

Order

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Bail Application No. 291/2022

CNR No. - MHCC02-005676-2022



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

BAIL APPLICATION NO. 291 OF 2022

IN

ACB REMAND APPLICATION NO. 451 OF 2022

Padmakar Pote S/o. Baburao,)
Age:57 years, Indian Inhabitant,)
Occupation:-Service,)
Residing at Shaswat Park, Room No. 102,)
'S' Wing, Walvilkar Road, Badlapur (W),)
Thane.)
(Presently in _____ Jail).) Applicant/accused

Versus.

The State of Maharashtra,)
(At the instance of A.C.B., Mumbai)
vide C. R. No. 25/2022).) Respdt./Complainant

Mr. Sumit Kothari, Learned Counsel for the applicant/accused.
Mr. V. C. Malankar, Learned Spl.PP for the State/Respondent/ACB.

**CORAM: H.H. THE SPECIAL JUDGE
UNDER PC. ACT, 1988,
SHRI. S. M. KOCHEY,
(C.R. No. 46).**

DATED: 29th April, 2022.

ORDER

The applicant/accused Mr. Padmakar Baburao Pote is apprehended and arrested for the offence punishable u/sec. 7 of the Prevention of Corruption Act, 1988 ("the P.C. Act" for short). He is in Judicial Custody. The present application is filed by the applicant/accused u/sec. 439 of the Code of Criminal Procedure, 1973 for releasing him on bail.

2. It is the case of the prosecution that the applicant/accused being the Head-Clerk at East Regional Department, Chembur, Mumbai, called the informant, who a retired from the Police Department and expressed his desire to meet him in connection with his leave encashment. The informant having been met the applicant/accused at Kalyan Railway Station, explained him that the informant doesn't fulfill the criteria as 'Leave Encashment', as his leave days are less than 300 and as such, he would not be entitled for his encashment to the tune of Rs. 2 lakhs. He further expressed that if the informant is ready to pay him 60,000/- rupees, he would fix everything as per Rules. The informant expressed his inability to pay this much of amount and then there were negotiations and ultimately an amount of Rs. 20,000/- was fixed. In the meantime, the informant made report with the Anti-corruption Bureau and the trap was laid. Ultimately on 25/04/2022 at about 8.00 p.m. at Hotel Gurukrupa, in front of Kalyan Railway Station, the applicant/accused was called and an amount of Rs. 10,000/- was given to the applicant/accused, as a part payment of agreed amount of Rs. 20,000/-. The applicant/accused accepted the amount by his right hand and kept in his right front pant pocket and the applicant/accused was caught red-handed by the Raiding Party, who was present on the spot. Thereafter the further procedure was carried out, F.I.R. was

registered, house search was taken, panchanama was drawn, custody of the applicant/accused was also taken by the police. Ultimately having been remanded into Judicial Custody, the present application is filed.

3. It is contended by the Learned Counsel for the applicant/accused that only an offence punishable under Section 7 of the Prevention of Corruption Act, 1988, is alleged to have been committed by the applicant/accused. The offence punishable under Section 13 of the Prevention of Corruption Act, 1988, is not levelled against the applicant/accused at this stage.

4. The Learned Counsel for the applicant/accused has relied upon the orders passed by the Hon'ble Bombay High Court (Bench at Aurangabad) in **Bail Application No. 1007 of 2018 in the case of Rajendra Dhannu Kirtikar vs. State of Maharashtra** and also the order passed by the Hon'ble Bombay High Court in **Criminal Bail Application No. 2672 of 2018 in the case of Raj Relu Gehani vs. The State of Maharashtra and Another**. He has further contended that the further custody of the applicant/accused is not warranted, as almost all the formalities have been completed. The applicant/accused has his permanent house in Mumbai, there are no chance of his being absconding and therefore, the applicant/accused may be released on bail.

5. The Learned Spl.PP. Mr. V. C. Malankar for the State/ACB, on the other hand, by filing their Say to this application, contended that the applicant/accused was caught red-handed, the trap money was recovered from the custody of the applicant/accused, the investigation is at the preliminary stage and there is sufficient chance that he may

tamper the evidence, if the applicant/accused is released on bail, his chances of being absconding can not be ruled out. It is therefore, the prosecution strongly objects the release of the applicant/accused on bail.

6. Considering the rival contentions of both the parties, the following points arise for determination and the findings thereon are recorded for the reasons to follow :-

<u>POINTS</u>	<u>FINDINGS</u>
1. Whether the applicant/accused is entitled for grant of bail?	Yes
2. What order?	As per final order, the application is allowed.

REASONS

7. Heard Learned Counsel Mr. Sumit Kothari for the applicant/accused and Learned Special Public Prosecutor Mr. V. C. Malankar for the State/ACB.

As to Point No. 1 :-

8. It is submitted by the Learned Counsel for the applicant/accused that the orders passed by the Hon'ble Bombay High Court in the abovesaid cases, are similar to the present case. Their Lordships have observed that only Section 7 of the Prevention of Corruption Act, 1988 is levelled against the applicant/accused and Section 13 of the Prevention of Corruption Act, 1988, is not levelled and therefore, on the similar facts, the applicant/accused is entitled for bail. It is further submitted by the Learned Counsel for the applicant/accused

that the investigation, which is done so-far, doesn't warrant the further detention of the applicant/accused in jail. He has permanent residence in Mumbai. There are no chances of his being absconding or influencing of the witnesses.

9. The Learned Spl.PP for the State/ACB, on the other hand, has submitted that there is strong *prima-facie* case made out against the applicant/accused. The applicant/accused is caught red-handed and if released, he may tamper with the prosecution evidence and therefore, the application be rejected.

10. On 25/04/2022, the applicant/accused came to be trapped and caught red-handed accepting illegal gratification from the informant. He was remanded to Police Custody. The investigation so far reveals that the FIR is registered against the applicant/accused, the house search is taken, the panchanama to that effect is recorded and even the voice sample of the applicant/accused is collected. The grounds mentioned in the reply to this application by the prosecution, opposing the application for bail, are that the documents from the office where the applicant/accused was working, are required to be collected. It is required to be found out as to whether other persons in the said office are involved or not and the detailed interrogation and investigation is required to be done. The call details are required to be collected. All these grounds do not reveal that the further investigation is required to be done with the help of the applicant/accused in custody. Undoubtedly for the present case, the offence punishable under Section 7 of the Prevention of Corruption Act, 1988 is the only offence levelled against the applicant/accused. Further investigation may take its own course, however no purpose would be served by detaining the

applicant/accused in jail, any further.

11. As submitted by the Learned Counsel for the applicant/accused that the applicant/accused has permanent residence in Mumbai, he can be put to certain conditions for securing his presence and the apprehension of the prosecution that the applicant/accused may tamper with the evidence or influence by the witnesses, can be taken care of, by putting certain conditions. Hence there are no exceptional grounds made out by the prosecution to warrant further detention of the applicant/accused in jail. Hence, this point is answered in the affirmative. In view of the findings to the above points, the following order is passed :-

ORDER

1. ACB Bail Application No. 291/2022 filed by applicant/accused Mr. Padmakar Baburao Pote in ACB Remand Application No. 451/2022 (C.R. No. 25/2022) is hereby allowed.
2. The applicant/accused is released on bail 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 numbers and also the mobile and landline numbers of his two close relatives/friends and his family members, who are residing preferably in Mumbai or Thane, along with their residential proof 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 shall not tamper with the prosecution evidence. He shall not enter the local jurisdiction of the concerned Police Stations.
6. The applicant/accused shall co-operate with the police

during investigation. He shall attend the concerned police station every Monday between 10.00 a.m. and 12.00 noon, till filing of the charge-sheet.

7. The applicant/accused shall not leave India without prior permission of the Court and shall not move out of the jurisdiction of the concerned police station without intimating the concerned police station well in advance, atleast one day prior to his journey.

8. The Learned Counsel for the applicant/accused is directed to inform the above conditions to the applicant/accused for compliance.

9. In case of breach or default of any of the above conditions by the applicant/accused, it would amount to cancellation of bail granted to the applicant/accused, automatically without further reference to the Court.

10. In view of the above, the application stands disposed of accordingly.

(Dictated and pronounced in the open Court.)



Dt. 29/04/2022

(S. M. Kochey)
Special Judge under PC. Act,
City Sessions Court for Greater Bombay
at Mumbai.

Dictated on : 29/04/2022
Transcribed on : 29/04/2022
Signed on : 29/04/2022

Order

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Bail Application No. 291/2022

CERTIFIED TO BE TRUE AND CORRECT COPY OF THE ORIGINAL SIGNED JUDGMENT/ORDER	
29/04/2022 at 3:45 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. M. Kochey (Court Room No. 46)
Date of Pronouncement of Judgment/Order	29/04/2022
Judgment/Order signed by P.O. on	29/04/2022
Judgment/Order uploaded on	29/04/2022