

Order .. 1 .. ACB Bail Application No. 237/2022

MHCC020046462022



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

ACB BAIL APPLICATION NO. 237 OF 2022
(CNR No. MHCC02-004646-2022)

IN

ACB REMAND APPLICATION NO. 365 OF 2022

1. Dr. Sandeep Ravindra Gaikwad) Applicant/Orig. Accd.
No. 1
2. Sachin Mahadev Kokitkar) Applicant/Orig. Accused
No.2

Versus.

The State of Maharashtra)
(At the instance of A.C.B., Mumbai)
vide C. R. No. 24/2022).)
Respdt./Complainant

Appearances :

Mr. Prerak Sharma, Ld. Adv. for the applicant/orig. accused.
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 applicants/accused under Section 439 of the Code of Criminal Procedure, 1973 ("the Cr.P.C." for short) for releasing him on bail. They are arrested for the offence under Sections 7 and 7 A of the Prevention of Corruption Act, 1988 ("P.C. Act" for short) is filed vide C.R. No. 24/2022 by the ACB. Accused No.1 is in Judicial Custody since 11/04/2022 and accused No.2 is in judicial custody since 08/04/2022.

2. The gist of prosecution case is that accused No.2 has demanded bribe of Rs. 3,000/- on 06.04.2022 in presence of accused No.1. Pursuant to the demand of bribe trap was laid. During trap an amount of Rs. 3,000/- was accepted by accused No.2 for himself and accused No.1. The bribe amount was accepted with regard to the pending work of conversation of hotel license, transformation of furnace from diesel to LPG and change in pin code. The complaint was filed on 10.01.2022. On seven occasion verification was done. The demand was confirmed and verified on 06.04.2022 from accused No.2. Hence, FIR was filed for the aforementioned offence.

3. The grounds on which bail is sought are that, the applicants/accused have been falsely implicated. Further custody interrogation is not necessary. Applicants are having unblemished service record. All panchanama are done. They are permanent resident of Mumbai. There is no prima facie evidence against the accused persons. The allegations are fabricated. Applicant No.1 is made a scapegoat. The FIR is filed to malign the reputation of accused persons. They are ready to abide with any conditions imposed by this Court. Hence, bail may be granted.

4. Notice was issued to the State/ACB. The prosecution has

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opposed the bail application on the grounds that investigation is in primary stage and the accused persons would destroy evidence, pressurize the witnesses and they would not be available, if released on bail. Statements of witnesses are yet to be recorded. They have 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 applicants/accused are 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. Prerak Sharma for the applicants/accused and Ld. A.P.P. Mr. Pankaj Chavan for the State/ACB have submitted as per their respective contentions. Additionally, Ld. Adv. Mr. Sharma has submitted that out of seven occasions, on six occasions the demand was not verified. Accused No.2 is not public servant. Accused No.1 has not demanded any bribe. House search of the accused persons is done. The press note issued by the ACB is in contravention to the FIR.

8. As per the facts of prosecution case, prima-facie, complicity of applicants/accused with the offence is seen through the case record. The applicants/accused were caught red-handed while accepting bribe

of Rs.3,000/-. The amount is recovered and all panchnamas are done. The veracity of prosecution evidence would be tested at the time of trial.

9. It is to be decided as to whether the physical custody of the applicants/accused is necessary during the course of pending investigation. It is seen from the record that sufficient opportunity for custodial interrogation of the applicants/accused is already granted to the ACB. Accused persons were in P.C.R. since 07.04.2022 to 11.04.2022. The voice sample of applicants/accused are 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 applicants/accused, hereinafter. The amount of Rs. 3000/- is recovered.

10. The apprehension of prosecution is pertaining to alleged tampering of evidence at the hands of applicants/accused. In that regard, there is nothing in the Say of Investigating Officer that the applicants/accused have any previous criminal record or having criminal antecedents to their discredit. They are residing on the given address at Mumbai and Thane respectively. Therefore, by imposing certain terms and conditions on the applicants/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 applicants/accused in pending investigation with regard to their criminal antecedents, they are entitled to be released on bail on certain terms and conditions. No purpose would be served by keeping them behind bars. There are no exceptional circumstances pointed out by the prosecution to reject the bail plea of the applicants/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. 237 of 2022 filed by applicants/original accused no.1 Dr. Sandeep Ravindra Gaikwad and Accused No.2 Sachin Mahadeo Kokitkar in ACB Remand Application No. 365/2022 (C.R. No. 24/2022) is hereby allowed.
2. The applicants/accused shall be released on their executing PB and SB of Rs. 25,000/- each (Rupees Twenty-five Thousand Only), with one or more sureties for each accused in the like amount.
3. The applicants/accused shall furnish their mobile/landline number, the mobile/landline numbers of their two close relatives/friends and their family members, who are residing preferably in Mumbai, along with their residential proofs to the concerned police station and shall not change their contact details till conclusion of trial.
4. The applicant/accused shall also produce the proof of their identity and proof of residence, at the time of executing bail bond.
5. The applicants/accused shall not contact the informant and prosecution witnesses in any manner and will not tamper with the prosecution evidence.
6. The applicants/accused shall co-operate with the police during investigation. They 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.

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7. The applicant/accused shall not leave India without prior permission of the Court.
8. The applicants/accused shall not commit any offence while on bail.
9. Provisional cash bail of Rs.25,000/- for each accused, total Rs. 50,000/- is accepted, in lieu of executing surety bonds, as per Section 445 of the Criminal Procedure Code, 1973, 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 applicants/accused, it would be viewed seriously and it would entail cancellation of bail granted to the applicants/accused.
12. ACB Bail Application No. 237/2022 filed by applicants/original accused no.1 Dr. Sandeep Ravindra Gaikwad and Accused No.2 Sachin Mahadeo Kokitkar in ACB Remand Application No. 365/2022 (C.R. No. 24/2022) 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

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

13/04/2022 at 4:40 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	13/04/2022
Judgment/Order signed by P.O. on	13/04/2022
Judgment/Order uploaded on	13/04/2022