Prajakta Vartak

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**
**CRIMINAL APPELLATE JURISDICTION**

**BAIL APPLICATION NO.2057 OF 2022**

Sagar Vilas Tote ...Applicant
vs.
State of Maharashtra ...Respondent

and

**BAIL APPLICATION NO.2058 OF 2022**

Sagar Vilas Tote ...Applicant
vs.
State of Maharashtra ...Respondent

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Mr.Akshay Bafna, for the Applicant.
P.I. Mr.Vikramsinh Kadam attached to Badlapur East P. Stn. present.
Mr.S.V.Gavand, APP for the State in BA 2057/22.
Mrs.A.A.Takalkar, APP for the State in BA 2058/22.

**CORAM : BHARATI DANGRE, J.**
**DATE : 7th OCTOBER, 2022.**

**P.C.:**

1. These two applications are filed by the same applicant Shri Sagar Vilas Tote who is charged for committing offences punishable under Sections 406 and 420 of the IPC read with Section 3 of the Maharashtra Protection of Interest of Depositors (In Financial Establishments) Act, 1999. Two distinct C.R.s came to be registered against him; C.R. I-64/2018 was registered with Bazar Peth Police Station, whereas C.R. I-11/2018 came to be registered with Badlapur East Police Station. He came to be arrested in both the C.R.s in the month of June 2018. On completion of investigation, charge-sheet bearing no. MPID No.01 of

2018 and MPID No.02 of 2018 was filed before the Additional Sessions Judge, Kalyan.

2. The prosecution alleged that as far as C.R. registered with Badlapur Police Station is concerned, the total investment with the assured interest has been worked out to be Rs.1,07,95,000/-. The learned counsel for the applicant makes a categorical statement that out of the amount received by him by way of investment from 15 investors, he has refunded an approximate amount of Rs.25,22,300/-. As far as the C.R. registered with Bazar Peth Police Station is concerned which involves 82 investors, the total amount as per the charge-sheet is worked out at Rs.4,73,23,260/-. The learned counsel for the applicant makes a categorical statement by referring to the statements of several victims which are part of the charge-sheet that he has cleared Rs.2,75,00,000/- in favour of some of the aggrieved investors the victims in the subject C.R. The investigation is complete and the charge-sheet is filed.

3. The learned counsel for the applicant seeks his release on two counts; firstly, on completion of investigation, further incarceration of the applicant is unnecessary and secondly, he seeks to derive benefit of Section 436-A of the Cr. P.C. which according to him, entitle him to be released on bail since on the date of his arrest, he has undergone imprisonment of four years and three months and the maximum penalty,

which would be imposed upon him on he being convicted for the offences punishable under Sections 406 and 420 of the IPC read with Section 3 of the Maharashtra Protection of Interest of Depositors (In Financial Establishments) Act, 1999, would be of seven years.

The learned counsel for the applicant placed reliance on the latest decision of the Apex Court in case of **Satender Kumar Antil Vs. Central Bureau of Investigation & Anr.**[1] as well as the decision in case of **Bhim Singh Vs. Union of India**[2] and the decision in case of **Hussainara Khatoon and Others (IV) Vs. Home Secretary, State of Bihar, Patna**[3].

The learned APP Mr. Gavand and Ms. Takalkar have filed their respective affidavits and the relief of being released by taking recourse to Section 436-A of the Cr. P.c. is opposed on the grounds that the offence involved is serious as the applicant has defrauded several investors and the amount runs into crores of rupees and since no property is available for attachment by the police, he do not deserve his release on bail though admittedly he has undergone imprisonment of more than four years and three months and the maximum period of imprisonment which could be imposed upon him by way of punishment is seven years.

4. Section 436-A of the Cr. P.C. prescribe the maximum period for

1 Miscellaneous Application No. 1849 of 2021
2 (2015) 13 SCC 605
3 (1980) 1 SCC 98

which an under-trial prisoner can be detained and it has been inserted by Act 25 of 2005 with effect from 23 June, 2006. The provision prescribe the maximum period for which under trial prisoner can be detained and it read thus:-

> "436A- Maximum period for which an under trial prisoner can be detained.-
> Where a person has, during the period of investigation, inquiry or trial under this Code of an offence under any law (not being an offence for which the punishment of death has been specified as one of the punishments under that law) undergone detention for a period extending up to one-half of the maximum period of imprisonment specified for that offence under that law, he shall be released by the Court on his personal bond with or without sureties;
> Provided that the Court may, after hearing the Public Prosecutor and for reasons to be recorded by it in writing, order the continued detention of such person for a period longer than one-half of the said period or release him on bail instead of the personal bond with or without sureties;
> Provided further that no such person shall in any case be detained during the period of investigation inquiry or trial for more than the maximum period of imprisonment provided for the said offence under that law."

5. As early as in 1980, the right of under-trial prisoners was recognized by the Hon'ble Apex Court in a decision of **Hussainara Khatoon and Others (IV) Vs. Home Secretary, State of Bihar, Patna** (supra) and speedy trial was reckoned as an essential ingredient of 'reasonable fair and just' procedure guaranteed by Article 21 of the Constitution. Hon'ble Justice Shri P. N. Bhagwati (as he was then) underlined the constitutional mandate to provide speedy trial in the following words:-

> “"Not only those precedents but also reason and reflection

> require us to recognise that in our adversary system of criminal justice, any person haled into court, who is too poor to hire a lawyer cannot be assured a fair trial unless counsel is provided for him. This seems to us to be an obvious truth. Governments, both State and Federal quite properly spend vast sums of money to establish machinery to try defendants accused of crime. Lawyers to prosecute are everywhere deemed essential to protect the public's interest in an orderly society. Similarly, there are few defendants charged with crime who fail to hire the best lawyers they can get to prepare and present their defences. That government hires lawyers to prosecute and defendants who have the money hire lawyers to defend are the strongest indications of the widespread belief that lawyers in criminal courts are necessities, not luxuries. The right of one charged with crime to counsel may not be deemed fundamental and essential to fair trials in some countries, but is in ours. From the very beginning, our state and national constitutions and laws have laid great emphasis on procedural and substantive safeguards designed to assure fair trials before impartial tribunals in which every defendant stands equal before the law. This noble idea cannot be realised if the poor man charged with crime has to face his accusers without a lawyer to assist him."

6. In case of **Bhim Singh Vs. Union of India** (supra), once again the principle was reiterated with its emphasis on Section 436A of the Cr.P.C. where jurisdictional Magistrate/Chief Judicial Magistrate/Sessions Judge were directed to hold one sitting in a week in each jail/prison for a limited time so that effect can be given to Section 436A of the Cr.P.C. Once again in the latest decision in case of **Satender Kumar Antil Vs. Central Bureau of Investigation & Anr.** (supra) while recognizing liberty to be one of the most essential requirements of the modern man, and quintessence of civilized existence, the highest Court of this country interpreted the said provision and reiterated its earlier decision in case of **Bhim Singh Vs. Union of India** (supra) while recognizing that the said

provision is a substantive one, facilitating liberty, being the core intendment of Article 21. The Hon'ble Apex Court observed thus:-

> "46. Section 436A of the Code has been inserted by Act 25 of 2005. This provision has got a laudable object behind it, particularly from the point of view of granting bail. This provision draws the maximum period for which an undertrial prisoner can be detained. This period has to be reckoned with the custody of the accused during the investigation, inquiry and trial. We have already explained that the word 'trial' will have to be given an expanded meaning particularly when an appeal or admission is pending. Thus, in a case where an appeal is pending for a longer time, to bring it under Section 436A, the period of incarceration in all forms will have to be reckoned, and so also for the revision.
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> 47. Under this provision, when a person has undergone detention for a period extending to one-half of the maximum period of imprisonment specified for that offense, he shall be released by the court on his personal bond with or without sureties. The word 'shall' clearly denotes the mandatory compliance of this provision. We do feel that there is not even a need for a bail application in a case of this nature particularly when the reasons for delay are not attributable against the accused. We are also conscious of the fact that while taking a decision the public prosecutor is to be heard, and the court, if it is of the view that there is a need for continued detention longer than one-half of the said period, has to do so. However, such an exercise of power is expected to be undertaken sparingly being an exception to the general rule. Once again, we have to reiterate that 'bail is the rule and jail is an exception' coupled with the principle governing the presumption of innocence. We have no doubt in our mind that this provision is a substantive one, facilitating liberty, being the core intendment of Article 21. The only caveat as furnished under the Explanation being the delay in the proceeding caused on account of the accused to be excluded. This court in Bhim Singh v. Union of India, (2015) 13 SCC 605, while dealing with the aforesaid provision, has directed that:
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> > "5. Having given our thoughtful consideration to the legislative policy engrafted in Section 436-A and large number of undertrial prisoners housed in the prisons, we are of the considered view that some order deserves to be passed by us so that the undertrial prisoners do not continue to be detained in prison beyond the maximum period provided under Section 436-A.

> 6. We, accordingly, direct that jurisdictional Magistrate/ Chief Judicial Magistrate/Sessions Judge shall hold one sitting in a week in each jail/prison for two months commencing from 1-10-2014 for the purposes of effective implementation of Section 436-A of the Code of Criminal Procedure. In its sittings in jail, the above judicial officers shall identify the undertrial prisoners who have completed half period of the maximum period or maximum period of imprisonment provided for the said offence under the law and after complying with the procedure prescribed under Section 436-A pass an appropriate order in jail itself for release of such undertrial prisoners who fulfill the requirement of Section 436-A for their release immediately. Such jurisdictional Magistrate/Chief Judicial Magistrate/ Sessions Judge shall submit the report of each of such sittings to the Registrar General of the High Court and at the end of two months, the Registrar General of each High Court shall submit the report to the Secretary General of this Court without any delay. To facilitate compliance with the above order, we direct the Jail Superintendent of each jail/prison to provide all necessary facilities for holding the court sitting by the above judicial officers. A copy of this order shall be sent to the Registrar General of each High Court, who in turn will communicate the copy of the order to all Sessions Judges within his State for necessary compliance."

Their Lordships of the Apex Court emphasis that the directions issued by the Court if not complied fully, are expected to be complied with in order to prevent the unnecessary incarceration of under-trials, and to uphold the inviolable principle of presumption of innocence until proven guilty.

7. In the light of the aforesaid pronouncement as above, which has enunciated the scope of Section 436A of the Cr.P.C., I do not think that the seriousness of the accusation would deny him the benefit flowing

from the said section, when his case squarely falls within sub-section (1) of Section 436A, on having undergone more than half of the period of maximum imprisonment, which would be imposed upon him by way of penalty, assuming that he will be convicted for the offences with which he is charged. The applicant deserves his release on bail. Hence the following order:-

**ORDER**

(a) Applications are allowed.

(b) Applicant - Sagar Vilas Tote shall be released on bail in connection with distinct C.R.s i.e. (i) C.R. I-64/2018 registered with Bazar Peth Police Station and (ii) C.R. I-11/2018 registered with Badlapur East Police Station on furnishing P.R. Bond to the extent of Rs.15,000/- each with one or two sureties in the like amount.

(c) The applicant shall mark his attendance before the concerned police station on first Monday of every trimester.

(d) The applicant shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing the facts to Court or any Police Officer. The applicant shall not tamper with evidence.

(e) On being released on bail, the applicant shall furnish his contact number and residential address to the Investigating Officer and shall keep him updated, in case there is any change.

**(SMT. BHARATI DANGRE, J.)**