by Special Auditor, Class-I, Cooperative Societies [Banks], Latur, on the directions issued by Divisional Joint Registrar, Cooperative Societies, Latur. By considering the report of Special Audit, Divisional Joint Registrar, Cooperative Societies, Latur, lodged a complaint with City Police Station, Osmanabad, on 8/5/2002, which is the First Information Report so far as present offence is concerned. 4. Advocate Shri Joydeep Chatterji has prayed for grant of bail in favour of his client on following grounds :- [1] All co-accused are enlarged on bail and hence, his client should be entitled for bail on the ground of parity.

J-2632 ARHCB—7-91—5,14,000 A4•

[Spl.—H.C.,A.S.,C.D. 79e.

FARAD CONTINUATION SHEET No.

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE

DISTRICT :

Appeal / Application No. of 199 .

Office Notes, Office Memoranda of Coram, appearances, Court's orders or directions and Registrar's orders	Court's or Judge's orders
	[5]
	[2] As many as 93 accounts maintained with various banks by Home Trade, as also, its directors in their personal name, including that of the petitioner, are by now sealed by investigating agencies in connection with various offences.
	[3] Three vehicles parked in rented premise i.e. "Kusum" Apartment, Flat No. 702, Plot No.70, Sector 17, Vashi, New Bombay, which is occupied by petitionor since last 15 years, are sealed by investigating agencies, although the fiat is not sealed.

[P. T. O.

Office Notes, Office Memoranda of Coram, appearances, Court's orders or directions and Registrar's orders	Court's or Judge's orders
	(6) [4] Advocate Shri Joydeep Chatterji has furnished addresses of father and brothers of petitioner and according to him, those are the only places where petitioner can go, apart from his rented premises at Bombay. [5] Consequently, it is the claim of Adv. Shri Joydeep Chatterji that now present petitioner is not in a position to interfere with the amount of rupees thirty crores, if lying in any of the accounts, [in fact, Adv. Shri Joydeep Chatterji, on instructions, made a statement that total amount in all 93 accounts together may not be more than a lakh or so] nor he is in a position to tamper with the evidence which would be in the form of accounts since all the transactions were at Maharashtra State Cooperative Bank at Bombay,

N -J-2632—ARHCB—7-91—5,14,000 A4*

[Spl.—H.C.,A.S.,C.D. 79e.

FARAD CONTINUATION SHEET No.

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE

DISTRICT :

Appeal / Application No. of 199 .

Office Notes, Office Memoranda of Coram, appearances, Court's orders or directions and Registrar's orders	Court's or Judge's orders
	[7] which is the Apex Bank.
	[6] Adv. Shri Joydeep Chatterji has also given account of as many as seven other offences registered at Nagpur, Amravati, Wardha, Pune [two], Economic Offences Wing, Crime Branch, CID, Bombay, etc. and pointed out that his client is enlarged on bail in all those offences. In order to impress upon the court about bona fide conduct of petitioner, Adv. Shri Joydeep Chatterji has submitted that petitioner had not applied for anticipatory bail and on the contrary, on 10/5/2002, he surrendered before JMFC, Nagpur, in connection with offence

[P. T. O.

Office Notes, Office Memoranda of Coram, appearances, Court's orders or directions and Registrar's orders	Court's or Judge's orders
	[8] registered and since then, he is under detention. So far as present offence is concerned, petitioner was technically arrested on 18/7/2002 and after being in police custody till 31/7/2002, he is in magisterial custody thereafter.
	5. Learned APP Shri V.B.Ghatge has vehemently opposed application for grant of bail. According to him, petitioner is Chairman of the agency and amount of rupees thirty crores, quite a huge amount, is at stakes in the matter.
	6. Adv. Shri Joydeep Chatterji was invited to locate the amount of rupees thirty crores and by producing extract of the accounts, he has demonstrated that amount was received by Home Trade on

N -J-2632—ARHCB—7-91—5,14,000 A4•

[Spl.—H.C.,A.S.,C.D. 79e.

FARAD CONTINUATION SHEET No.

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE

DISTRICT :

Appeal / Application No. of 199 .

Office Notes, Office Memoranda of Coram, appearances, Court's orders or directions and Registrar's orders	Court's or Judge's orders
	{9 } 1/2/2002 under pay slip No. 229013, it was transferred to NDCC Bank under Cheque No.695177 and after deduction of Bank Commission i.e.Rs.233.33/--, an amount of Rs.29,99,99,766.67/-is credited to NDCC Bank on the same day. Thus, according to Adv. Shri Joydeep Chatterji, now, present petitioner is not in a position to disburse the amount, since the amount is not in his custody. 7. Adv.Shri Joydeep Chatterji placed reliance on the observations of the Supreme Court in the matter of Bhagirathsinh Judeja Vs.State of Gujarat [AIR 1984 SC 372] and more

[P. T. O.

Office Notes, Office Memoranda of Coram, appearances, Court's orders or directions and Registrar's orders	Court's or Judge's orders

{10}

particularly, contents in para no. 5 to following effect:-

> "But even where a prima facie case is established, the approach of the court in the matter of bail is not that the accused should be detained by way of punishment but whether the presence of the accused would be readily available for trial or that he is likely to abuse the discretion granted in his favour by tampering with evidence."

Adv. Shri Joydeep Chatterji also relied upon judgment of Apex Court in case of Ashok Dhingra Vs. N.C.T. of Delhi [AIR 2000 SC 3537 [1]], wherein, accused, facing trial for identical provisions under IP Code, was enlarged on bail by imposing stringent conditions. in view of the fact that he was already in custody from 5/7/1999 to 10/12/1999.

JPN—J-2632—ARHCB—7-91—5,14,000 A4•

[Spl.—H.C.,A.S.,C.D. 79e.

FARAD CONTINUATION SHEET No.

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE

DISTRICT :

Appeal / Application No. of 199 .

Office Notes, Office Memoranda of Coram, appearances, Court's orders or directions and Registrar's orders	Court's or Judge's orders
	{11}
	8. Taking into consideration that all other accused persons in this offence are enlarged on bail; present petitioner, although Chairman of Home Trade, will not be in a position to disburse the amount, if any, lying in accounts of the company or in his personal accounts, in view of sealing of those by investigating agencies; as at present, Ld. APP will not be in a position to urge that petitioner may abscond and make himself unavailable for trial, as Adv. Shri Joydeep Chatterji submits that petitioner was holding a passport, but the same is surrendered with Econcmic

[P. T. O.

Office Notes, Office Memoranda of Coram, appearances, Court's orders or directions and Registrar's orders	Court's or Judge's orders
	[12] Offences Wing, Bombay. Since the evidence is mainly regarding book entries with various bank, submission of Adv. Shri Chatterji - that petitioner will not be in a position to tamper the evidence - is required to be upheld. 9. In the circumstances, application for bail is being granted. Adv Shri Chatterji urged that this court may permit his client to furnish cash security instead of surety on the basis of solvency certificate. This prayer cannot be conceded. This is mainly because when a solvent surety on the basis of solvency certificate is offered, there is one guarantee that surety has permanent roots and he is not likely to leave address and he can be set on heels to trace out and produce accused

PN J-2632--ARHCB—7-91—5,14,000 A4•

[Spl.—H.C.,A.S.,C.D. 79e.

FARAD CONTINUATION SHEET No.

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE

Appeal / Application No. of 199 . DISTRICT :

Office Notes, Office Memoranda of Coram, appearances, Court's orders or directions and Registrar's orders	Court's or Judge's orders
	[13] person before the court instead of forfeiting the bond amount. So, only ~~Shouldering~~ relief on this count, that can be granted to petitioner is that he can furnish more Surety ~~securities~~ than one in order to complete amount of surety that may be ordered. [i] Petitioner shall be released on furnishing PR bond & Surety of Rs.5,00,000/-- [Rupees five lacs only] [Liberty to furnish more than one sureties, but based on solvency certificates, to make up the amount of Rs.5,00,000/-]. Sureties shall give an undertaking that they will not alienate or encumber the property

[P. T. O.

Office Notes, Office Memoranda of Coram, appearances, Court's orders or directions and Registrar's orders	Court's or Judge's orders
	(14) on the basis of which solvency certificate is obtained. [ii] Bail before the CJM, Osmanabad. also [iii] Petitioner shall deposit cash security of Rs.1,00,000/-- [Rupees one lacs only] with the CJM, Osmanabad, the court in which chargesheet is filed. It is clarified that this amount of cash security shall be available at the disposal of the court, in which matter may be pending either at the stage of trial or appeal, for forfeiture, in case of breach of conditions of the Bond. [iv] Petitioner shall submit proof of surrender of his passport to the Economic Offences Wing, Bombay, before the CJM, Osmanabad.

GPN—J-2632—ARHCB—7-91—5,14,000 A4•

[Spl.—H.C.,A.S.,C.D. 79e.

FARAD CONTINUATION SHEET No.

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE

DISTRICT :

Appeal / Application No. of 199 .

Office Notes, Office Memoranda of Coram, appearances, Court's orders or directions and Registrar's orders	Court's or Judge's orders
	(15)
	[v] Petitioner shall keep himself at the address i.e. "Kusum Apartment", Flat No. 702, Plot No. 70, Sector 17, Vashi, New Bombay" and shall not change his address, without permission of court before which the matter may be pending.
	[vi] Petitioner shall report to Vashi Police Station [After his release and return to the above address], twice in a month i.e. on every 1st and 15th. He will be at liberty to pray to DO change of that police stn for him exemption from reporting, well in advance, in case on those dates he is required to attend courts elsewhere.

[P. T. O.

Office Notes, Office Memoranda of Coram, appearances, Court's orders or directions and Registrar's orders	Court's or Judge's orders
	[16] Hamdast allowed. Application disposed of. Dt. 29/4/03 sd/- Per Dy. Reg.

True Copy

Assistant Registrar
High Court, Appellate Side
Bombay at Aurangabad.
02/5/03

WPM
2/5

(P)

Section

Certified to be true copy

IN THE HIGH COURT OF JUDICATURE OF BOMBAY

BENCH AT AURANGABAD

CRIMINAL APPLICATION NO. 2965 OF 2006

DISTRICT: OSMANABAD.

In the matter of Sec. 482 Cr.P.C.

AND

In the matter of Crime No.101/02 registered with City Police Station Osmanabad for offences punishable u/s 218, 406, 409, 420, 468, 471, 120-B of I.P.C.

AND

In the matter of modification and reduction of condition imposed by this Hon'ble court in Cri.Application No. 688/2003 to furnish PR Bond and surety of Rs.5,00,000/-(Rs.Five Lakhs only) by order dated 29.4.2003.

AND

(20)

In the matter of ~~relaxation~~ modification & reduction of condition imposed by this Hon'ble court in Cri. Application No. 688/2003 to deposit cash security of Rs.1,00,000/- in the court of C.J.M. Osmanabad by order dated 29.4.2003.

Sanjay s/o Hariram Agrawal,
Age: 40 years, Occ: Business,
R/o Vashi, Mumbai,
At present in Central Jail, Surat (Gujrat)

.....Applicant

V e r s u s

THE STATE of MAHARASHTRA
Copy to be served on Govt. Pleader
(High Court of Bombay Bench
at Aurangabad).

.....Respondent

To,

THE HON'BLE CHIEF JUSTICE AND
OTHER HON'BLE PUISNE JUDGES
OF THE HIGH COURT OF
JUDICATURE OF BOMBAY, BENCH
AT AURANGABAD.

HUMBLE APPLICATION OF THE
APPLICANT ABOVE NAMED.

MOST RESPECTFULLY SHOWETH THAT:

The Applicant most humbly submits as under:

application before ....

Supreme Court of India.

HENCE IT IS PRAYED

A. Criminal Application may be allowed.

B. That, the condition to furnish PR Bond and surety of Rs.5,00,000/-(Rs.Five Lakhs only) and to deposit cash security of Rs.1,00,000/- in the court of C.J.M. Osmanabad by order dated 29.4.2003 may kindly be modified and reduced and oblige.

C. Any other order in favour of the applicant may Kindly be passed.

FOR THIS KIND ACT OF JUSTICE AND KINDNESS THE PETITIONER SHALL REMAIN EVER GRATEFUL AND OBLIGE.

Date: 25/09/2006.

Advocate for the Applicant

M.B.Dalvi

Place: Aurangabad.

Note: The petitioner is in jail and as such his affidavit may kindly be dispensed off.

Date: 25/09/2006.

Advocate for the Applicant

M.B.Dalvi

Place: Aurangabad.