

Order

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ACB Bail Application No. 57/2022

CNR No. MHCC02-001244-2022



**IN THE COURT OF SPECIAL JUDGE,
(CONSTITUTED UNDER THE PREVENTION OF CORRUPTION ACT, 1988)
FOR GREATER BOMBAY AT MUMBAI**

ACB BAIL APPLICATION NO. 57 OF 2022

IN

ACB REMAND APPLICATION NO. 87 OF 2022

Mohd. Ali Wali Mohd. Mansuri) Applicant/Orig. Accd.
No. 1

Versus.

The State of Maharashtra)
(At the instance of A.C.B., Mumbai)
vide C. R. No. 3/2022).) Respd./Complainant

Appearances :

Mr. Sameer D. Pradhan, Ld. Adv. for the applicant/orig. accused no. 1.
Mr. S. E. Soshte, Ld. A.PP for the State/Respondent/ACB.

**CORAM: H.H. THE SPECIAL JUDGE
UNDER P.C. ACT, 1988
S. P. NAIK-NIMBALKAR,
(C.R. No. 46).**

DATED: 1st February, 2022.

:ORAL ORDER:

The application is filed by the applicant/original accused no. 1 Mohd. Ali Wali Mohd. Mansuri under Section 439 of the Code of Criminal Procedure, 1973 ("the Cr.P.C." for short) for releasing him on bail. He is in Judicial Custody since 31/01/2022. The offence under

Sections 7 and 12 of the Prevention of Corruption Act, 1988 ("P.C. Act" for short) is filed vide C.R. No. 3/2022 by the ACB.

2. The gist of prosecution case is that the informant Abdul Rafiq Qadar Shaikh is a resident of Girgaon, Mumbai. His cousin brother Sajid Shaikh was caught with a chit of 'matka' in his pocket by accused no. 1 Public Servant Sanjiv Nimbalkar. He was taken to Dongri Police Station. Demand of bribe of Rs. 50,000/- was made from him by both accused persons. The informant approached ACB. After doing requisite formalities, on 27/01/2022 the complaint was taken. Demand was verified. It was told to the informant to give the amount of Rs. 20,000/- to the applicant/accused. After completion of necessary formalities of pre-trap panchanama, trap was laid. It was successful. The applicant/accused was caught red-handed while accepting demand of bribe Rs. 18,000/-. Alongwith the belongings an amount of Rs. 20,500/-, was seized from the applicant/accused. The applicant/accused was arrested and booked in the crime. He was remanded to the P.C.R. from 28/01/2022 to 31/01/2022. On 31/01/2022, he was taken into Judiciary Custody till 14/02/2022.

3. The grounds on which bail is sought are that, the applicant/accused is innocent and is falsely implicated. He was known to the informant and the co-accused and in goodfaith, he accepted the money without having any knowledge that the money is a bribe amount. Investigation is completed. Interrogation is done. He has co-operated with the police. He has roots in the society. He would not flee. He is ready to abide with any conditions, if imposed by this Court. Hence, bail may be granted.

4. Notice was issued to the State/ACB. The prosecution has opposed the bail application on the grounds that the accused Public

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Servant Sanjiv Nimbalkar is tested Covid positive and is quarantined. Hence, investigation is to be done with him. If the applicant/accused is released on bail, he would pressurize the informant and witnesses. He would destroy the evidence. Investigation is incomplete. Investigation would be hampered, if the applicant/accused is released on bail. Hence, on this grounds, it is submitted to reject his bail application.

5. In view of the above rival facts, the following points arise for my consideration and I have given my findings against each of them for the reasons recorded below :-

<u>Points</u>	<u>Findings</u>
(1) Whether the applicant/accused is entitled to be released on bail under Section 439 of the Code of Criminal Procedure, 1973?..	In the affirmative
(2) What order ?	.. As per final order

REASONS

As to Point No. 1 :-

6. Heard both the sides and perused the case record.

7. Ld. Advocate Mr. Sameer Pradhan for the applicant/accused and Ld. A.P.P. Mr. S. E. Soshte for the State/ACB have submitted as per their respective contentions.

8. As per the facts of prosecution case, prima-facie, complicity of applicant/accused with the offence is seen through the case record. The applicant/accused was caught red-handed while accepting bribe of Rs. 18,000/-. The amount is recovered from him.

9. It is to be decided as to whether the physical custody of the

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applicant/accused is necessary during the course of pending investigation. It is seen from the record that sufficient opportunity for custodial interrogation of the applicant/accused is already granted to the ACB. The applicant/accused was in P.C.R. since 28/01/2022 to 31/01/2022. The voice sample of applicant/accused is taken. Panchanamas are drawn. Therefore, there are no circumstances in the Say of Investigating Officer to infer that the investigation is to be done with the aid of applicant/accused, hereinafter. It is the contention of prosecution that the investigation is pending with accused no. 2. However, as submitted, he is tested Covid positive and he is quarantined in the hospital. Therefore, the need and necessity of physical custody of the applicant/accused qua-pending investigation, are not warranted.

10. The apprehension of prosecution is pertaining to alleged tampering of evidence at the hands of applicant/accused. In that regard, there is nothing in the Say of Investigating Officer that the applicant/accused has any previous criminal record or is having criminal antecedents to his discredit. He is residing on the given address at Mumbai. Therefore, by imposing certain terms and conditions on the applicant/accused, the objection of the prosecution can be taken care of.

11. As bail is the rule and jail is an exception, considering the facts of case and the role of applicant/accused in pending investigation with regard to his criminal antecedents, he is entitled to be released on bail on certain terms and conditions. No purpose would be served by keeping him behind bars. There are no exceptional circumstances pointed out by the prosecution to reject the bail plea of the applicant/accused. Resultantly, I answer Point No. 1 in the affirmative and with regard to Point No. 2, I proceed to pass the following order :-

ORDER

1. ACB Bail Application No. 57/2022 filed by applicant/original accused no. 1 Mohd. Ali Wali Mohd. Mansuri in ACB Remand Application No. 87/2022 (C.R. No. 3/2022) is hereby allowed.
2. The applicant/accused shall be released on his executing PB and SB of Rs. 25,000/- (Rupees Twenty-five Thousand Only), with one or more sureties in the like amount.
3. The applicant/accused shall furnish his mobile/landline number, the mobile/landline numbers of his two close relatives/friends and his family members, who are residing preferably in Mumbai, along with their residential proofs to the concerned police station and shall not change his contact details till conclusion of trial.
4. The applicant/accused shall also produce the proof of his identity and proof of residence in Mumbai, at the time of executing bail bond.
5. The applicant/accused shall not contact the informant and prosecution witnesses in any manner and will not tamper with the prosecution evidence. He shall not enter the local jurisdiction of Dongri and Pydhonie Police Stations till the completion of investigation.
6. The applicant/accused shall co-operate with the police during investigation. He shall attend the concerned police station every Thursday in between 10.00 a.m. to 12.00 noon, till filing of the charge-sheet.
7. The applicant/accused shall not leave India without prior permission of the Court.
8. The applicant/accused shall not commit any offence while on bail.
9. Ld. Advocate for the applicant/accused is directed to inform the above conditions to the applicant/accused for compliance.
10. In case of breach/default of any of the above condition by the applicant/accused, it would be viewed seriously and it would entail cancellation of bail granted to the applicant/accused.

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11. ACB Bail Application No. 57/2022 filed by applicant/original accused no. 1 Mohd. Ali Wali Mohd. Mansuri in ACB Remand Application No. 87/2022 stands disposed of accordingly.

(Order dictated and pronounced in open Court.)



Date:-01/02/2022

(S. P. NAIK-NIMBALKAR)
Special Judge under P.C. Act,
City Sessions Court for Greater Bombay
at Mumbai.

Dictated on : 01/02/2022
Transcribed on : 01/02/2022
Signed on : 01/02/2022
Sent to Dept. on :

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

01/02/2022 at 4:40 p.m.
UPLOADED DATE AND TIME

Gitalaxmi R. Mohite
NAME OF STENOGRAPHER

Name of the Judge (With Court Room No.)	H.H.J. Shri. S. P. Naik-Nimbalkar (Court Room No. 46)
Date of Pronouncement of Judgment/Order	01/02/2022
Judgment/Order signed by P.O. on	01/02/2022
Judgment/Order uploaded on	01/02/2022