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**IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION
MANOJ MISRA; J., MANMOHAN; J.**

Criminal Appeal No(s). 378/2026 @SLP (Crl) No. 11336/2025; January 21, 2026
RAKESH JAIN versus STATE

Condition of Upfront Deposit or Undertaking to Pay Arrears/Siphoned Amounts as a Pre-condition for Bail Deprecated - High Courts Must Decide Bail on Merits Rather Than Deferring Due to Non-Payment - The Supreme Court of India has reiterated that the practice of courts insisting on upfront deposits, or undertakings for such deposits, as a condition for considering a bail prayer on merits is improper - Such practices have the potential to derail the criminal justice delivery system by becoming a tool for complainants to extort settlements and forcing the accused to give up their right of defense - In the present case, the appellant was denied an extension of interim bail by the High Court solely because he failed to fulfill an undertaking to deposit the remaining balance of an alleged siphoned subsidy amount (approx. ₹4.10 crore), despite having already deposited over 50% of the amount - The Supreme Court held that – i. In offences under Section 409 IPC, there is no automatic presumption regarding the culpability of a Director; it must be established during the trial; ii. An inability to comply with a financial undertaking is not a valid ground to defer the consideration of a bail prayer on its merits, especially when the investigation is complete and the accused has already suffered significant incarceration; iii. The appropriate course for the High Court was to decide the regular bail application on its own merits rather than keeping the matter pending through repeated interim extensions tied to upfront deposits. [Relied on *Gajanan Dattatray Gore vs. State of Maharashtra and Anr.* 2025 SCC OnLine SC 1571; Paras 11-14]

For Appellant(s): Mr Rauf Rahim, Sr. Adv. Mr Rajesh Kundani, Adv. Mr Ali Rahim, Adv. Mr Mohsin Rahim, Adv. Mr. Vikrant Singh Bais, AOR

For Respondent(s): Mr. Anil Kaushik, A.S.G. Mr. Mukesh Kumar Maroria, AOR Mr. Gaurang Bhushan, Adv. Mr. Arkaj Kumar, Adv. Mr. Bhuvan Kapoor, Adv. Mr. Diwakar Sharma, Adv.

ORDER

1. Leave granted.
2. Heard learned counsel for the parties.
3. This appeal arises from an order of the Delhi High Court dated 21.07.2025 which rejects the prayer of the appellant for extension of interim bail in connection with FIR No. 200/2019, registered at P.S. Economic Offences Wing, District EOW, *inter alia*, under Section 409/ 120B IPC.
4. It appears that in respect of diversion of subsidy amount of about Rs.4.10 crore provided to a Company, namely, M/s Pragat Akshay Urja Limited, a First Information Report (FIR) was lodged implicating the Company and its Directors. The appellant is stated to be one of the Directors. Pursuant to the FIR, the appellant was taken into custody on 12.12.2019. Part of the subsidy amount i.e., Rs. 2,17,92,500 was deposited by the Company on 26.12.2019. Noticing the same and recording the statement made on instructions by the learned counsel for the appellant that remaining amount would also be deposited, the High Court granted interim bail to the appellant on 22.04.2020 on certain conditions. It appears that the main bail prayer of the appellant remained pending before the High Court, and the appellant continued to be on interim bail. However, instead of

deciding the main bail prayer, the High Court vide impugned order cancelled the interim bail on failure of the appellant in complying with the undertaking.

5. On 01.08.2025, while issuing notice on the Special Leave Petition preferred by the appellant, this Court passed the following order:

“1. The contention of learned counsel for the petitioner is that as per allegations an amount of Rs. 4,00,00,000/- was siphoned off and diverted from the project for which subsidy was provided by the Government. These allegations were against the petitioner as well as other co-accused. However, on 22.04.2020, after having suffered incarceration of about five months, the petitioner was released on interim bail by taking into account that petitioner had deposited a sum of Rs. 2,17,92,500/- on 26.12.2019 and a statement was made that he would arrange for deposit of the balance amount. The aforesaid interim order was extended from time to time. However, by the impugned order dated 21.07.2025 extension was denied on the ground that the petitioner had failed to deposit the remaining amount.

2. It has been contended that there are several co accused who have been granted the benefit of bail therefore, merely because the petitioner could not arrange to deposit the balance amount, the benefit of bail ought not to be denied more so, when the investigation is complete and a chargesheet has been filed.

3. Issue notice returnable in six weeks.

4. In the meantime, the effect and operation of the order 21.07.2025 refusing extension of interim bail shall remain stayed. The petitioner shall not be required to surrender provided he submits fresh bail bonds to the satisfaction of the Trial Court within a period of two weeks from today along with an undertaking that he shall cooperate in the trial and shall not threaten the witnesses or tamper the evidence.”

6. The learned counsel for the appellant submits that even if the appellant had failed to deposit the amount as undertaken to be deposited by his Counsel, there was no good reason for the High Court not to decide the bail prayer on merits. He has placed reliance on a recent decision of this Court in *Gajanan Dattatray Gore vs. State of Maharashtra and Anr.*¹, wherein this Court deprecated the practice of courts imposing conditions of deposits for securing bail. In paragraph 19 of the said judgment it was observed:

“19. By this order, we make it clear and that too in the form of directions that henceforth no Trial Court or any of the High Courts shall pass any order of grant of regular bail or anticipatory bail on any undertaking that the accused might be ready to furnish for the purpose of obtaining appropriate reliefs.”

7. Based on the above decision, the learned counsel for the appellant submits that the subsidy diversion allegation is *qua* the Company. The appellant is allegedly one of the Directors of the Company. To what extent the appellant's culpability is there in the crime, is a matter of trial. In such circumstances, taking into account that the offences for which the appellant is suffering incarceration or had suffered incarceration are triable by a Court of Magistrate, it was not a case where consideration of the bail prayer of the appellant should have been deferred even though investigation was complete and by then the appellant had already suffered incarceration for a period exceeding five months. Otherwise also, if a person is unable to comply with the undertaking, that is not a ground to defer consideration of bail prayer on merits.

8. *Per contra*, on behalf of the respondent it is submitted that since the condition of deposit was imposed on the own statement of the appellant to secure an interim order,

¹ 2025 SCC OnLine SC 1571

the appellant cannot be aggrieved by such imposition of condition and, therefore, on this very ground the appeal deserves to be dismissed.

9. In support of the above submission, the learned counsel for the respondent has placed reliance on a decision of this Court in *Kundan Singh Vs. Superintendent of CGST and Central Excise*², where it was held that where an interim protection has been obtained by agreeing to a condition, the person cannot question such condition.

10. We have accorded due consideration to the rival submissions and have also considered the decisions cited before us.

11. In our view, the two decisions operate on different fields. The decision in *Gajanan Dattatray Gore* (supra) deprecates the practice of the courts in insisting on upfront deposits, or undertaking for such deposits, or compliance(s) of certain obligations, from bail/ stay applicant(s) for consideration of their prayer on merits as that encourages implication with an oblique purpose and has the potential to derail the criminal justice delivery system by making it a tool in the hand of unscrupulous complainant(s) to extort a settlement and force the other side to give up its right of defence. On the other hand, the decision in *Kundan Singh* (supra) is on a fundamental principle that a person who has agreed for a condition cannot question the same.

12. The question that arises for our consideration here is whether in a situation like this, should the bail prayer of the appellant be deferred from time to time without addressing the merits of the bail application.

13. Here the applicant is one of the Directors of a Company. The allegations are in respect of diversion of funds by the Company. In an offence punishable under Section 409 IPC there is no presumption regarding culpability of a Director. The same would have to be established in a trial. In such circumstances, when more than 50 per cent of the amount of subsidy alleged to have been diverted has been deposited by the Company, whether the court should have insisted on a further deposit for considering his regular bail prayer is the issue that troubles us.

14. In our view, the appropriate course for the court was to decide the bail application on its own merits rather than to keep the matter pending by extending the interim bail and insisting on the upfront deposit. In such circumstances, we deem it appropriate to dispose of this appeal by requiring the High Court to decide the regular bail application of the appellant as expeditiously as could be possible preferably within a period of three weeks from the date a certified copy of this order is placed before the High Court.

15. In the interregnum, the interim order that was passed on 21.07.2025 shall remain operative.

16. Pending application(s), if any, shall stand disposed of.

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