

MHCC020004312025



IN THE COURT OF SESSIONS FOR GREATER MUMBAI AT MUMBAI
CRIMINAL BAIL APPLICATION NO. 43 OF 2025

Arul Mozhi Selvan

Age : 50 years, Occ. : Service,
R/at : 102, Sai Nidhi Co-operative
Housing society, Ghatla, Suresh
Pednekar Road, Nagesh Patilwadi,
Chembur, East, Mumbai.

...Applicant/accused

Vs.

State of Maharashtra

Through Tilak Nagar
Police Station, Mumbai)

...Respondent

Appearance :-

Ld. Adv. Mr. Prem Kumar Pandey for the Applicant.
Ld. APP Mr. P. B. Bankar for the Respondent/State.

**CORAM : H. H. THE ADDL. SESSIONS JUDGE,
R. M. JADHAV (C.R. NO.22)**

DATED : 14th January, 2025

(O R A L O R D E R)

(Dictated and pronounced in the open Court)

This is an application for grant of bail filed by applicant/accused **Arul Mozhi Selvan** seeking bail in crime No. 434/2024 registered with Tilak Nagar Police Station for the offence punishment under Sections 406, 420 r/w 34 of IPC.

2. Heard Ld. Advocate Mr. Prem Kumar Pandey for accused

and Ld. Addl. PP Mr. P. B. Bankar for State. Gone through the police papers made available for perusal.

3. It is argued by Ld. Adv. Mr. Pandey for applicant/accused was subjected to arrest and thereafter taken into judicial custody after initial police custody. The accused is behind bar since the date of arrest. The accused did not confess can not be the reason to hold that he was not co-operating the investigation as the constitution of India has provided right to the accused against self incrimination. The substantial investigation in respect of the offence is over. The invocation of Section 406 and 420 of IPC is improper as they are independent offences and can not co-exist simultaneously. No further requirement of the applicant/accused to the police for the purpose of investigation. Hence, he may be enlarged on bail.

The Ld. Adv. of accused placed on record the decision of the Hon'ble Apex Court in *Delhi Race Club (1940) Ltd., & Ors. Vs. State of Uttar Pradesh & Anr. in Criminal Appeal No. 3114 of 2024, decided on 23rd August, 2024* and the Hon'ble Apex Court in *Pankaj Bansal Vs. Union of India & Ors. In Criminal Appeal Nos. 3051-3052 of 2023, decided on 3rd October, 2023.*

4. As against this Ld. Addl. P P Mr. Bankar for prosecution argued that prima facie there is material on record to show the involvement of the applicant/accused in the commission of the offence. The co-accused are yet to be arrested. The cheated amount is not recovered. Investigation is at initial stage. Therefore, bail is opposed. The Ld. Addl.PP placed on record the decision of the Hon'ble Apex Court in *State of Bihar Vs. Amit Kumar alias Bacha Rai in Criminal Appeal No. 767 of 2017 decided on 20th April, 2017.*

5. Considered the rival submissions and the decision cited above. Gone through police papers and material placed by rival sides.

6. It appears that informant Ramugrah Ashriphlal Mourya gave report with Tilak Nagar police station alleging that the applicant/accused in furtherance of common intention with applicant/accused Richi Robert, Rekha Robert and Rokade cheated the complainant by not returning the amount of Rs. 75 lakhs or delivering the possession of the flat purchased by him.

7. Prima facie there is material on record to show the role of the applicant/accused in the commission of the offence.

8. Be that as it may, the applicant/accused came to be arrested on 03.12.2024. He was taken into judicial custody after initial police custody. The accused was available to the police for the purpose of investigation. Now, nothing remain to be recovered and discovered from the accused. The investigation is based on documentary evidence. The fact that co-accused are not arrested can not be the ground to deny the bail to the applicant/accused. More particularly when he was subjected to arrest and police custody.

9. The alleged amount of cheating can not be recovered by detaining the applicant/accused behind bar. Therefore, the submissions of the Ld. APP for the State that the cheated amount not recovered will not be a rider to the applicant/accused to get the regular bail.

10. It is trite settle legal position as held in **Pankaj Bhansal's case** that accused can not be asked to confess the crime in view of the

Constitutional Principle enshrined in Article 20 (3) of the Constitution. Further, the invocation of Section 420 and 406 of IPC are improper in view of the decision of the Hon'ble Apex Court in **Delhi Race Club's case** as mentioned supra.

11. The offence complained against the applicant/accused although non bailable but are triable by Magistrate. The maximum punishment to offence complained is up to 7 years. As such there is no bar of Section 437(1) of Cr.P.C. in granting bail to the applicant/accused.

12. The decision of the Hon'ble Apex Court in **Amit Kumar alias Bacha Rai's case** in respect of the Socio-economic offence which constitute a class apart and need to be visited with different approach in the matter of the bail. The present case is a case of fraud done by the individual against the other individual. It is not a Socio-economic offence which affects the national economy of the country. Therefore, above decision will not be useful to the prosecution in support of their submissions opposing the bail.

13. The accused is resident of Chembur, Mumbai. He is ready to furnish surety to the satisfaction of the Court. No criminal antecedent are there against him. Substantial investigation against him is completed. Consequently, I found no reason to detain him behind bar for further period. As a sequel, I hold that the applicant/accused has made out the case for grant of bail upon certain terms and conditions.

14. In result, I pass the following order :-

ORDER

1. Criminal Bail Application is allowed.
2. Applicant/accused **Arul Mozhi Selvan** be released on bail on furnishing P.R. & S.B. of Rs.25,000/- along with surety in the like amount in connection with C.R. No. 434/2024 registered with Tilak Nagar police station.
3. Applicants/accused shall attend the concerned police station on every Monday in between 10.00 am to 11.00 am for a period of one month or till filing of the chargesheet which ever is earlier.
4. Applicant/accused shall furnish his residential address proof and contact numbers to Investigating Officer.
5. Applicant/accused 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 such facts to the Court or to any Police Officer.
6. Applicant/accused shall not leave Mumbai without prior permission of the Court.
7. Bail before learned Court below.
8. Criminal Bail Application stands disposed of accordingly.

Date : 14.01.2025

(R. M. JADHAV)
Additional Sessions Judge,
Sessions Court,
Gr. Bombay (C.R.No.22)

Directly typed on computer on : 14.01.2025
HHJ signed on : 14.01.2025

“CERTIFIED TO BE TRUE AND CORRECT COPY OF THE ORIGINAL SIGNED JUDGMENT/ORDER.”		
Upload Date	Upload Time	Name of Stenographer
14.01.2025	5.30 p.m.	Mrs. Manasi M. Kadam
Name of the Judge (With Court Room No.)		HHJ R. M. JADHAV (CR 22)
Date of Pronouncement of JUDGMENT /ORDER		14.01.2025
JUDGMENT /ORDER signed by P.O. on		14.01.2025
JUDGMENT /ORDER uploaded on		14.01.2025