(V) Both the Appellants are in jail, they be set at liberty forthwith, if not required in any other case.

(VI) Both the Appellants shall furnish Personal Bond of Rs.15,000/- each and surety in the like amount each, under Section 437-A of the Code of Criminal Procedure, before the concerned trial Court at Raigad-Alibag.

(VII) Criminal Appeal No.292 of 2015 filed by the State for enhancement of sentence, stands dismissed.

Result:- Both the Appellants acquitted and Appeal filed by the State, for enhancement of sentence, dismissed.

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ACQUITTAL & BAIL CASES

HIGH COURT OF BOMBAY

(Anuja Prabhudessai, J.)
Criminal Appeal No. 514 of 2018
Decided on 1 November, 2018

PANKAJ ASHOK KUNDE & ORS. ***- Appellant(s).***

Versus

STATE OF MAHARASHTRA ***- Respondent(s).***

Law Covered:- ***(A) Code of Criminal Procedure, 1973 — Section 438 & 439 — Bail — Indian Penal Code, 1860 — Sections 406 & 420 r/w 34 — Condition of depositing of ₹ 5 lakh imposed by Court below — Held, bail proceedings could not be converted into recovery proceedings & the learned Judge could not have imposed the condition to deposit money— Condition is illegal — set aside. (Para 8)***

(B) Code of Criminal Procedure, 1973 — Section 438 — Anticipatory bail — Duty of the Court — Essential requirements — Nature & gravity of accusation — Antecedents of the applicant, namely, about his previous involvement in such offence & the possibility of the applicant to flee from justice — whether accusation has been made with the object of injuring or humiliating him by having him so arrested — Sheikh Ayub vs. State of M.P. — relied upon. (Para 5)

(C) Code of Criminal Procedure, 1973 — Sections 438 & 439 — Interpretation of Statute — Condition while granting bail — imposing of — Words "any condition" interpretation of — should not be regarded as conferring absolute power on a Court of law to

impose any condition that it chooses to impose — Any condition has to be interpreted as a reasonable condition acceptable in the facts permissible in the circumstance and effective in the pragmatic sense and should not defeat the order of grant of bail— Sheikh Ayub vs. State of M.P. — relied upon. (Para 5)

Facts:- *The present application was filed to quash and set aside the condition to deposit ₹.5 lakh each by the Applicants while granting the bail. The short question before the honourable High Court for consideration was whether it was within the jurisdiction of the Additional Sessions Judge to impose a condition to deposit ₹.5 lakh. It was held that the bail proceedings could not be converted into recovery proceedings and the learned Judge could not have imposed the condition to deposit sum of ₹.5 lakh each. The said condition was held as illegal and set aside.*

Law of relief:- - Bail proceedings cannot be converted into recovery proceedings.

Held:- The short question for my consideration is whether it was within the jurisdiction of the Additional Sessions Judge to impose a condition to deposit Rs.5,00,000/-. The Apex Court after considering the several previous judgments has observed thus:

> *12) The law presumes an accused to be innocent till his guilt is proved. As a presumably innocent person, he is entitled to all the fundamental rights including the right to liberty guaranteed under Article 21 of the Constitution.*
>
> *13) We also clarify that while granting anticipatory bail, the Courts are expected to consider and keep in mind the nature and gravity of accusation, antecedents of the applicant, namely, about his previous involvement in such offence and the possibility of the applicant to flee from justice. It is also the duty of the Court to ascertain whether accusation has been made with the object of injuring or humiliating him by having him so arrested. It is needless to mention that the Courts are duty bound to impose appropriate conditions as provided under sub-section (2) of Section 438 of the Code.*
>
> *14) Thus, in the case on hand, fixed deposit of Rs. 1,00,00,000/- for a period of six months in the name of the complainant and to keep the FDR with the investigating officer as a condition precedent for grant of anticipatory bail is evidently onerous and unreasonable. It must be remembered that the Court has not even come to the conclusion whether the allegations made are*

true or not which can only be ascertained after completion of trial. Certainly, in no words are we suggesting that the power to impose a condition of this nature is totally excluded, even in cases of cheating, electricity pilferage, white-collar crimes or chit fund scams etc.

15) The words "any condition" used in the provision should not be regarded as conferring absolute power on a Court of law to impose any condition that it chooses to impose. Any condition has to be interpreted as a reasonable condition acceptable in the facts permissible in the circumstance and effective in the pragmatic sense and should not defeat the order of grant of bail. We are of the view that the present facts and circumstances of the case do not warrant such extreme condition to be imposed. (Para-5)

Suffice it to say that the bail proceedings could not be converted into recovery proceedings and the learned Judge could not have imposed the condition to deposit sum of Rs.5,00,000/- each. The said condition is therefore, illegal and cannot be sustained. (Para-8)

Counsel:- ***For Appellant(s):*** *Mr. Sanjay P. Shinde, Adv.*

For Respondent(s): *Mr. N.B. Patil, Adv.*

Cases Referred:-

1. *Sumit Mehta Vs. State (NCT Of Delhi) (2013) 15 SCC 570, (Para-5)*
2. *Gurbaksh Singh Sibbia V. State Of Punjab (1980) 2 SCC 565, (Para-5)*
3. *Amarjit Singh Vs. State (NCT Of Delhi) (2009) 13 SCC 769, (Para-5)*
4. *State Ayub Vs. State Of M.P. (2004) 13 SCC 457, (Para-5)*
5. *Vyomesh Shah & Ors. Vs. State Of Maharshtra, (Para-6)*

JUDGMENT

ANUJA PRABHUDESSAI, J.: - 1. By the present application the Applicant has sought following reliefs:-

(a) That Rule be issued and records be called for.

(b) That on perusal of the same and on further hearing to the Applicants, this Hon'ble Court may kindly be pleased to quash and set aside the condition No.2 of deposit of Rs.5,00,000/- each by the Applicants in the common Order dated 28.8.2018 passed in Criminal Bail Application No.1128 of 2018, Criminal Bail Application No.1129 of 2018 and in Criminal Bail Application No.1134 of 2018 by the Ld. Additional Sessions Judge, Nashik;

(c) Pending the hearing and final disposal of the present Application, the condition No.2 of deposit of Rs.5,00,000/- each by the Applicants in the common Order dated 28.08.2018 passed in Criminal Bail Application No.1128 of 2018, Criminal Bail Application No.1129 of 2018 and in Criminal Bail Application No.1134 of 2018 by the Ld. Addl. Sessions Judge, Nashik, be kindly stayed;

(d) That pending the hearing and final disposal of the present Application no coercive steps of athe arrests be taken against the applicants in C.R. No.234 of 2018, registered with Respondent Sarkarwada Police Station, Nashik for the offence punishable under Section 405, 420, r/w. 34 of I.P.C."

2. Heard Mr. Sanjay Shinde, the learned counsel for the Applicants and Mr. N.B. Patil, the learned APP for the Respondent-State. I have perused the records and considered the submissions advanced by the learned counsel for the respective parties.

3. The records reveal that the Applicant was arrested in C.R. No.234 of 2018 registered with Sarkarwada Police Station for offences punishable under Sections 406 and 420 r/w. 34 of the Indian Penal Code, 1860.

4. The Applicants had filed applications for bail being Criminal Bail Applications No.1128 of 2018, 1129 of 2018 and 1134 of 2018. The learned Additional Sessions Judge, Nashik allowed the said applications on following terms :

"1. All three applications are allowed.

2. In the event of arrest, all Applicants be released on PR & SB of Rs.25,000/- each with one or two sureties in like amount and on condition to deposit Rs.5,00,000/- (Rupees Five Lacs only) each within period of one month from today.

3. Applicants to execute the bail before concerned I.O. on 31-08-2018 and attend police station on every alternate day thereafter in between 12 to 2 p.m. for purpose of investigation and shall not tamper with prosecution evidence. On failure of conditions of bail, it will be automatically stand cancelled."

5. The short question for my consideration is whether it was within the jurisdiction of the Additional Sessions Judge to impose a condition to deposit Rs.5,00,000/-. In this regard, the learned counsel

for the Applicant has relied upon the decision of the Apex Court in ***Sumit Mehta vs. State (NCT of Delhi) (2013) 15 SCC 570***. The Apex Court after considering the several previous judgments in ***Gurbaksh Singh Sibbia v. State of Punjab (1980) 2 SCC 565***; ***Amarjit Singh vs. State (NCT of Delhi) (2009) 13 SCC 769***, ***State Ayub vs. State of M.P. (2004) 13 SCC 457*** has observed thus:

> *12) The law presumes an accused to be innocent till his guilt is proved. As a presumably innocent person, he is entitled to all the fundamental rights including the right to liberty guaranteed under Article 21 of the Constitution.*
>
> *13) We also clarify that while granting anticipatory bail, the Courts are expected to consider and keep in mind the nature and gravity of accusation, antecedents of the applicant, namely, about his previous involvement in such offence and the possibility of the applicant to flee from justice. It is also the duty of the Court to ascertain whether accusation has been made with the object of injuring or humiliating him by having him so arrested. It is needless to mention that the Courts are duty bound to impose appropriate conditions as provided under sub-section (2) of Section 438 of the Code.*
>
> *14) Thus, in the case on hand, fixed deposit of Rs. 1,00,00,000/- for a period of six months in the name of the complainant and to keep the FDR with the investigating officer as a condition precedent for grant of anticipatory bail is evidently onerous and unreasonable. It must be remembered that the Court has not even come to the conclusion whether the allegations made are true or not which can only be ascertained after completion of trial. Certainly, in no words are we suggesting that the power to impose a condition of this nature is totally excluded, even in cases of cheating, electricity pilferage, white-collar crimes or chit fund scams etc.*
>
> *15) The words "any condition" used in the provision should not be regarded as conferring absolute power on a Court of law to impose any condition that it chooses to impose. Any condition has to be interpreted as a reasonable condition acceptable in the facts permissible in the circumstance and effective in the pragmatic sense and should not defeat the order of grant of bail. We are of the view that the present facts and circumstances of the case do not warrant such extreme condition to be imposed.*

6. In ***Vyomesh Shah & Ors. Vs. State of Maharshtra*** in Writ Petition No. 4197 of 2016, the Division Bench of this Court has held thus:

> *"15. It is well settled law that while granting bail though the Court may impose such conditions as it thinks fit but the object of putting conditions should be to avoid the possibility of the person hampering investigation. The discretion of the Court while putting conditions should be in excercise of judicial discretion. In an offence under Sections 409 and 420 of IPC, the Court is certainly not going to recover the alleged amount as a condition ot granting of bail. In other words, Courts are expected to put reasonable conditons in exercise of judicial discretion and such conditions should be aimed at securing the presence of the accused at the time of trial and he should not hamper the evidence or prosecution witnesses during pendency of trial. The Court is not expected to recover the amount in a criminal proceedings by putting condition to deposit money while granting bail. In this regard, reference can be made to Apex Court decisions in Sandeep Jain vs. National Capital Territory of Delhi, Shyam Singh vs. State through CBI and Sheikh Ayub vs. Stae of M.P."*

7. The principles laid down in the aforesaid decisions are squarely applicable to the facts of the present case. In the instant case, the question whether the applicant has misappropriated the amount or not and or has committed the alleged offence is a matter of trial. Hence the learned Judge could not have treated the proceedings as recovery proceeding and directed the applicant to deposit the amount

8. Suffice it to say that the bail proceedings could not be converted into recovery proceedings and the learned Judge could not have imposed the condition to deposit sum of Rs.5,00,000/- each. The said condition is therefore, illegal and cannot be sustained.

9. In the light of above, the application is allowed in terms of clause (b). The condition in order dated 28 th August, 2018 passed in Criminal Bail Applications No.1128 of 2018, 1129 of 2018 and 1134 of 2018 whereby the Applicants have been directed to deposit Rs.5,00,000/- each is hereby quashed and set aside.

10. The application stands disposed of in above terms.

Result:- Condition to deposit Rs.5,00,000/- each quashed and set aside.

February 2019