

Order

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ACB Bail Application No. 76/2022

CNR No. MHCC02-001641-2022



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

ACB BAIL APPLICATION NO. 76 OF 2022

*IN*

ACB REMAND APPLICATION NO. 116 OF 2022

(Earlier ACB Remand Application No. 87 of 2022)

Mr. Sanjeev Honaji Nimbalkar, )  
Age:50 years, Occupation:Service, )  
Residing at Ganesh Tower, Murbad Road, )  
Chikanghar, Opp. Lourdes High School, )  
Kalyan D.C., Thane, )  
Maharashtra-421 301. ) Applicant/Orig. Accd.  
No. 2

Versus.

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

**Appearances :**

Mrs. Snehal A. Thorat, Ld. Advocate for the applicant/orig. accused no. 2.  
Mr. S.E. Soshte, Ld. A.P.P. for the State/Respondent/ACB.

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

**DATED: 10th February, 2022.**

**:ORAL ORDER:**

The application is filed by the applicant/original accused no. 2 Mr. Sanjeev Honaji Nimbalkar 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 09/02/2022. 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 applicant/accused no. 2 Public Servant Mr. Sanjeev Honaji 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 accused no. 1 Mohd. Ali Wali Mohd. Mansuri. After completion of necessary formalities of pre-trap panchanama, trap was laid. It was successful. The accused no. 1 Mohd. Ali Wali Mohd. Mansuri was caught red-handed while accepting demand of bribe Rs. 18,000/-. Alongwith the belongings an amount of Rs. 20,500/-, was seized from him. The applicant/accused no. 2 was caught from the spot. During his medical examination, before arrest, he was tested Covid positive and therefore, was admitted in the hospital. He was later on arrested on 05/02/2022 and booked in the crime.

3. The grounds on which bail is sought are that, the applicant/accused is innocent and is falsely implicated. Nothing is recovered at his instance. There are no criminal antecedents. He has been made a scape-got in the foul played by the original complainant. Further custody is not required. Investigation is completed. His family is dependent on him. There is no *prima-facie* evidence against him. He is ready to abide with all the conditions, if any, imposed by this Court. Hence, it is prayed to release him on bail.

4. Notice was issued to the State/ACB. The prosecution has opposed the bail application by filing Say at Exh-2. The objection of the prosecution is that investigation is incomplete. If the applicant/accused is released on bail, he would tamper with the evidence. Investigation pertaining to furniture of Rs. 15,14,000/- and cash amount of Rs. 8,000/- found at the residence of applicant/accused, is to be done. Gold ornaments total 13.5 tolas are also found at his residence. Interrogation pertaining to the other suspects in this crime, is yet to be done. The applicant/accused would flee and there would be no threat in the minds of erring public servants, if the applicant/accused is released on bail. Hence, bail may be rejected.

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 Mrs. Snehal Thorat 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 on the platform of Sandhust Railway Station. The amount of Rs. 18,000/- is found with accused Mohd. Ali Wali Mohd. Mansoori. It is alleged that he has accepted the same for the applicant/accused. Accused Mohd. Ali Wali Mohd. Mansoori is granted bail by this Court vide Bail Order dated 01/02/2022. It is submitted that the role of applicant/accused and that of accused Mohd. Ali Wali Mohd. Mansoori are not distinguishable and therefore, grounds of parity are available to the applicant/accused.

9. In the given set of circumstances and facts, 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 06/02/2022 to 09/02/2022. The voice sample of applicant/accused is taken. Panchanamas are drawn. The amount used as bribe is collected. So also, the furniture, gold and cash amount of Rs. 8,000/- from the house of applicant/accused, are seized. 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 and pending investigation. 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.

11. There are no emerging circumstances to derive a conclusion of interference in investigation at the hands of applicant/accused. The

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ancillary and incidental places and witnesses connected with this crime are within the jurisdiction of Dongri Police Station. It is a fact of common knowledge that generally after custody of 48 hours, the public servants in ACB Trap Cases are usually suspended. It is submitted by Ld. Advocate Mrs. Snehal Thorat for the applicant/accused that the applicant/accused has been suspended when he was in the hospital during Covid positive. Therefore, the possibility of applicant/accused entering the Dongri Police Station and exercising his influence in the capacity of a Police Officer in that area, is remote. He is residing on the given address at Kalyan-West, District-Thane. Therefore, by imposing certain terms and conditions on the applicant/accused, the apprehension of the prosecution of tampering, can be taken care of. Attendance can be given, which would suffice the purpose of prosecution.

12. 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. 76/2022 filed by applicant/original accused no. 2 Mr. Sanjeev Honaji Nimbalkar in ACB Remand Application No. 116/2022 (Earlier 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

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relatives/friends and his family members, who are residing preferably in Mumbai or Thane, 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 shall not tamper with the prosecution evidence. He shall not enter the local jurisdiction of Dongri and Pydhonie Police Stations till the completion of investigation, except the attendance given.

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.

11. ACB Bail Application No. 76/2022 filed by applicant/original accused no. 2 Mr. Sanjeev Honaji Nimbalkar in ACB Remand Application No. 116/2022 (Earlier ACB Remand Application No. 87/2022) (C.R. No. 3/2022) stands disposed of accordingly.

(Order dictated and pronounced in open Court.)

**(S. P. NAIK-NIMBALKAR)**

**Special Judge under P.C. Act,  
City Sessions Court for Greater Bombay  
at Mumbai.**

Date:-10/02/2022

Dictated on : 10/02/2022  
Transcribed on : 10/02/2022  
Signed on : 10/02/2022  
Sent to Dept. on :

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

10/02/2022 at 4:15 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	10/02/2022
Judgment/Order signed by P.O. on	10/02/2022
Judgment/Order uploaded on	10/02/2022