

Order .. 1 .. ACB Bail Application No. 238/2022

MHCC020046802022



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

ACB BAIL APPLICATION NO. 238 OF 2022
(CNR No. MHCC02-004680-2022)

IN

ACB REMAND APPLICATION NO. 354 OF 2022

Rajendra Sahadeo Naik) Applicant/Orig. Accd.
No. 1.

Versus.

The State of Maharashtra)
(At the instance of A.C.B., Mumbai)
vide C. R. No. 23/2022).)
Respdt./Complainant

Appearances :

Mr. Abhijit Mantri, Ld. Adv. for the applicant/orig. accused no. 1.
Mr. Pankaj Chavan, Ld. A.P.P. 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: 12th April, 2022.

:ORAL ORDER:

The application is filed by the applicant/original accused

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no.1 Rajendra Sahadeo Naik under Section 439 of the Code of Criminal Procedure, 1973 ("the Cr.P.C." for short) for releasing him on bail. He is arrested for 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. 23/2022 by the ACB. He is in Judicial Custody since 08/04/2022.

2. The gist of prosecution case is that the wife of the informant has filed an application to the office of project officer BMC. On hearing appeal was dismissed. The informant has filed an application dated 06.01.2022 with the BMC office East division, Andheri K. Accused No.1, the public servant in the same office of BMC demanded Rs.3,00,000/- from the informant for changing the appeal order and to regularize the entry in the name of informant of his shop. The informant complaint to the ACB about the demand of bribe on 18.02.2022. Verification was carried on 21.02.2022. It was confirmed in the verification that the accused demanded Rs.3,00,000/- from the informant as a bribe with an ulterior motive to change the order of appeal and regularize the entry in the shop record. On 04.04.2022 trap of was laid. During the trap an amount of Rs.3,00,000/- were accepted by accused No.2 as told to him by accused No.1 and thereby they were caught red-handed. In the personal search Rs.80,000/- from accused No.1 were seized. Rs. 3,00,000/- were found from the office of accused No.1. Hence, FIR was filed against them for the aforementioned offence.

3. The grounds on which bail is sought are that, the applicant/accused has been falsely implicated. Further custody interrogation is not necessary. Applicant is having unblemished service record. All panchanama are done. He is permanent resident of Thane. He is ready to abide with any conditions imposed by this Court. Hence, bail may be granted.

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4. Notice was issued to the State/ACB. The prosecution has opposed the bail application on the grounds that investigation is in primary stage and the accused would destroy evidence, pressurize the witnesses and accused would not be available, if released on bail. He has not given satisfactory explanation regarding the amount. Hence, bail may not be granted.

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. Abhijit Mantri for the applicant/accused and Ld. A.P.P. Mr. Pankaj Chavan for the State/ACB have submitted as per their respective contentions. Additionally, Ld. Adv Mr. Mantri has submitted that accused No.2 has no connection with the amount recovered from accused No.1. The amount of Rs.80,000/- recovered from accused No.1 was pertaining to the collected rent and bank withdrawal. The amount of Rs.3,00,000/- is not recovered at the instance of accused No.1 but, from a cabin where accused No.1 was not seated and not was having any control over it.

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.3,00,000/-. The amount is recovered and panchanamas are done.

9. It is to be decided as to whether the physical custody of the 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 05.04.2022 to 08.04.2022. 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.

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 Thane. 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 :-

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ORDER

1. ACB Bail Application No. 238 of 2022 filed by applicant/original accused no.1 Rajendra Sahadeo Naik in ACB Remand Application No. 354/2022 (C.R. No. 23/2022) 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, 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.
6. The applicant/accused shall co-operate with the police during investigation. He shall attend the concerned police station every Thursday and Sunday 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.

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8. The applicant/accused shall not commit any offence while on bail.
9. Provisional cash bail of Rs.25,000/- is accepted for a period of next four weeks. Surety be complied till then.
10. Ld. Advocate for the applicant/accused is directed to inform the above conditions to the applicant/accused for compliance.
11. 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.
12. ACB Bail Application No. 238/2022 filed by applicant/original accused no.1 Rajendra Sahadeo Naik in ACB Remand Application No. 354/2022 stands disposed of accordingly.

(Order dictated and pronounced in open Court.)



Date:-12/04/2022

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

Dictated on : 12/04/2022
Transcribed on : 12/04/2022
Signed on : 12/04/2022
Sent to Dept. on :

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

13/04/2022 at 3.35 p.m.
UPLOADED DATE AND TIME

Mrs. M. M. Kadam
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	12/04/2022
Judgment/Order signed by P.O. on	12/04/2022
Judgment/Order uploaded on	13/04/2022