

Mangesh Vs State Of Maharashtra

Court: Bombay High Court (Nagpur Bench)

Date of Decision: Oct. 16, 2020

Acts Referred: Indian Penal Code, 1860 " Section 34, 120, 406, 409, 417, 419, 420, 465, 466, 467, 468, 469, 471, 472, 473, 474

Code Of Criminal Procedure, 1973 " Section 439

Constitution Of India, 1950 " Article 14, 21

Hon'ble Judges: Rohit B. Deo, J

Bench: Single Bench

Advocate: S.P. Dharmadhikari, Sumit Gandhe, N.B. Jawade

Final Decision: Dismissed

Judgement

1. The applicant, who is arraigned as accused 6 in Crime 405/2019, registered with Police Station Lakadganj, Nagpur, for offences punishable under

sections 406, 409, 417, 419, 420, 465, 466, 467, 468, 469, 471, 472, 473, 474, 120 read with section 34 of Indian Penal Code, is seeking regular bail

invoking section 439 of the Criminal Procedure Code, 1973 ("Code").

2. Gist of the prosecution case:-

2.1 The accused Ajinkya Vilasrao Deshmukh, Amol Ravikiran Kumbhare, Anagha Nikhil Bhusari, Vikky Rameshkumar Jat, Amit Chandrashekhar

Bhagwat and the applicant Mangesh Ranjit Jagtap entered into a criminal conspiracy to perpetrate a fraud of humongous proportion, the immediate

victim of which is the Andhra Bank and the eventual sufferers the public at large.

2.2 The substratum of the prosecution case is that accused Anagha Bhusari was the Branch Manager of Itwari Branch of Andhra Bank. The

accused entered into a criminal conspiracy and manipulated sanction of 69 loans inter alia housing loan, vehicle purchase loan and cash loan from the

Itwari, Manewada and Bokhara Branches of the Andhra Bank. Loans were obtained in the name of non-existent business concerns or family

controlled concerns of the accused and in some cases by impersonation and use of fabricated documents, in the name of gullible persons who had not

even visited the concerned Branch, much less applied for the loan.

2.3 The fraud caused loss of Rs. 9,45,00,000/- (Rupees Nine Crores Fourty Five Lacs) to Andhra Bank, which ultimately is the loss of public money. 3.

I have heard the learned Senior Counsel Mr. S.P. Dharmadhikari in support of the bail application and Mr. N.B. Jawade, the learned Addl. Public

Prosecutor, who strenuously opposed grant of bail. With the able assistance of the learned counsel, the material in the chargesheet is scrutinized

threadbare.

4. Mr. S.P. Dharmadhikari would submit, with usual fairness, that in the teeth of the incriminating material in the chargesheet, the hearing may

proceed on the premise that the prosecution has made out an overwhelming prima facie case against the applicant. Mr. S.P. Dharmadhikari is quick to

add that the existence of prima facie case against the accused, and indeed even a strong prima facie case, is not decisive. The extension of the

submission is that the exercise of discretion under section 439 of the Code must be judicious and on the touchstone of several relevant considerations,

inter alia, the nature of the accusations, the gravity of the offence alleged, the incriminating material in support of the accusation, the likelihood of the

accused tampering with the evidence or not being available to face the trial, the character and antecedents of the accused and other relevant

circumstances. Mr. S.P. Dharmadhikari would submit that in the case at hand the other relevant circumstances would be, the fact that two co-

accused, who are attributed similar role, are released on bail, that the chargesheet runs into as many as approximately 3500 pages and cites 58

witnesses and, axiomatically a prolonged trial.

5. In rebuttal, Mr. N.B. Jawade would submit that the principle of parity does not come into play for reasons more than one. Mr. N.B. Jawade would

submit that the role of the accused is not necessarily decisive. The conduct of the accused and the width and amplitude of the criminal acts would be a

distinguishing factor if the allegations against the applicant are considered in juxtaposition with the allegations faced by Anagha Bhusari and Amit

Bhagwat, who are released on bail. Adverting to the incriminating material, Mr. N.B. Jawade would submit that considering the criminal acts in which

the applicant has indulged, and there is voluminous cogent incriminating material to prima facie hold so, grant of bail shall be a huge disservice to the

civil society, which is the ultimate casualty in economic offences. Mr. N.B. Jawade would emphasize that the Apex Court has carved out economic

offences as a separate category and this Court must therefore, be slow to exercise discretion in favour of the applicant.

6. In response to Mr. N.B. Jawade's submission that the principle of parity cannot be invoked, Mr. S.P. Dharmadhikari would submit that the role

of the applicant, and for that matter, other accused cannot conceivably be more prominent or graver than the role attributed to Anagha Bhusari. Mr.

S.P. Dharmadhikari has a simplistic submission that Anagha Bhusari is the kingpin or the mastermind in the sense that the accused could perpetrate

the fraud only due to her sanctioning of the loans. Mr. S.P. Dharmadhikari, taking the submission further, emphasizes that the conduct of the accused

and the disposal of the ill gotten wealth and indeed the means employed to facilitate the sanction of the loans do not detract from the fact that the

genesis of the fraud is the power of the Branch Manager to sanction loans, which power Anagha Bhusari misused brazenly.

7. In the light of the fair and candid submission of Mr. S.P. Dharmadhikari that he would not join issues with Mr. N.B. Jawade on the existence of an

overwhelming prima facie case, I was tempted not to burden the order with the reference to the incriminating material, which temptation I resisted

since the incriminating material would be of significant relevance while appreciating the rival submissions on the principle of parity.

8. Mr. S.P. Dharmadhikari's submission that since the loans are sanctioned by Anagha Bhusari, the role of the other accused cannot be more

prominent or graver and therefore, principle of parity comes into play, appears attractive at first blush, as conceptually logical. Slightly deeper and

more profound analysis of the principle would however suggest that the expression "role" cannot be understood narrowly. The conduct of the

accused, the extent, width and amplitude of the criminal acts, the deviance and the wantonness exhibited, may keep the principle of parity at bay.

8.1 Coming to the criminal acts attributed to the applicant, the allegation is that he projected himself as a partner in several business concerns inter alia

Shrikrupa Agro, Green Bequators, J.M. Agro, Shrikrupa Engineering and Modern Engineering and on the basis of fabricated or false ITR forms,

establishment certificates and manipulated project reports obtained OCC loan of Rs. 10 lacs, term loan of Rs. 35 lacs, term loan of 55 lacs, cash

limit/loan of Rs. 10 lacs, term loan of Rs. 10 lacs, OCC limit of Rs. 10 lacs and vehicle loans.

8.2 The applicant produced a fabricated saledeed and obtained housing loan of Rs. 20 lacs in the name of his father Rajkishor which he diverted to his

account. Similarly, term loan of Rs. 10 lacs was availed in the name of Radhika, the applicant's sister which was diverted to the applicant's

account. Vehicle loan of Rs. 5 lacs and term loan of Rs. 3.50 lacs was availed in the name of Meena Jagtap, the applicant's mother which was

again diverted to the applicant's account. The applicant did not spare his cousin Siddhesh Jagtap and obtained housing loan of Rs. 20 lacs and

OCC limit of Rs. 10 lacs in the name of Maharashtra Wax Company.

8.3 Housing loan of Rs. 20 lacs, property term loan of Rs. 8 lacs and business loan of Rs. 5 lacs was availed in the name of co-accused Ajinkya Vilas

Deshmukh, and an amount of Rs. 25 lacs out of total loan of Rs. 33 lacs availed by Ajinkya Deshmukh was diverted to the accounts of the applicant.

The loan were obtained on the basis of false and / or fabricated documents.

8.4 The applicant availed loan of Rs. 1.15 crores in the name of co-accused Amit Bhagwat or his family members and the amount ultimately landed

up in the accounts of the applicant or concerns ostensibly established by him.

8.5 The applicant availed loan to the tune of 67 lacs in the name of co-accused Amol Kumbhare on the basis of false or fabricated documents and

major portion of the amount of loan is traced to the accounts of the applicant or the concerns which he set up to facilitate the fraud.

8.6 The applicant availed loan of Rs. 25.15 lacs, on the basis of false and fabricated documents, in the name of Sunita Mohan Dhore, which amount is

traced to the applicant's account or the accounts of the dummy establishments set up by him.

8.7 Similar modus operandi was employed to defraud the Andhra Bank and loans were availed in the name of Mohan Dhore, Shubham Meshram,

Dharmendra Pode, Rajendra Kusre, Sunita Kusre, Jitendra Chaukase, Ravindra Katole, Vedprakash Garg, Shyamkumar Atram, Ajaykumar Sharma

and Govardhan Lanjewar. While the loans were availed on the basis of false or fabricated documents, the ultimate beneficiary is the applicant in

whose accounts or in the accounts of the dummy companies, the major portion of the loan amount is traced. 8.8 The incriminating material to bring

home the charge for offence punishable under sections 467, 468 of Indian Penal Code, which is punishable with imprisonment extending to life, is

prima facie clinching. The applicant produced a fabricated saledeed purportedly executed by Dharmendra Pandey in his favour, in support of the loan

application. The saledeed bears the date 6.12.2017 and purports to have been registered at the office of the Joint Sub-Registrar Class-2, Nagpur at

Serial 3340/2017. During the investigation, inquiries with the office of the Sub-Registrar revealed that the saledeed is fabricated and as a fact at the

serial number mentioned in the registration details, a giftdeed is executed between different persons. The applicant produced the fabricated saledeed

and manipulated housing, vehicle and term loan in the name of Dharmendra Pandey. The KYC and identity documents were forged and fabricated

and Dharmendra Pande was absolutely unaware that such loans are shown outstanding against his name. It was only when Dharmendra Pandey

needed financial assistance to purchase a mobile and checked his SIBIL credit ratings, that he discovered, that he was the victim of fraud perpetrated

by the applicant. Dharmendra Pandey neither approached the Andhra Bank nor did he submit any document for any purpose to the Andhra Bank,

much less to obtain loan. The modus operandi brings into sharp focus, the devious mind of the applicant and the extent to which the applicant

misconducted himself to satisfy the greed to make a fast buck.

9. It is in the backdrop and context of the incriminating material which prima facie is overwhelming that Mr. S.P. Dharmadhikari fairly made the

submission which is recorded supra.

10. Indubitably, the accusations are extremely grave. The material in support of the accusations, prima facie, is clinching. The conviction may entail life

sentence. Irrefutably, the offence falls in the category of economic offences. It is true, as emphasized by Mr. S.P. Dharmadhikari, that given the

girthy chargesheet and the number of witnesses cited, the trial may be prolonged. The seminal question is, however, whether the period spent in

custody or the likelihood of delay in the conclusion of the trial or the hearing of the appeal, as the case may be, would have a bearing on the

consideration of bail in serious offences, particularly those offences punishable with life sentence.

11. It would be apposite to refer to the articulation of the Apex Court in *State of Bihar and Another vs. Amit Kumar alias Bachcha Rai*, (2017) 13

SCC 751. The Hon'ble Apex Court set aside the order of the Patna High Court granting bail to Amit Kumar who was accused of a socio-

economic offence. Amit Kumar was the alleged kingpin of the Bihar Intermediate Examination, 2016 scam. The Apex Court emphasized that there is

no straight jacket formula for consideration of granting bail to an accused. While the cherished right of personal liberty envisaged under Article 21 of

the Constitution of India must be zealously safeguarded, the competing forces present in the facts and circumstances of each case will have to be

measured.

12. In *State of Bihar and Another vs. Amit Kumar alias Bachcha Rai*, the Apex Court distinguished the decision in *Sanjay Chandra vs. CBI*, (2012) 1

SCC 40, in which the maximum punishment was 7 years and noted that the chargesheet is submitted inter alia under sections 409, 465, 467, 468, 471

of Indian Penal Code. The Apex Court reiterated the settled position that socio-economic offences constitute a class apart and need to be visited with

a different approach in the matter of bail. The Apex Court further noted that the Investigating Agency reserved the right to file additional chargesheet

and the investigation was therefore open, and the custodial interrogation may be necessary for further investigation.

13. Significantly, the Apex Court has enunciated that in serious offences, the mere fact that the accused was in jail, for however long time, should not

be the concern of the Courts. The relevant observations read thus:

“8. A bare reading of the order impugned discloses that the High Court has not given any reasoning while granting bail. In a mechanical

way, the High Court granted bail more on the fact that the accused is already in custody for a long time. When the seriousness of the

offence is such the mere fact that he was in jail for however long time should not be the concern of the courts. We are not able to appreciate

such a casual approach while granting bail in a case which has the effect of undermining the trust of people in the integrity of the

education system in the State of Bihar.

14. Mr. S.P. Dharmadhikari relies on the decision of the Hon'ble Apex Court in *Dataram Singh vs. State of Uttar Pradesh and Another*, (2018)3

SCC 22. Notably, the facts culled out in the said decision indicate that the accused was not charged with offence punishable with life sentence. The

accusation was that the accused cheated the informant of Rs. 37 lacs and then issued cheque towards refund of the part amount which was

dishonoured. The Trial Court and the High Court rejected the application for bail. The Apex Court noted that during the entire period of investigation,

the accused was not arrested even after the chargesheet was filed, the accused was not arrested for a considerable period of time and it was only

when the accused approached the High Court with a prayer to quash the First Information Report that the trial court directed him to appear before the

trial Judge. It was not even the case of the prosecution that the accused was of shady character. The observation of the Apex Court, that the

discretion must be exercised in a judicious manner and in a humane way and that bail and not jail is the rule, cannot be understood de hors the context.

15. The position of law that economic offences constitute a class apart since the deleterious effect on the moral fiber of the society and the vitality and

strength of the an economy is obvious, is too well settled to warrant exhaustive reference to the catena of decisions holding the field. It would suffice

if the articulation of Apex Court in few of the plethora of decisions, is noticed:

16. In *State of Gujrat vs. Mohanlal Jitmalji Porwal and another*, (1987)2 SCC 364) the Apex Court observed thus:

"Ends of justice are not satisfied only when the accused in a criminal case is acquitted. The Community acting through the State and the

Public Prosecutor is also entitled to justice. The cause of the Community deserves equal treatment at the hands of the court in the discharge

of its judicial functions. The Community or the State is not a person-non-grata whose cause may be treated with disdain. The entire

Community is aggrieved if the economic offenders who ruin the economy of the State are not brought to books. A murder may be committed

in the heat of moment upon passions being aroused. An economic offence is committed with cool calculation and deliberate design with an

eye on personal profit regardless of the consequence to the Community. A disregard for the interest of the Community can be manifested

only at the cost of forfeiting the trust and faith of the Community in the system to administer justice in an even handed manner without fear

of criticism from the quarters which view white collar crimes with a permissive eye unmindful of the damage done to the National Economy

and National Interest.

17. In *Himanshu Chandvadan Desai & Ors..vs.. State of Gujrat*, (AIR 2006 SC 179) the Apex Court was examining the order of the High Court of

Gujrat rejecting bail under section 439 of the Code. The first appellant was one of the Directors of the Cooperative Bank and appellants 2 and 3 were

the beneficiaries of the financial fraud. The allegation was that the funds of the Cooperative Bank were siphoned off by dubious loans and fictitious

letters of credit in the name of friends and relatives of the appellants. The chargesheet was filed inter alia under section 409, 468 and 471 of the Indian

Penal Code. The appellants contended, that while the chargesheet was filed on 22.1.2003, charges were not framed, 150 witnesses are cited and the

trial is likely to be protracted. The extension of the submission was that if the appellants are not granted bail, the incarceration would be a detention by

way of punishment. The Apex Court observed that the crime in which the appellants are involved is very serious involving a conspiracy to cheat and

defraud public institutions in a systematic manner and the punishment is likely to be severe in the event of conviction. Noting that having regard to

huge amounts involved in the systematic fraud, there is a danger of the appellants absconding, if released on bail, or attempting to tamper with the

evidence by pressurizing witnesses, the Apex Court declined to interfere with the order of rejection of bail.

18. The jurisprudential logic of a different approach to economic offences is not only the gravity of the crime, equally relevant is the ability of the

offender, who is likely to be an influential person with either status or standing or means, to influence the course of trial. Economic offences are

committed for personal profit and the casualty is the well being of the society. Such offences affect the economy of the country. Economic offences

are committed with cool and cold blooded design, involve deep rooted conspiracy, and the intent is to satisfy personal greed regardless of the

consequences and harm to societal interest.

19. Economic offenders pose a serious challenge before the criminal justice system. Devious mind set armed with unlimited ill gotten wealth may

enable the economic offender to influence the investigation, tamper with the evidence and pressurize witnesses.

20. While bail and not jail is the rule, economic offences fall within the exceptions. Economic offences constitute a class apart warranting, nay

necessitating, a different approach. The liberty of the accused and the presumption of innocence must undoubtedly weigh in the exercise of discretion.

However, the right of the State to arrest, investigate and detain economic offenders and the interests of the civil society must also be borne in mind.

The seemingly competing interests need delicate balancing. An unidimensional approach restricted to the perspective of the accused would cause an

immense disservice to the justice dispensation system.

21. Irrefutably, the presumption of innocence and the liberty of the accused are cherished facets of the right to life enshrined in Article 21 of the

Constitution of India. Unduly prolonged trial may, in the factual context, transgress the guarantee of life and personal liberty enshrined in Article 21 of

the Constitution. Equally sacrosanct is the right of the society in general and the victim in particular to justice, to legitimately expect and aspire that the

criminal is prosecuted and punished. A safe and secure environment is an integral and intrinsic facet of the right to dignified living. Judges are duty

bound to ensure that the competing rights and aspirations are delicately balanced. An univariate cogitation on the rights of the accused may

conceivably eviscerate the credibility of the justice dispensation system. Presumption of innocence is not a fetish. The right of the State to arrest,

investigate and detain economic offenders deserves equal, if not more respect and consideration when pitted against the competing right of the

economic offender to liberty. The chant of the Mantra "liberty and presumption of innocence" must be patiently heard and bestowed due

consideration. However, the Courts are duty bound to ensure that in the din the voice of the competing interests of the society and the victim is not

muzzled.

22. In my considered view, no case is made out which would impel me to exercise discretion in favour of the applicant.

23. The main plank of Mr. S.P. Dharmadhikari's argument in support of the application was the principle of parity. While, in the light of the

incriminating material, the applicant is held not entitled to discretionary relief of bail, in fairness to Mr. S.P. Dharmadhikari, the submission predicated

on the principle of parity must be addressed. In Chambers's Dictionary, the meaning of expression "parity" is equality in status, parallelism,

equivalence. In Law Lexicon Dictionary, "parity" is defined to mean being on a par with, analogy, close similarity. The Webster's

Comprehensive Dictionary defines the said expression to mean equality, as of condition or rank, equivalent position, equal value, close resemblance.

24. The bedrock of the principle of parity is the doctrine of equality. Ordinarily, persons similarly circumstanced deserve to be treated similarly. Article

14 of the Constitution of India guarantees equality in treatment and invidious classification or classification which is not justified by rationale which has

a nexus to the objective to be achieved is an anathema to the equality guarantee.

25. Parity, and indeed the guarantee of equality enshrined in the Article 14 of the Constitution of India, is a positive concept. The principle of parity

cannot be invoked in a negative manner. An illegal decision or a decision which is vitiated by an ex-facie error cannot be the edifice on which an

argument invoking the principle of parity can be constructed.

26. Parity is not a rule of law. The genesis of the principle is the anxiety of judges, impelled by prudence to ensure the consistency in orders and the

perception that if similarly circumstanced litigants are treated differently, the credibility of the justice dispensation system shall be in jeopardy.

27. In the context of the criminal jurisprudence, parity cannot be the sole ground for grant of bail. In a given case parity may be a relevant

consideration. But then, there is no inexorable rule that if a co-accused who is similarly circumstanced is released on bail, the accused must be

released on bail on the principle of parity. The following observations of the Hon'ble Apex Court in Rakesh Kumar Pandey vs. Munni Singh @

Mata Bux Singh & anr (SLP 4059/2000) are illuminating:

“Suffice it to say that for a serious charge where three murders have been committed in broad day light, the High Court has not applied

its mind to the relevant materials, and merely because some of the co-accused, whom similar role has been ascribed, have been released on

bail earlier, have granted bail to the present accused respondents. It is true that State normally should have moved this Court against the

order in question, but at the same time the power of this Court cannot be fettered merely because the State has not moved, particularly in a

case like this, where our conscience is totally shocked to see the manner in which the High Court has exercised its power for release on bail

of the accused respondents.”

28. In view of the heavy reliance placed by Mr. S.P. Dharmadhikari on the order in Criminal Application 212/2020 (Smt. Anagha w/o. Nikhil Bhusari

vs. State of Maharashtra) a reference to the said order rendered by an esteemed learned Single Judge, is inevitable. Perusal of the order would reveal

that the learned counsel for the applicant relied on the decision in P. Chidambaram VS. Director of Enforcement 2019 SCC OnLine 1549. Pertinently,

the said bail order is qua offences with maximum imprisonment of seven years. The learned Judge did record a prima facie finding that Anagha

Bhusari is involved in the fraud. The learned Judge then noted that the chargesheet and supplementary chargesheet run into thousands of pages and

58 witnesses are cited. It is further noted that Anagha Bhusari was granted interim bail and she has not misused the liberty. The other order which is

pressed in service is the order of another esteemed Single Judge granting bail to Amit Bhagwat. The learned Single Judge records that the

documentary evidence is seized and that there is nothing to suggest that the evidence would be tampered. The learned Single Judge invoked the

principle of parity in view of the bail order in favour of Anagha Bhusari. The bulk of the chargesheet and the number of witnesses cited and the period

of more than seven months spent in custody also weighed with the learned Single Judge.

29. In my considered view, the applicant herein is not similarly circumstanced. The argument that the fraud could not have been perpetrated at all had

the loans not been sanctioned, is conceptually correct. However, the submission that the principle of parity comes into play misses the point that the

shades, colour and contours of the felonious misconduct of the applicant are markedly different. The applicant is accused of unabashedly fabricating

documents including a document purporting to be a registered saledeed. The applicant allegedly duped and defrauded not only the Andhra Bank, he

made life miserable for many gullible persons in whose names loans were obtained on the basis of documents which are either false or fabricated.

30. Arguendo, even if I assume, that the applicant is similarly circumstanced, I would still be disinclined to invoke the principle of parity. The

accusations are grave and the material on record is prima facie clinching. The audacious, albeit crude, modus operandi of the economic offence

shocks once conscious. While consistency in orders is ordinarily desirable, when the conscious revolts, the anxiety to ensure consistency must give

way to the voice of the conscious. The conscious of the Court cannot be a hostage to the mistaken and misplaced notion that since the co-accused

who are similarly situated are granted bail, the applicant accused must be bestowed with the similar indulgence.

31. In the result, the application is dismissed.

32. Needless to record, that nothing observed in the order shall prejudice the accused in the course of the trial and every observation reflects only a

prima facie finding arrived at for the purpose of deciding the entitlement to bail. The trial Court is directed to conduct the trial with utmost priority no

sooner the regular functioning of the Courts resumes and to conclude the trial within six months from the resumption of regular functioning of the

courts.