IN THE COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

CRIMINAL APPLICATION (BA) NO. 763/2015
(Vinay s/o Jaidev Wasankar vs. State of Maharashtra : Th: Addl. Commissioner of Police, Economic Offence Wing, Nagpur)
&
CRIMINAL APPLICATION (BA) NO.820 /2015
(Abhijit s/o Jayant Choudhari vs. State of Maharashtra : Th:P.S.O. Ambazari Police Station, Nagpur)
&
CRIMINAL APPLICATION (BA) NO. 769/2015
(Mrs.Bhagyashree w/o Prashant Wasankar vs. State of Maharashtra :Th:P.S.O. Ambazari Police Station, Nagpur)
&
CRIMINAL APPLICATION (BA) NO. 646/2015
(Mrs.Bhagyashree w/o Prashant Wasankar : Th: P.S.O. Frezarpura, Amravati)

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Office Notes, Office Memoranda of Coram, appearances, Court's orders of directions and Registrar's orders	Court's or Judge's order

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Mr.Shahank Manohar with Mr.Shyam Dewani, Counsel for applicant in B.A. No.763/2015
Mr. Firdos Mirza, Advocate for applicant in B.A. No. 820/2015
Mr. Sunil Manohar, Senior Advocate with Mr A.C.Jaltare, for applicants in B.A.No. 769/2015 & 646/2015

Mr. S.S.Doifode, A.P.P. for respondent-State

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CORAM: A.B.CHAUDHARI, J.
DATED : 22nd December, 2015.

COURT'S ORDER:

1. Criminal Application Nos. 763/2015, 820/2015. 769/2015 arise out of Crime No.156/2014 {now Special Case No. 4/2014}, registered with Ambazari Police Station, Nagpur for

offence punishable under sections 420, 406, 409, 506 read with Section 120-B of the Indian Penal Code (IPC) and Section 3 of the Maharashtra Protection of Interest of Depositors (in Financial Establishments) Act, 1999 ("MPID Act"), for grant of regular bail u/s. 439 of the Criminal Procedure Code (Cr.P.C.).

Criminal Application No.646/2014 arises out of Crime No.291/2014 for the offence punishable u/ss. 406, 420, 409, 120-B r/ws. 34 of the IPC and Section 3 of the MPID Act, registered with Police Station Frezarpura, Amravati, for regular bail, u/s. 439 of the Cr.P.C.

2. Since the nature of the crime and the accused involved are from the same firms and family and there is no distinction on facts, all these Applications have been taken up for hearing and decision thereon, together.

3. Criminal Application No. 763/2015 has been argued by Mr.Shashank Manohar with Mr. Shyam Dewani, learned Advocates; Criminal Application No.820/2015 has been argued by Mr. Firdos Mirza; Criminal Application Nos.769/2015 and 646 /2015 have been argued by Mr. Sunil Manohar, learned senior counsel with Mr

A.C. Jaltare, Advocate.

4. Learned counsel for the applicants in all the above-referred Applications strenuously contended that the applicants have been in jail from the date of their arrest, almost for more than a period of one year. They contended that Wasankar Wealth Management Limited is a Company in the nature of an advisory company and, as such, does not hold or control any monies of the depositors. Wasankar Investment Limited is the proprietary firm run by Prashant Wasankar against whom the allegations are made that he is the alleged accused in committing fraud and duping the gullible investors. All the investments were made in his proprietary firm by the investors and the promissory notes were also issued by these firms. All these applicants who are the Directors in the Wasankar Wealth Management Limited, had resigned on 1.7.2010 as per the report and the *proforma* released by the Registrar of Companies, which is filed on record. Thus, the applicants not being the Directors of even the advisory company, namely, Wasankar Wealth Management Limited after 1.7.2010, the question of they being guilty of any of the transactions thereafter, does not arise and, therefore, there is no connection whatsoever with the alleged crimes. Consequently, there is no

evidence against any of these applicants to continue their incarceration for an indefinite period. The principal contention raised by learned counsel for the applicants is that these companies had started their business from the year 1989 and was doing remarkably well till 2013 inasmuch as the Companies were giving returns to the depositors as per the promises and, therefore, there is no reason to believe that these companies were formed or deposits were accepted for duping the gullible investors, as is the case with mushroom growth of companies which come and vanish in the thin air. According to them, therefore, there is need to draw a distinction between flight by night companies and the Companies which were run as above, which did not face any complaint of mismanagement or mistrust of the depositors till the year 2013, i.e. almost for 24 years. It is only after 2013, due to the poor economic conditions, the collapse started and the depositors and investors were severely affected, as a result of which, the investors could not be paid back their monies. But then that does not amount to fraud or cheating or the breach of trust, as alleged by the prosecution. The learned counsel for the applicants, therefore, vehemently submitted that a *prima facie* case is thus clearly made out by the applicants for releasing them on bail. The learned counsel for the applicants then contended that in some cases the amounts were paid back by cheques; but eventually the cheques had bounced and, therefore, some depositors/investors have filed cases for offence punishable u/s. 138 of the Negotiable Instruments Act(“ N.I. Act”), which clearly show that the transactions were *bona fide* and whatever will be the outcome of the cases u/s 138 of the N.I. Act would be the ultimate fate of the litigation; but then to dub the same as cheating or forgery or fraud is far-fetched. The learned counsel for the applicants contended that the charge-sheet has admittedly been filed in the trial Court and no further investigation is required to be done and, therefore, there is no chance of any attempt to tamper with the evidence. Learned counsel for the applicants then heavily relied on the decisions in the cases of ***Sanjay Chandra vs. Central Bureau of Investigation ((2012) 1 SCC 40*** (2G spectrum case), decided by the Hon’ble Supreme Court, in the matter of grant of bail. The learned counsel took me through various paragraphs of the judgment cited *supra*. They have also placed on record the copies of the orders in similar type of cases where bail has been granted by this Court, namely, in the case of Samir Sudhir Joshi vs. State of Maharashtra (Cri. Appln.No. 665/2014) and others. Learned counsel for the applicants then contended that the properties of all the applicants have been attached by the Government, as per the notification dated 11th

March, 2015 in MPID Act and, therefore, there is no scope even for disposing of any of the properties.

5. *Per contra*, Mr.S.S.Doiphode, learned A.P.P. opposed these bail Applications tooth and nail and argued that the investigation in all these cases is underway inasmuch as even now, the depositors are coming with their complaints about the loss of their hard-earned deposits. According to the learned A.P.P. supplementary charge-sheets can always be filed and would be filed after further investigations and, at any rate, the investigation being continued, the applicants do not at all deserve to be released on bail. He then submitted that the story advanced by the applicants that they had resigned from the Directorship is apocryphal and factually wrong because there are plethora of documents to show that even after their resignation since 1.7.2010, the applicants signed as Directors and dealt with the Banks and other institutions and acted as Authorised Signatories or the Directors and, therefore, the stand taken by the applicants is obviously wrong and incorrect. He then contended that the bank accounts were also opened after the said date by them and they continued to operate as such and, therefore, there is no reason to believe the theory of resignation propounded by the applicants. Not

only that, after their resignation, these applicants had issued cheques under their signatures as Authorised signatories or the Directors. Learned A.P.P. placed before me all these materials, so also the case diary, for perusal. The learned A.P.P. then submitted that these applicants have taken lordly sums as salaries from the firms showing themselves as employees or the Chief Executive Officers, to the tune of Rs. 25 to 30 lakhs. The learned A.P.P. then submitted that these applicants have committed breach of trust acting as agents, which clearly falls u/s. 409 IPC, which provides sentence of imprisonment for life and, therefore, the applicants are not entitled for bail. The learned A.P.P. then submitted that the balance in the bank accounts if seen, will show that there is hardly any balance or traumetically trivial sums in those accounts'; whereas huge amounts in lakhs and crores were withdrawn before they could be attached by the Government machinery. Thus, it is clear that the applicants had a clear intention to play a fraud and that is why they had withdrawn huge amounts and parked the same elsewhere and there is every likelihood of the applicants appropriating those amounts for themselves and destroying the evidence. It is not therefore proper to release them on bail. The learned A.P.P. then submitted insofar as attachment of the property is concerned, the worth of properties attached is hardly Rs. 16

crores whereas the depositors' investment are far higher. The learned A.P.P. placed reliance on ***Y.S.Jagan Mohan Reddy vs. Central Bureau of Investigation: (2013) 7 SCC 439*** and other catena of decisions and submitted that none of the applicants deserves to be released on bail. He submitted the case diary and the investigation material before me to highlight his points.

6. Heard learned counsel for the rival parties at length. Perused the Applications, averments made therein minutely as well as the reply filed by the respondent-State. Seen the judgment in the case of Sanjay Chandra (*supra)* and various paragraphs shown to me by the learned counsel for the applicants. I have also seen the judgment in the case of Y.S. Jagan Mohan Reddy *(supra)* more particularly, paragraph Nos.14 to 16. I quote Para nos. 14 to 16 which read thus:

> "14. On going into all the details furnished by the CBI in the form of Status Report and the counter affidavit dated 06.05.2013 sworn by the Deputy Inspector General of Police and Chief Investigating Officer, Hyderabad, without expressing any opinion on the merits, we feel that at this stage, the release of the appellant (A-1) would hamper the investigation as it may influence the witnesses and tamper with the material evidence. Though it is pointed out by the learned senior counsel for the appellant that since the

appellant is in no way connected with the persons in power, we are of the view that the apprehension raised by the CBI cannot be lightly ignored considering the claim that the appellant is the ultimate beneficiary and the prime conspirator in huge monetary transactions.

15. Economic offences constitute a class apart and need not be visited with a different approach in the matter of bail. The economic offence having deep rooted conspiracies and involving huge loss of public funds needs to be viewed seriously and considered as grave offences affecting the economy of the country as a whole and thereby posing serious threat to the financial health of the country.

16. While granting bail, the court has to keep in mind the nature of accusations, the nature of evidence in support thereof, the severity of the punishment which conviction will entail, the character of the accused, circumstances which are peculiar to the accused, reasonable possibility of securing the presence of the accused at the trial, reasonable apprehension of the witnesses being tampered with, the larger interests of the public/State and other similar considerations."

7. In the case of ***Nimmagadda Prasad vs. Central Bureau of Investigation: 2013 CRI LJ 3449,*** the Hon'ble Supreme Court in Paragraph Nos. 26,27,28 stated thus:-

"26. Unfortunately , in the last few years, the country has been seeing an alarming rise in the white-collar crimes, which has affected the fiber of the country's economic structure. Incontrovertibly, economic offences have serious repercussions on the development of the country as a whole. In the State of Gujarat vs. Mohanlal Jitamalji Porwal and anr. (1987) 2 SCC 364: (AIR 1987 SC 1321) this Court, while considering a request of the prosecution for adducing additional evidence, inter alia, observed as under :-

> " ....The entire Community is aggrieved if the economic offenders who ruin the economy of the State are not brought to book. A murder may be committed in the head 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...."

27. While granting bail, the court has to keep in mind the nature of accusations, the nature of evidence in support thereof, the severity of the punishment which conviction will entail, the character of the accused, circumstances which are peculiar to the accused, reasonable possibility of securing the presence of the accused at the trial, reasonable apprehension of the witnesses being tampered with, the

larger interests of the public/State and other similar considerations. It has also to be kept in mind that for the purpose of granting bail,the legislature has used the words " reasonable grounds for believing" instead of "the evidence" which means the Court dealing with the grant of bail can only satisfy it as to whether there is a genuine case against the accused and that the prosecution will be able to produce prima facie evidence in support of the charge. It is not expected, at this stage, to have the evidence establishing the guilt of the accused beyond reasonable doubt.

28. Economic offences constitute a class apart and need not be visited with a different approach in the matter of bail. The economic offence having deep rooted conspiracies and involving huge loss of public funds needs to be viewed seriously and considered as grave offences affecting the economy of the country as a whole and thereby posing serious threat to the financial health of the country."

8. In ***Dr.Vinod Bhandari vs. State M.P. : 2015 ALL MR (Cri) 1236 (SC)*** a decision of the Supreme Court in the case of Sanjay Chandra (supra) in para no.16, was considered. The Hon'ble Apex Court in Para nos. 17 and 18 held thus:

" 17. In the light of the above settled principles of law dealing with the prayer for bail pending trial, we proceed to consider the present case. Undoubtedly, the offence alleged against the appellant has serious adverse impact on the fabric of the society. The offence is of high magnitude indicating illegal admission to large number of undeserving candidates to the medical courses by corrupt means. Apart from showing depravity of character and generation of black money, the offence has the potential of undermining the trust of the people in the integrity of medical profession itself. If undeserving candidates are admitted to medical courses by corrupt means, not only the society will be deprived of the best brains treating the patients,the patients will be faced with undeserving and corrupt persons treating them in whom they will find it difficult to repose faith. In these circumstances, when the allegations are supported by material on record and there is a potential of trial being adversely influenced by grant of bail, seriously jeopardising the interest of justice, we do not find any ground to interfere with the view taken by the trial Court and the High Court in declining bail.

18. It is certainly a matter of serious concern that the appellant has been in custody for about one year and there is no prospect of immediate trial. When a person is kept in custody to facilitate a fair trial and in the interest of the society, it is duty of the prosecution and the court to take all possible steps to expedite the trial. Speedy trial is a right of the accused and is also in the interest of justice. We are thus, of the opinion that the prosecution and the trial Court must ensure speedy trial so that right of the accused is protected. This court has already directed that the investigation be finally completed and final charge-sheet filed on or before March 15, 2015. We have also been informed that a special prosecutor has been appointed and the matter is being tried before a Special court. The High

court is monitoring the matter. We expect that in these circumstances, the trial will proceed day to day and its progress will be duly monitored. Material witnesses may be identified and examined at the earliest. Having regard to special features of this case, we request the High Court to take up the matter once in three months to take stock of the progress of trial and to issue such directions as may be necessary. We also direct that if the trial is not completed within one year from today for reasons not attributable to the appellant, the appellant will be entitled to apply for bail afresh to the High Court which may be considered in the light of the situation which may be then prevailing."

9. I have kept in mind the law laid down by the Hon'ble Apex Court, in the recent point of time. I then find from the reply filed on behalf of the State in these cases that the applicants had lured the depositors to invest huge monies in their firms with false promise of making their deposits double or as the case may be, by floating the schemes. It is stated in para nos. 7 and 8 of the reply as under :-

" 7. During the investigation, it is found that the accused persons floated the scheme and induced the depositors by giving them 30 % to 50% more rate of interest than the prevailing rate of interest. Copy of the chart showing the scheme floated is as under :

Scheme	**For member**	**For Non-member**	**Minimum Investment**
Double the payment	33 months	48 months	50,000/-
40% interest	18 months	24 months	50,000/-
Yearly deposit	25%	18%	50,000/-
90 days deposit	4.75%	3.25%	1,00,000/-
2 year deposit quarterly	5.25%	3.75%	1,00,000/-
DTP (12 months)	30%	...	2,00,000/-
Repayment @ 150%	30 months	...	5,00,000/-
Monthly Deposit	2%	...	1,00,000/-
Triple Deposit	63 months	66 months	50,000/- to 9,99,900/-
Triple Deposit	60 months	63 months	1,00,000/- to 24,99,000/-
Triple Deposit	57 months	60 months	25,00,000/- and more
L.T.P. 3 to 5 years	1 ½ to 2	...	2,00,000/-
S.I.P. (3 to 5 years)	16%	...	3,000/-
S.T.P. (1 year)	20%	...	2,00,000/-
Fusion Agro (1 year)	25%	...	50,000/-
PERK	30 months		1,00,000

8. It is submitted that during investigation, the police has received near about 599 complaints from the

> depositors as they were cheated and duped by the accused persons for an amount of Rs,159,80,29,021/-. In view of the complaints and the scam stated above, the matter was investigated by this non-applicant."

10. Reading of paragraph 7 and 8 of the reply would clearly reveal that the applicants are guilty of alluring the investors by enticing them to invest amounts by promising handsome returns. This is the beginning of fraud that was intended to be committed by the applicants and the people were got in trap. As seen above, ultimately as stated in paragraph 8 of the reply, cheating took place with the total amount of Rs.159 crores plus. It is thus clear that submission that the firms existed from 1989 and there was no complaint till 2013 and because of collapse of market the investors could not be paid back, is patently incorrect. *Au contraire,* the applicants had a definite nefarious design to collect monies from the people by promising them interest at the rate, ranging from 30 per cent to 60 percent, than the prevailing rate of interest and, to my mind, that itself is sufficient to draw a conclusion that there was plan and conspiracy to dupe the gullible investors. In paragraph 10 there is a reference that statements have been recorded showing that these applicants were

the agents who propagated their schemes to the investors by alluring them to invest in their firms for exorbitant returns. It is necessary to quote paragraph nos. 12 and 13 which read thus :

> "12. It is submitted that, during investigation it was found that near about 599 depositors were duped by the accused persons, a fraud to the tune of Rs. 160.00 crores is to unearth. However, to the common knowledge of the Investigating officer, near about 4300 depositors were duped by the accused persons.
>
> 13. Applicant has assisted to open trading accounts/Demat account of depositors through Wasankar Investment and Wasankar Infotech. He has played active role in the instant crime. She has convinced the Investors/Depositors by introducing the lucrative scheme floated by applicant and Director of Wasankar Wealth Management Ltd. made them to deposit money with the company. The said firm "Wasankar Investment" firm also operate from the address of Wasankar Wealth Management Ltd i.e. 247, Hill road, Shivajinagar, Nagpur. In March 2011 applicant accused has merged his firm "Wasankar Infotech" with Wasankar Wealth Management ltd. Also other accused Prashant Wasankar and Bhagyashree Wasankar have merged their firms "Wasankar Investment" and "Sarla Securities: with Wasankar Wealth Management ltd in March 2011. After merger of these firm they have fraudulently conducted business in the names of these firms."

11. It is clear from the above reply that the firms were

started diverting the depositors money without their consent and knowledge and in the way the applicants liked and, as a matter of fact, ultimately they siphoned off the entire money. A perusal of the chart showing the properties attachment order which was made ultimately under the notification u/s 11 March, 2015 shows that the balance amount in these accounts, before attachment order, shows the balance to the tune of Rs. 378, 343, 1389, 3138, 24,000 and so on. These accounts had contained heavy deposits but then they were siphoned out or withdrawn when the applicants sensed that in the police action attachment would be made. Obviously these huge amounts which they withdrew must have been parked somewhere. These amounts belonged to the depositors. If the applicants are released on bail, they are bound to reach to these amounts because they are in know of the place where they have stashed the same and in that case that would be a straight loss to the depositors. I am, therefore, of the firm opinion that on this count also, the applicants cannot be released on bail. It is then seen that in para nos. 19 and 20 of the reply that the amounts were transferred to the individuals and the firms and the applicants - Prashant Wasankar and Bhagyashree Wasnkhar and others. It clearly shows that the depositors' money was used as if it was the personal property of these applicants and ultimately the depositors were duped. Thus, paragraph 31 of the reply shows the fraudulent transfers of money in the sum of rupees fifty one crores, fifty eight lakhs and five thousand from the months of March to June which clearly indicates that by a well prepared design these amounts were withdrawn and paid to the persons named, about whom no details have been forthcoming. The stand taken by the applicants that they had resigned from the firm on 1.7.2010 does not appear to be correct, after verification of record placed before me by the learned APP. On the contrary, it shows that the applicants had dealt with as Director/ Authorised signatory and operated the accounts and, therefore, the contention to that affect is outrightly rejected.

12. It is important to note that it is claimed in paragraph no. 47 of the reply that the acceptance of deposits and dealing with the monies of the investors was done by the applicants without prior permission from the Security & Exchange Board of India (SEBI) and without their knowledge and without any registration with the Reserve Bank of India which, in my opinion, is a very very serious offence. The applicants could not have collected any deposits from any of the depositors or investors for the same being deposited in the aforesaid firm- Wasankar Investments Limited,

which indeed had no registration with RBI or permission from the SEBI.

13. The upshot of the above discussion is that none of these Applications has any merit and in the light of the ratio laid down by the Hon'ble Apex Court cited supra, they must be rejected. In the result, I make the following order:

ORDER

Criminal Application (BA) Nos. 763/2015; 820 /2015 (BA) NO. 769/2015 and 646/2015, all are rejected.

JUDGE

sahare