

Asstt Superintendent
City Sessions Court
Greater Bombay.

REDUCTION
BAIL Amount
CBI-Mumbai

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IN THE COURT OF SPECIAL JUDGE FOR GR.MUMBAI AT
MUMBAI

MISC. APPLICATION NO. 544 OF 2006

IN

BAIL APPLICATION NO. 72 OF 2002

IN

CBI SPL. CASE NO. 83 OF 2003

Sanjay Agarwal,
Adult, R/o. Flat No.702,
Kusum Apartment, Plot No.70,
Sector 17, Vashi, Navi Mumbai.

...Applicant/
(Orig. Accd.)

Versus

C.B.I.

...Respondent.

Coram : H.H. Special Judge,
Shri U.D. Salvi.

Dated : 4th December 2006.

Mr. Venkat Krishna i/b Mr. I.A. Bagaria, advocates,
for the applicant-accused.
Mr. Asnani, SPP, for the CBI.

ORAL ORDER (Dictated in open Court)

1. The applicant-accused Sanjay Agarwal, in the
crime registered at R.C.4/(E) of 2002 under
Sections 120-B, 409, 420, 467, 468 of I.P.C. and
under Section 13(2) r/w Sec.13(1)(c) & (d) of the
Prevention of Corruption act, 1988 against him and
other accused with CBI, BSFC, Mumbai, has moved
this application for reduction of the bail amount.



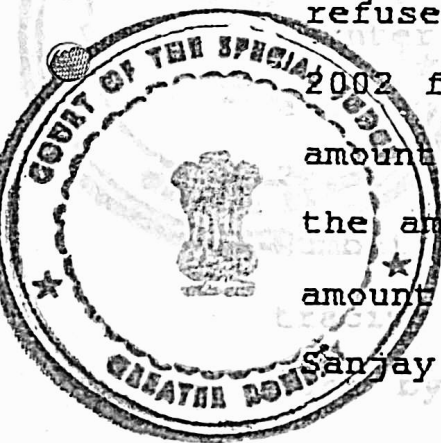
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2. Investigation was delayed and as a result thereof the applicant-accused Sanjay Agarwal could succeed in getting bail of Rs.20,00,000/- with one or more sureties in the like amount u/s 167(2) of Cr.P.C. vide order dated 3.8.2002 in Bail Application No.72/02. The applicant-accused Sanjay Agarwal, however, failed to get reduction in the bail amount vide order dated 5.10.02 in M.A.No.308/02. Now, the applicant-accused Sanjay Agarwal has moved this Court again for reduction of the bail amount mainly on the ground that he is not in position to furnish the surety/ies or cash security to the extent expected by the judicial order dated 3.8.2002, particularly, for the reason his assets, including his bank accounts, having been frozen following several cases of embezzlement registered against him. The applicant-accused Sanjay Agarwal contends that in several other cases of similar nature either he has been released on bail bonds of lesser amounts or there has been reduction of bail amounts by the superior Courts, vide affidavit dated 22.11.2006 of the applicant-accused Sanjay Agarwal. There is a candid statement



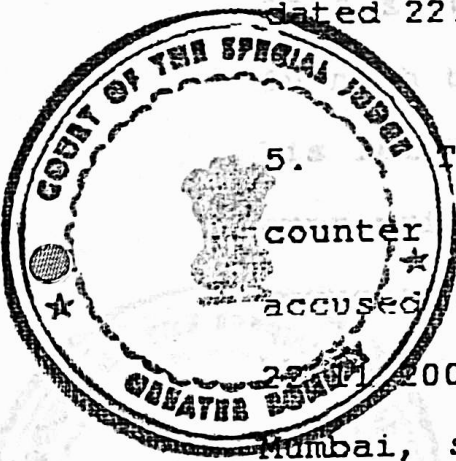
3. The CBI resisted the application with a short say dated 16.11.2006. Ld. SPP Mr. Asnani, for the CBI, BSFC, contended that the applicant-accused Sanjay Agarwal is making a specious plea of his detention in jail for 4-1/2 years on account of his inability to furnish solvent surety/ies or cash security, inasmuch as the applicant-accused Sanjay Agarwal was involved in several other financial scams and he could not have been relieved of the detention unless he was bailed out in all the cases of financial scams pending against him, and last of such bail was granted on 14.11.2006. He further contended that the reduction in the bail amount was refused vide order dated 5.10.2002 in M.A.No.388 of 2002 for the reason of magnitude of the defrauded amount in the present case. He further submitted the amount of Rs.18 crores in cash from defrauded amount went in the pocket of the applicant-accused Sanjay Agarwal.



4. This controversy poses a question as to the present financial condition of the applicant-accused Sanjay Agarwal. There is a candid statement

of the applicant-accused Sanjay Agarwal that he does not have any independent property to furnish as a security for his release on bail and all the properties including the Bank accounts of the business owned by the applicant-accused Sanjay Agarwal, in the name and style of M/s. Home Trade Co., have already been frozen; and financial positions of his relations and friends are not so good as to afford furnishing of solvent surety/ies for the amount of Rs.20,00,000/-, vide affidavit dated 22.11.2006.

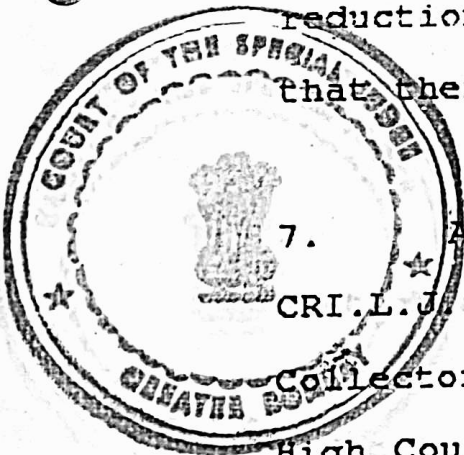
5. There is no statement from the CBI to counter these revelations made by the applicant-accused Sanjay Agarwal vide affidavit dated 22.11.2006. Ld. SPP Mr. Asnani, for the CBI, BS&FC, Mumbai, submitted that no further investigation in tracing the movements of the funds withdrawn in cash by the applicant-accused Sanjay Agarwal was made, and, therefore, the answer to the pertinent question as to the present financial status of the applicant-accused Sanjay Agarwal cannot be given readily. He conceded to the fact that the



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properties including the bank accounts owned by M/s. Home Trade Co. have already been frozen by various authorities. He did not like to take risk of preferring multiple applications for reduction of bail. In this situation begs a further question as to the capitalization of the detention of the applicant-accused Sanjay Agarwal for last 4-1/2 years. Pertinently, the applicant-accused Sanjay Agarwal had made an application for reduction of the bail shortly after the grant of bail to him. This shows his intention to plead his inability to furnish the bail bond of Rs.20,00,000/- and to seek his release from detention on reduction of the bail appropriately. In his earlier application for reduction of bail amount was rejected on the ground that there was no change in the circumstances.

7. Adverting to the Judgment reported in 1993 CRI.L.J. 3569 (Swan Kher Gulsan & Lrs. v. Asstt. Collector of Customs & anr.) passed by the Hon'ble High Court, it is not difficult to gather that the issue of inability of the accused to furnish bail amount can be reviewed after a reasonable time.

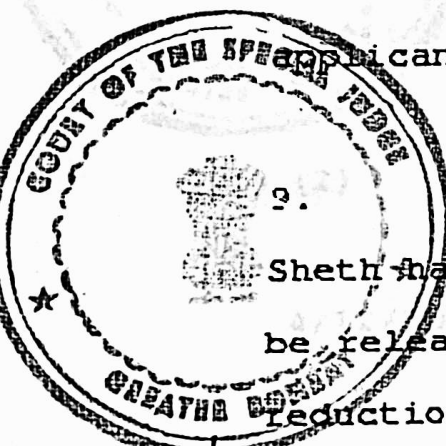


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Taking a cue from this judgment, an argument can very well lie in the mouth of the applicant-accused Sanjay Agarwal that he did not like to take risk of preferring multiple applications for reduction of bail in quick succession and get them rejected, and he therefore waited so long.

8. Presently, the investigation is complete and the material required to successfully try the accused has been locked in form of documents. Looking to the workload before the Court the trial in the present case is a distant reality. The affidavit dated 22.11. 2006 further reveals that there has been instances of heavy reduction of bail amounts in several other cases pending against the applicant-accused Sanjay Agarwal.

9. The parties submit that the co-accused Ketan Sheth has been ordered by the Hon'ble High Court to be released on bail bond of Rs.5,00,000/- following reduction in the earlier bail amount of Rs. 20,00,000/-. The applicant-accused Sanjay Agarwal is prepared to furnish bail bond of Rs.5,00,000/- with



solvent surety/ies and abide by the terms and conditions as stipulated by this Court for grant of bail. Hence the order.

ORDER

(1) Bail amount of Rs.20,00,000/- is reduced to Rs.5,00,000/-, and accordingly the applicant-accused Sanjay Agarwal shall be released on P.R. Bond of Rs.5,00,000/- with one or more sureties in the like amount, subject to the following conditions :-

- (i) shall not tamper with the evidence or approach any witness in any manner whatsoever;
- (ii) shall keep the CBI, BSFC, Mumbai informed of his whereabouts from time to time;
- (iii) shall not leave India unless permitted by the Court.

(2) M.A.No.544/06 is disposed of accordingly.

4/12/2006.



(U.D. Salvi)

Special Judge, Gr. Mumbai

(i) Date of dictation of the Order by the HH Judge

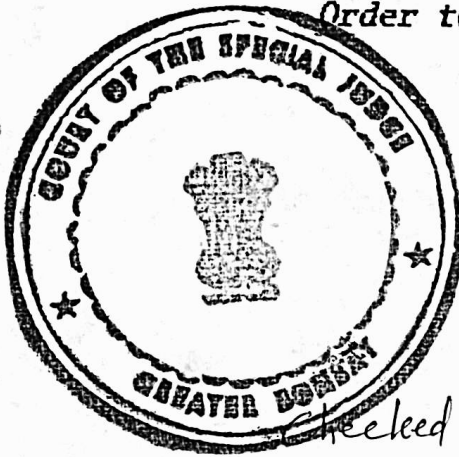
: 4/12/2006.



(ii) Date of transcription of the Order by the Steno : 5/12/2006.

(iii) Date on which the Judgment/Order is signed by the HH Judge : 6/12/2006^u

(iv) Date of delivery of the Judgment/Order to the Certified Copy Section:



CERTIFIED TO BE A TRUE COPY
Dated this... 8th day of Dec. 2006

[Signature]
For Registrar
City Sessions Court
Mumbai
EP.

Checked by - *[Signature]*
08/12/06

CBI, MUMBAI

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IN THE COURT OF SPECIAL JUDGE AT GR. MUMBAI.

BAIL APPLICATION NO. 72 OF 2002.

IN

R.C.NO. 4(E) OF 2002.

CBI - BAIL ORDER

Applicant-Accused.

3/8/02

... Respondents.

Sanjay Agarwal.

V/s.

CBI, BS & FC, Mumbai.

Shri Jaideep V. Thakkar, Advocate for the Applicant.

Shri Gul Asnani, Special Public Prosecutor for CBI.

CORAM: HIS HONOUR THE SPECIAL JUDGE.

SHRI S.G. DESHMUKH,

DATED: 3RD AUGUST, 2007.

ORAL ORDER.



This is a bail petition filed on behalf of the applicant-accused Sanjay Agarwal for releasing him on bail under Section 167(2) of the Code of Criminal Procedure, stating that the CBI did not file the charge-sheet within a span of sixty days and thus, the applicant-accused became entitled to be released him on bail by this court.

2. CBI filed the say and resisted the bail petition.

3. The offence under Section 120-B, 409, 420, 467, 468 of the Indian Penal Code and Section 13(2) r/w 13(1)(c) and (d) of

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Greater Bombay

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the P.C.Act, 1988, has been registered against the present applicant-accused and some others vide RC No.4(E) of 2002, on the complaint of one D.T.Joseph, Director General of Shipping, Mumbai. The present applicant-accused has been arrested on 24.5.2002 and since then he is either in police custody or judicial custody. It is a fact that the CBI has not filed the charge-sheet till today.

4. Section 167(2), Cr.P.C. is a provision which authorises the Magistrate permitting detention of an accused in a custody and prescribes the maximum period for which such a detention could be ordered pending investigation. It also be mentioned that Sec. 67(2), Cr.P.C. does not provide the period of limitation for filing the charge-sheet before the court, but it provides that if the investigating agency fails to submit the charge-sheet within ninety days or sixty days of the case may be, then the investigating agency is not entitled to approach the court for authorised detention of a person who is in custody.

5. In the present case, the offence is registered under Sections 120-B, 409, 420, 467, 468 of the I.P.C. and Sec.13(2) r/w 13(1)(c) and (d) of the P.C.Act, 1988.

6. Sec.409, IPC is punishable with imprisonment for life or imprisonment either description for a term which may extend to ten years and also be liable to fine.



7. Sec. 467, IPC is punishable with imprisonment for life or with imprisonment for other description for a term which may extend to ten years and shall also be liable to fine.

8. Sec. 468, IPC is punishable with imprisonment of either description for a term which may extend to seven years and shall also be liable to fine.

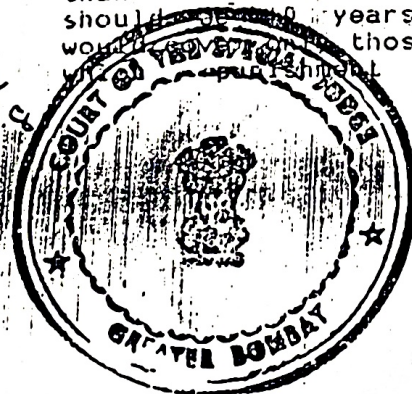
9. Sec. 420, IPC is punishable with imprisonment of either description for a term which may extend to seven years and shall also be liable to fine.

10. Sec. 120-B, IPC is punishable in the same manner as for abetment of the offence which is the object of conspiracy.

11. Sec. 13(2) of P.C. Act, 1938 is punishable with imprisonment for a term not less than one year, but which may extend to seven years.

12. In (2001) 5 SCC page 34, Rajiv Chaudhari Vs. State of Delhi, Their Lordships of the Apex court observed that :-

"from the relevant paragraph of aforesaid Sec. 167 Cr.PC, it is apparent that in cases which offence is punishable with imprisonment for 10 years or more, the accused could be detained up to a period of 90 days. In this context, the expression "not less than" would mean imprisonment should be 10 years or more and would mean those offences for which punishment could be



imprisonment for a clear period of 10 years or more. Under Section 386 punishment provided is imprisonment of either description for a term which may extend to 10 years and also fine. That means, imprisonment can be for a clear period of 10 years or less. Hence, it could not be said that minimum sentence would be 10 years or more. Further, in context also if clause (1) of proviso (a) to Section 167(2) is considered, it would be applicable in case where investigation relates to an offence punishable (1) with death; (2) imprisonment for life; and (3) imprisonment for a term of not less than ten years. It would not cover the offence for which punishment could be imprisonment for less than 10 years. Under Section 386 IPC, imprisonment can vary from minimum to maximum of 10 years and it cannot be said that imprisonment prescribed is not less than 10 years".

13. In the instant case, the investigation is not yet completed and the charge-sheet is not yet filed. The present application is filed on behalf of the applicant-accused Sanjay Agarwal who is in custody, for releasing him under Section 167(2). Cr.P.C. The accused accrues indefeasible right for releasing him on bail on account of default of the investigating agency to file the charge-sheet within the period prescribed, the accused is entitled to be released on bail. I have mentioned that in the instant case, the punishment under Sections 409 and 467, IPC is ~~punishable with~~ imprisonment for life or imprisonment either description for a term which may extend to ten years and shall also be liable to fine. Thus, imprisonment under Secs. 409 and 467, IPC can vary from minimum to maximum of 10 years or imprisonment for life.

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It cannot be said that the imprisonment prescribed is not less than ten years. Thus, the offence which can be punished with imprisonment less than ten years would not fall under Clause (1), but will fall under Clause (2) of Sec. 167(2)(a) Cr.P.C. and thus, the applicant-accused is entitled to be released on bail.

14. One of the accused Ketan Sheth who is said to have drained the public funds with the present applicant-accused has been ordered to be released on bail by this court on PR of Rs.20 lacs with one or more sureties of like amount. I pass the following order:-

O R D E R.

The application is allowed. The applicant-accused be released on PR of Rs.20 lacs (Rs. Twenty lacs) with one or more sureties of like amount.

The applicant-accused shall not leave India without the permission of the court.

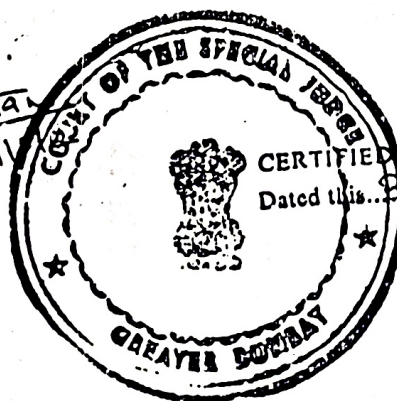
The applicant-accused shall render every assistance and help to the investigating agency.

The applicant-accused shall not in any manner whatsoever tamper or attempt to tamper with the evidence.

3rd August, 2002.

Checked by - Bata

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M. M. M. M. M.
(S.G. DESHMUKH) 3.8.2002
Special Judge,
Greater Mumbai.

Devi
For Registrar
City Sessions
Mumbai
30/11/02