

IN THE COURT OF SESSION FOR GR. BOMBAY AT MUMBAI

BAIL APPLICATION NO.1505 OF 2022

Jagdish Shrivastav,
Age – 51 year, Occ – Business,
R/o – 39/301, Siddhkala Apartment,
Near Swimming Pool, Manish Nagar,
Kalwa West, thane-400605. ... **Applicant**

Versus

The State of Maharashtra
(At the instance of Police Station,
Dadar,
C.R.No.896/2021) ... **Respondent**

Appearance:

Mr. Prem Kumar R. Pandey, Ld. Adv. for applicant.
Mr. Ramesh Siroya, Ld. Addl. P.P.

CORAM : HIS HONOUR ADDL SESSIONS
JUDGE M. G. DESHPANDE
(C.R.No.16)
DATE : August 3, 2022

ORDER

1. Applicant Jagdish Shrivastav is accused in C.R.No.896/2021 registered with Dadar Police Station under Ss. 465, 467, 468, 471 r.w Sec.34 of I.P.C. He is praying for bail. This is his second bail application after filing of chargesheet. This Court vide its order dt.28.04.2022 in B.A.No.700/2022 rejected the first bail application.

2. Prosecution vide say (Exh.2) of Investigating Officer, strongly opposed the application and contended to reject the same on

following grounds,

- a. If bail is granted to the applicant, he will give threat to the informant and witnesses.
- b. Looking to the antecedents of the applicant, it appears that he is habitual in committing such type of offences.
- c. Applicant will repeat the crime if released on bail.

With this, prosecution contended to reject the application.

3. Heard Ld. Adv. Mr. Prem Kumar Pandey for the applicant and Ld. A.P.P Mr. Ramesh Siroya. Following points arise for my determination. I am recording following findings thereon for the reasons discussed below :-

POINTS	FINDINGS
1. Whether the applicant-accused has made out a strong prima-facie case to release him on bail ?	Yes
2. What Order ?	Application is allowed.

REASONS

POINT NO.1.

FACTS INVOLVED IN C.R.NO. 896 OF 2021

4. The FIR is lodged by one Pushpalata Khandare on 28.11.2022. She stated that she was knowing accused No.1 Jayshree Shrivastav since past many years. She had taken financial help from the informant to the tune of Rs.7 Lakhs in the year 2018 on the ground that her mother was not well and the money was needed for her treatment. At that time, her husband was present with accused No.1. The informant asked for return of the said money, but it was never returned.

However, out of Rs.7 Lakhs, they promised to give cheque for Rs.4 Lakhs and Rs.3 Lakhs in cash. The cheque was given, but, the cheque was dishonoured. Thus, no money was returned. The amount of Rs.7 Lakhs was misappropriated.

5. The informant pursued the matter with the accused. At that time, accused No.1 told her that the applicant was in a position to get a room from Thane Municipal Corporation and that they would get two rooms for lesser price and from that transaction she could return Rs.7 Lakhs. The informant initially refused, but, just to get back her money she decided to go ahead with the proposed transaction. At that time, the accused showed documents in respect of room No.504, building No.13/01 at Dharmaveer Nagar, Thane. They showed the original documents and told the informant that the room stood in the name of their relatives and those relatives would complete the transaction and that the informant would have to pay the registration fees. The price was quoted at Rs.30 Lakh but by way of concession, they were willing to sell that room to the informant for Rs.25 Lakh. They also took certain amounts in cash for giving it to certain officers. Thus, both the applicants extracted Rs.10 Lakh from the informant. Even thereafter the accused No.1 told her that she was in dire need of money and she was willing to sell her flat at Badlapur for Rs.30 Lakh though the market price of the flat was Rs.40 Lakh. On this inducement also the informant paid Rs.13 Lakh to both the accused. She was given keys of that flat. Thus, the accused had taken Rs.30 Lakhs from the informant out of which an amount of Rs.1,66,500/- was returned and the balance amount of Rs.28,33,500/- was not returned. Subsequently, neither rooms nor the flat was given to the informant. Based on these allegations, the FIR is lodged.

6. Previous bail applications were rejected by the Ld. Court of First Instance and also this Court. At that time, the main aspect and consideration was the progress in investigation and the same was observed in paragraph (8) of order dt.28.04.2022 passed by this Court in Bail Application No.700/2022. Admittedly, the chargesheet has been filed. Even thereafter the Ld. Court of First Instance rejected the bail application, hence the applicant has preferred this application.

7. Careful examination of chargesheet prima-facie indicates that the allegations regarding payment of Rs.8 Lakh in October,2018 is vague and no mode of payment is specifically mentioned anywhere in the chargesheet. Ld. Adv. for the accused pointed out bank statements of Jayshree Shrivastav, which indicates entries regarding withdrawals pointing out some transactions which are prior to the alleged payments. The bank statement for the period 01.01.2017 to 25.08.2020 indicates that, Rs.14,000/- transferred in the account of Rajshree Chalke through NEFT. Another statement for the period 01.01.2017 to 25.08.2020 indicates entry dt.16.07.2018 whereby another Rs.13,000/- were transferred in the name of Chalke Kaki. The next bank statement for the period 01.01.2017 to 25.08.2020 has two entries dt.27.09.2018 and 28.09.2018 whereby amounts of Rs.30,000/- and Rs.10,000/- respectively had been transferred in the name of Chalke. Entries in the next statement for the period 01.01.2017 to 25.08.2020 indicates transfer of Rs.40,000/- and Rs.5,000/- respectively in the name of Chalke on 16.10.2018.

8. It is prima-facie evident that the informant had suppressed these transactions in the FIR and her statement. She has suppressed around 34 entries as such which she received from the wife of the

accused. When Rajshree Chalke in her statement states about payment of Rs.8 Lakh, does not refer such transfer of money which is referred above. The informant had given in all three statements and had an opportunity to disclose all the facts clearly. Yet, she has suppressed all these transactions. There are so many cheques at page No.78 to 85 of the chargesheet indicating that the same were issued by the accused. But statement of Rajshree is silent on this.

9. Contention of the prosecution is that there are antecedents of the accused, for that prosecution relied on FIR No.0038/2020 dt.05.02.2020 registered with Naupada Police Station, Thane. Another FIR is vide No.0260/2019 registered with Chitalsar, Manpada Police Station, Dist. Thane. In FIR No.0038/2020 as well as FIR No.0260/2019 the name of the present accused is not mentioned. In FIR No.38/2020 wife of the present accused is accused. Therefore, it cannot be said that, there are so many antecedents against the present accused.

10. Chargesheet has been filed on 27.05.2022. Eversince till date near about 2 months has been passed. Internet record shows that, till date the Ld. Court of First Instance has not framed charge for beginning trial of under trial prisoners. Therefore, no one is sure when the trial will begin and conclude. Previous bail application was rejected on the ground that, investigation was in progress. Now, this ground does not exist. Prosecution has opposed the bail application on three grounds which are general. For those grounds keeping accused behind bars for uncertain period is not justified. Prosecution has failed to show any antecedents of the accused. Prosecution has opposed the application on the ground that accused will pressurize the witnesses. In

order to safeguard this objection imposing conditions on the accused will be sufficient. Situation existing while rejecting previous application is no more as investigation is over and chargesheet has been filed. Internet surfing regarding this case clearly indicates that the Ld. Court of First Instance has not framed the charge and trial has not yet begun. It is necessary to note that, all jails in Mumbai are overcrowded and almost prisoners of three times than actual capacity are lodged therein. Therefore, the applicant cannot be kept behind bars for uncertain period when particularly there is no certainty as to when the trial will begin and conclude. Hence, I hold that applicant has made out a strong *prima-facie* case to release him on bail. Therefore, Point No.1 is answered in the affirmative and applicant-accused can be released on bail as follows.

ORDER

1. Bail Application No.1505 of 2022 is allowed.
2. Applicant-accused Jagdish Shrivastav be released on bail in C.R.No.896/2021 registered with Dadar Police Station on executing P.R. bond in the sum of Rs.1,00,000/- (Rs. One Lakh) and one or two surety bonds of like amount.
3. The applicant shall undertake not to pressurize the informant and prosecution witnesses, and also not to tamper with the evidence of prosecution.
4. The applicant shall not leave Mumbai without permission of the Ld. Metropolitan Magistrate concerned.
5. The applicant shall undertake to attend each and every date of the trial.

6. The applicant is permitted to furnish provisional cash security of Rs.1,00,000/- for a period of two months, with PR bond as directed above.
7. Bail before the Ld. Court of First Instance.

Dt.: 03.08.2022



(M.G. Deshpande)
Addl. Sessions Judge.
C.R.No.16, Gr.Bombay at Mumbai

Signed on : 03.08.2022

**“CERTIFIED TO BE TRUE AND CORRECT COPY OF THE ORIGINAL
SIGNED JUDGMENT/ORDER”**

04.08.2022 at hours UPLOAD DATE AND TIME	(KISHOR PRAKASH SHERWADE) NAME OF STENOGRAPHER
Name of the Judge	HHJ M. G. DESHPANDE (COURT ROOM NO.16)
Date of pronouncement of judgment/order	03.08.2022
Judgment/order signed by P.O. on	03.08.2022
Judgment/order uploaded on	04.08.2022