

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.**

Criminal Application (BA) No. 878 of 2014

(Shri Vijay S/o Chudaman Marathe Vs. State of Mah. through P.S.O.,
Durgapur, Dist. Chandrapur)

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

Court's or Judge's order

Shri S. P. Bhandarkar, Advocate for the applicant
Mrs. K. S. Joshi, APP for the State

CORAM : P. B. VARALE, J.

DATE : 28-7-2015.

Heard learned counsel Shri Bhandarkar for the applicant at length and learned Additional Public Prosecutor Mrs. Joshi for the State/non-applicant.

2. Before I proceed to the merits of the present application, certain facts are necessary to be referred. This application was heard by this Court on earlier occasions. On February 9, 2015, learned counsel for the applicant submitted proposal to this Court by way of pursis that the applicant undertakes to raise funds so as to refund the amount of the depositors. It was submitted that property stands in the names of mother and brother of the applicant and they were ready to sell property so as to facilitate the applicant thereby raising funds for refund of amount of the depositors. Considering the proposal, this Court granted some time to the applicant. In the subsequent hearing when it was found that though the proposal was made by the applicant, refund as

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submitted by the applicant was not possible by the applicant due to the peculiar facts. This Court was not inclined to accept the submissions of the learned counsel for the applicant on merits, but an attempt was made to submit that the applicant would make *bonafide* attempt for refund of the depositors' money and an opportunity was granted to the applicant. The learned counsel appearing for the applicant, then on instructions, prayed for withdrawal of the application. This is revealed from the order sheet of this Court dated 24-3-2015. The matter was then adjourned to 30-3-2015 for withdrawal. On 30-3-2015, the matter was again adjourned due to paucity of time to 31-3-2015 for withdrawal. On 31-3-2015, learned counsel Shri Bhandarkar appearing for the applicant submitted that there was communication gap between the applicant and the counsel who was appearing for the applicant. It was submitted by Shri Bhandarkar, learned counsel that the undertaking ought not to have been submitted to this Court on raising funds and refund of money to the depositors. It was the submission of the learned counsel Shri Bhandarkar that the application could have been argued by the counsel on its own merits. This Court on 31-3-2015 recording all these events and also expressing its displeasure on the course adopted by the applicant, only with a view to give an opportunity to the learned counsel who entered on the scene subsequently and on the backdrop that

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there should not be any grievance that the applicant was not heard, adjourned this matter.

3. Today, Shri Bhandarkar, learned counsel for the applicant made his submissions at length. He submits that the First Information Report is lodged at Durgapur Police Station, District Chandrapur against the present applicant at the instance of one Shri Bharat Nagrale. It was submitted in the report that the applicant approached the complainant sometime in the month of January, 2012. He informed the complainant about his company and submitted that on investment of the amount in his company, the complainant would receive handsome returns. Initially, on deposit of some amount, the complainant received the interest on that investment. Subsequently, the applicant then asked the complainant to deposit the amount whereby he would get the returns double of his investment. Accordingly, complainant deposited the amount. After waiting for a considerable period, when the complainant found that neither the interest is returned nor there was any assurance of return of principle amount, he approached the applicant. The applicant issued a cheque and requested not to approach any Court of law and also created an impression that the applicant would return the amount within a short span of 1 and 1½ months. The report further states that like the complainant, there were 80 to 100 depositors who have invested

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the amount with the applicant. Sometime in the month of April, 2013 and August, 2013, a meeting was called of all the depositors by the applicant. He gave assurances of the return of the amount and prayed for some time. These depositors including the complainant waited for a considerable period of one year and on 3-8-2014, again the applicant called the meeting of the depositors. In that meeting, the applicant informed the depositors that he had invested the amount collected by these depositors in purchase of some agriculture land and as there was some dispute pending in the Court about that agriculture land, he would return the amount of depositors after the decision of the legal proceedings in respect of that agriculture land. When the depositors were desperately asking for the return of amount or some undertaking in writing from the applicant, the applicant not only flatly refused to return the amount but gave threats to the depositors that they are at liberty to take any action and he would return the amount only and when it was possible to him. Thus the complainant left with no choice to approach the Police Station along with other depositors who were nearly 30 in numbers and the amount deposited by the depositors with the applicant was running more than Rupees Three Crores.

4. Shri Bhandarkar, learned counsel submits that the allegations against the applicant that he

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was running a spongy scheme and by giving false assurances to the depositors deceived them are unbelievable on the face of the record. Shri Bhandarkar submits that the report itself shows that the applicant assured the depositors for return of the amount and that was accepted by the depositors in the meeting and certain amount were returned and these receipts were collected by the investigating agency in the process of investigation. The next submission of Shri Bhandarkar is, initially an offence punishable under Section 420 of the Indian Penal Code was registered against the applicant and for the reasons best known to the investigating agency, the other offences under Sections 467, 468, 471, 109, 201 of the Indian Penal Code and Section 3 of the Maharashtra Protection of Interest of Depositors (in Financial Establishments) Act and Section 138 of the Negotiable Instruments Act are added against the applicant.

5. The next submission of Shri Bhandarkar is that the applicant informed the depositors that he had purchased certain agriculture property. Learned counsel submits that one Shri Dambare on false submissions, sold the property to the present applicant. Learned counsel further submits that the applicant being a gullible person was impressed with the assurances of Shri Dambare. Learned counsel submits that Dambare was enlarged on bail and the present applicant stands on a better footings than

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Dambare. Shri Bhandarkar then submits that intention of the applicant was never to deceive the depositors, but for certain unforeseen events occurred namely, the ailment of the applicant, the applicant was unable to return the amount of the depositors. Shri Bhandarkar then submits that this Court has allowed the applications seeking enlargement of bail in similar offences. Then Shri Bhandarkar vehemently submits that as the law laid down by the Apex court in the judgment delivered in the case of *Sanjay Chandra Vs. Central Bureau of Investigation* reported in *(2012) 1 SCC 40*, the prime factors for consideration of the bail would be : (1) whether the applicant would flee away from the justice ? (2) whether there is apprehension that the applicant would pressurise the witnesses and whether the trial would take indefinite length of time in progress and conclusion ? (3) whether the detention of the applicant would be justified ?

6. It is the submission of the learned counsel Shri Bhandarkar insofar as the aspect that the applicant would flee away from justice is concerned, there is no material placed on record by the prosecution nor the prosecution or investigating agency has placed on record any material to show that the applicant would pressurise the witnesses. Thus on these submissions, learned counsel Shri Bhandarkar prays for enlargement of the

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applicant on bail.

7. Learned Additional Public Prosecutor vehemently opposed the application and invited my attention to various replies filed by the investigating agency in this Court.

8. On perusal of the material placed on record and on the backdrop of submissions of Shri Bhandarkar, what reveals is in the report itself, it is stated by the complainant that till 2013, the applicant by painting a rosy picture that the amount deposited by the depositors would receive handsome returns/double the amount of the deposit amount, accepted the deposits. The applicant till 2013 gave assurances but after waiting for period of one year, these depositors when approached the applicant, the applicant on the ground that he has invested the amount in purchase of some agriculture land flatly refused to return the amount of the depositors. Not only this, when the desperate depositors wanted the return of their amount, the applicant asked them to approach any authority and said that he would return amount only when it was possible for him. On these background, the submission of learned counsel for the applicant that the applicant bonafidely made attempts to return the amount and also returned back some amount, but for unavoidable circumstances, he was unable to return the amount cannot be accepted.

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9. It will be interesting to note that the applicant takes a specious plea that it was one Shri Dambare who gave assurance to the applicant and the applicant being a gullible person was impressed by the assurances of Shri Dambare and invested the amount with Shri Dambare for purchase of the property. By no stretch of imagination, one can lead to this conclusion that a person who is running a financial scheme, accepted the amount from various depositors, dealing with these depositors in their finances and was so gullible to be impressed by assurance of one Dambare and invested the amount received from these depositors in purchase of agriculture land. It will not be out of place to mention that when the applicant submits that he is on better footings than Shri Dambare, this Court while dealing with the application of Shri Dambare in clear words observed that a plan was hatched by this applicant and there was no material to show that Shri Dambare had any connection with this applicant and considering that Shri Dambare had no role to play against these depositors, allowed the application of Shri Dambare. Thus, the applicant cannot take any benefit of the order passed in the application of Dambare and the submission that the applicant stands on a better footings than Dambare deserves to be rejected at the threshold.

10. Other ground raised by the applicant to submit that for the unforeseen difficulties, the applicant is

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unable to return the amount of deposits namely, is his ailment. Perusal of the documents shows that these documents pertain to ailment for a period of a month namely, January, 2014. The documents placed on record show that the applicant was under treatment from 20-1-2014 to 31-1-2014. The last certificate issued by the private hospital on 31-1-2014 shows that the applicant was advised certain tablets and he was asked to attend for follow up on 15-2-2014. As there is no document to show either the applicant approached the hospital for his treatment as directed for follow up on 15-2-2014 or any document to show that thereafter at some point of time the applicant was in condition that such ailment was making him unable to move. The submission of the applicant that he was prevented to take any steps for return of the depositors' money also cannot be accepted.

11. The submission of the learned counsel that the ground raised by the applicant that the investigating agency for reasons best known to it added some charges against the applicant leads to a submission that the agency is acting malafide against the applicant. There is no such material placed on record and it is only oral submission of the learned counsel for the applicant. Furthermore, if the trial Court finds that there is no material against the applicant for the charges levelled against the applicant, necessary result would follow on

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appreciation of the material by the competent Court. Insofar as the submissions of Shri Bhandarkar placing heavy reliance on the judgment of the Apex Court in the case of *Sanjay Chandra Vs. Central Bureau of Investigation* (cited supra) is concerned, firstly, there cannot be any dispute on the proposition of law laid down by the Apex Court. Certain facts which would be necessary to refer are in the matter of Sanjay Chandra's case, on the backdrop of the fact that 17 accused persons involved in that scam known as 2G scam, the statements of the witnesses were running into several hundred pages and the documents placed on record being voluminous, the Apex Court took into consideration the fact that the trial may take considerable time and the appellants who were in jail for a longer period will have to remain in jail for more than the period of detention had they been convicted and as such observed that it will not be in the interest of justice that these accused should be in jail for indefinite period. In the present case, there is nothing on record to show that the trial would take inordinate lapse of period. It is also not the case that the applicant is behind bars for a longer period. The submission of learned counsel on the backdrop of Sanjay Chandra's case is that in the present case, there is no material to show that the applicant would pressurise the witnesses or tamper the evidence. This submission cannot be accepted on the backdrop of the report itself, for the reason, the complainant

stated in the report that when the depositors made an attempt and asked the applicant to give some undertaking of his assurance for return of the amount, the applicant by flatly denying and refusing gave threats to these depositors by saying that they are at liberty to approach the Police Station or Court and he would return the amount as and when possible for him. It is also on the record that the applicant, who is not bothered to blow hot and cold before this Court, has no regards of law when the applicant made the statements before this Court and when it was expected that the applicant would follow his own undertaking before this Court. The applicant took the somersault and had not even bothered to indulge in a blame game saying that the learned counsel, who was appearing for the applicant initially, made a statement without his instructions.

12. The submission was major part payment was already made by the applicant. It was also the submission of the learned counsel that it was not the applicant but his relatives, namely, mother who filed an affidavit before this Court and made an attempt to submit before this Court that the mother is ready to return the amount of depositors. This submission is only to avoid responsibility of the statement made before this Court and putting the burden on the shoulder of the mother of the applicant and making an attempt to submit that the relatives of the applicant were submitting whatever they want to

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submit before this Court and the applicant has nothing to do with these submissions made before this Court at the instance of his relative including his mother. Least to say, such submissions hardly can be accepted. Considering all these facts, in my opinion, this is not a fit case to enlarge the applicant on bail. The application, being meritless, deserves to be rejected and it is accordingly, rejected.

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