**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**
**NAGPUR BENCH : NAGPUR**

**Criminal Application (BA) No.317 of 2018**
**...**

Avinash Rameshji Bhute,
R/o 29, Samarth Nagar,
Hindustan Colony, Nagpur. .. **APPLICANT**

.. **Versus** ..

State of Maharashtra,
The Economic Offences Wing,
Nagpur. .. **NON-APPLICANT**

Mr. Sunil V. Manohar, Senior Advocate with Mr. D.V. Chavan, Advocate for Applicant.
Mr. Sanjay Doifode, Additional Public Prosecutor for Non-applicant
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**CORAM : MANISH PITALE, J.**
**DATE OF RESERVING ORDER : JUNE 14,2018.**
**DATE OF PRONOUNCING ORDER : JULY 04,2018**

**ORDER**

1. By this application, the applicant has approached this Court for being released on bail with reference to Crime No.156 of 2014 dated 7.5.2014, wherein the applicant has been shown as accused for offences punishable under Sections 420,

406, 506 and 120-B of the Indian Penal Code (IPC) read with Section 3 of the Maharashtra Protection of Interest of Depositors (In Financial Establishments) Act, 1999 (MPID Act), as also under provisions of Reserve Bank of India Act and the Securities and Exchange Board of India Act, 1992.

2. An FIR dated 9.5.2014 bearing Crime No. 156 of 2014 was registered in Police Station Ambazari, Nagpur, for offences under the said provisions against Wasankar Wealth Management Limited and its Directors, for having committed financial fraud and having duped innocent depositors to the tune of crores of rupees. Initially, the applicant was not named in the FIR but, upon investigation the Police found material against him and in February, 2015 he was summoned, calling upon him to explain receipt of amount of Rs.9,11,85,000/- from Prashant Wasankar, one of the Directors of Wasankar Wealth Management Ltd. On 4.1.2016 the applicant was arrested. He applied for bail before the Court of Special Judge MPID Act and Additional Sessions Judge-5, Nagpur (trial Court). In the said Court, in support of his application for bail, the applicant submitted an undertaking stating that out of total amount of Rs.14,26,36,300/- (the above mentioned amount with interest), he had already deposited an amount of Rs.2,00,00,000/- and

further that he undertook to deposit amount of Rs.1,50,00,000/- before 15th day of each month starting from 15.02.2016. It was also undertaken by the applicant that he would pay the last installment to cover the interest amount so that the entire amount would stand deposited. On the basis of the said undertaking submitted by the applicant, on 11.01.2016, the trial Court allowed the bail application of the applicant, directing that he shall be released on bail on executing P.R. bond of Rs.1,00,000/- with solvent surety and on the condition that he shall deposit Rs.1,50,00,000/- every month in terms of the aforesaid undertaking and that he would remain present on every Wednesday and Thursday before the Crime Branch, EOW Nagpur, for interrogation.

3. Instead of abiding by the undertaking in terms of the order dated 11.01.2016 passed by the trial Court, on 9.2.2016, the applicant moved an application for modification of the said order. During the pendency of the said application, on 10.03.2016, the applicant moved Criminal Application No.178 of 2016 before a Division Bench of this Court , praying for quashing of the FIR under Section 482 of the Code of Criminal Procedure (Cr.P.C.). In this application, the applicant also prayed for a direction to quash the action of the State in

freezing his bank accounts. On 29.06.2016, the applicant withdrew the said application before the Division Bench of this Court, with liberty to apply for discharge in the event charge sheet was filed against him. Thereafter on 1.7.2016, the trial Court rejected the application for modification of order filed by the applicant, categorically holding that the applicant could not be permitted to offer property towards security in lieu of his undertaking to pay regular amounts every month.

4. On the very same day i.e. 1.7.2016, the applicant filed Criminal Application No. 459 of 2016, before this Court under Section 482 of the Cr.P.C. making the following prayers:-

> *"(a) Quash and set aside the order passed by the Special Court, Nagpur in Misc. Criminal Application No.350/2016 on1/7/2016, and be pleased to relax the condition imposed by the Special Court, Nagpur directing the applicant to deposit Rs.1.5 Crores before the 15th day of every month and to;*
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> *(b) in lieu of payment of amount in cash, the applicant be permitted to offer his immovable property i.e. MIDC Leasehold Plot No. D-12, D-13 & D-67 situated at Mouza Sonegaon (Seem), Nagpur MIDC, Hingana Road, Nagpur as a Security by making the same free from all encumbrances within a period of Three Months by lifting restrictions*

*imposed upon the applicant by the Special Court, Nagpur vide order dated 9/10/2015, passed in Misc. Criminal Application No.2472/2015 and to;*

*(c) defreeze all the bank accounts of the applicant and he be permitted to operate the same and to;*

*(d) direct that no coercive action be taken against the applicant till the decision of this application and to;*

*(e) grant any other relief found to be fit in the circumstances of the case.”*

5. On 18.08.2016, a learned Single Judge of this Court allowed the said application to the extent of prayer (c) pertaining to defreezing the bank accounts of the applicant and permission to him to operate the same. It is relevant that the applicant did not bring to the notice of the learned Single of this Court that an identical prayer for defreezing of bank accounts was also made by him in Criminal Application No. 178 of 2016, which he had withdrawn before the Division Bench of this Court. Being aggrieved by the said order of the learned Single Judge of this Court, the State filed Special Leave petition before the Hon’ble Supreme Court. On 7.9.2017 the Hon’ble Supreme Court granted leave in the Special Leave Petition and allowed the appeal of the State. The Hon’ble Supreme Court

noted that since the learned Single Judge of this Court was not apprised about the withdrawal of earlier application by the applicant wherein virtually same relief had been sought, it amounted to a manifest abuse of the process of law. On this basis, the Hon'ble Supreme Court set aside the order dated 18.08.2016 passed by the learned Single Judge of this Court whereby defreezing of bank accounts of the applicant was permitted. The Hon'ble Supreme Court further dismissed Criminal Application No. 459 of 2016 filed by the applicant before this Court. Therefore, the prayers made in the said application bearing Criminal Application No.459 of 2016 stood rejected in their entirety. The applicant filed a review petition before the Hon'ble Supreme Court, which was also dismissed on 24.10.2017.

6. Thereafter, the applicant filed another application dated 30.10.2017, before the trial Court for modification of its order dated 11.01.2016, whereby bail was granted to him on the conditions mentioned above. The prayers made in the said application read as follows:-

> *"(I) Suitably relax the condition inter alia directing the applicant to deposit Rs.1.5 crores before 15th day of every month as recorded in the order dated 11/01/2016 in*

*Misc. Criminal Application No.48/2016;*

*(II) Permit the applicant to offer immovable property bearing Plot No.D-12, D-13 and D-67 situate at Sonegaon (Seem) MIDC, Hingna road, Nagpur as a security in lieu of payment of Rs.1.5 crores per month;*

*(III) Permit the applicant to make a payment of Rs.1 crore with the non applicant within such time as this Hon'ble court may deem fit and proper;*

*(IV) Allow the application;*

*(V) Grant any other relief which this Hon'ble court may deem fit and proper in the facts and circumstances of the case in the interest of justice."*

7. The State also applied to the trial Court for cancellation of bail granted to the applicant in view of his failure to abide by the conditions stipulated in order dated 11.01.2016 passed by the trial Court. Both the applications were taken up together by the trial Court. On 27.11.2017, the trial Court passed a common order rejecting the application for modification filed by the applicant and allowing the application of the State, thereby cancelling bail granted to the applicant. The trial Court issued warrant of arrest against the applicant.

8. The applicant filed Criminal Appeal No. 589 of 2017

before this Court, challenging the said order. On 30.11.2017, a Division Bench of this Court refused to entertain the said appeal, in view of the fact that the Hon'ble Supreme Court had already dismissed Criminal Application No. 459 of 2016 filed by the applicant wherein similar prayers, including the prayer for submitting property in lieu of security, had been made. The Division Bench of this Court continued the protection granted to the applicant for a period of four weeks on the condition that he would deposit Rs.1,00,00,000/- before the competent authority, with a further direction to the applicant to report to the office of the respondent on every Saturday. The applicant filed Special Leave Petition before the Hon'ble Supreme Court challenging the said order of the Division Bench of this Court. On 8.1.2018, the applicant withdrew the said special leave petition before the Hon'ble Supreme Court with liberty to approach the trial Court for grant of regular bail.

9. On 18.01.2018, the applicant was arrested and since then he is in custody.

10. As per the liberty granted by the Hon'ble Supreme Court, the applicant filed an application for grant of bail before the trial Court. By order dated 17.03.2018, the trial Court

rejected the said application, holding that the applicant had been changing his stand frequently and his conduct was such that he did not deserve grant of bail. The trial Court found that the allegations against the applicant were of serious nature involving huge amount of public money and that, therefore, he did not deserve to be enlarged on bail. In the meanwhile, charge sheet and supplementary charge sheet were filed by the Police, wherein specific role was attributed to the applicant.

11. In this backdrop, the applicant has filed the present bail application.

12. Mr. S.V. Manohar, learned senior counsel along with Mr. D.V. Chavan, Advocate appeared on behalf of the applicant. It is submitted by the learned senior counsel that the applicant has been in custody for about six months and that the charge sheet as also the supplementary charge sheet have been filed and that now there is no reason why the applicant needs to be kept behind bars. It is submitted that a perusal of the charge sheet shows that even according to the respondent-State, the role attributed to the applicant is that the main accused have transferred huge amount in the account of the applicant. It is contended that in the charge sheet there is no allegation about

the applicant having duped innocent depositors and that there is no indication about the applicant being part of the financial fraud alleged to have been committed by the main accused. It is contended that the said amount, which according to the respondent comes to Rs.14,26,36,300/- along with interest, was invested by the main accused with the applicant and no intention could be attributed to the applicant of having duped innocent investors. It was submitted that at worst, the said alleged ill-gotten money stood transferred to the applicant and that in this situation the role attributed to the applicant was very minor and distinct from the alleged criminal actions of the main accused.

13. It was further contended that Section 3 of the MPID Act did not apply to the applicant at all because he was in no way connected with the financial establishment i.e. Wasankar Wealth Management Limited, which had allegedly, fraudulently defaulted in repayment of deposits. It was further contended that the applicant had already deposited a total of Rs.3,00,00,000/- and although he was unable to deposit amount of Rs.1,50,00,000/- every month in terms of undertaking given to the trial Court when he was granted bail on 11.01.2016, he was prepared to offer specific property as

security to the respondent-State, on the basis of which he deserved to be enlarged on bail. It was submitted that alleged seriousness of offences against the accused could not be the only basis for rejection of bail. It was also contended that even if the applicant had given the aforementioned undertaking, he could not be deprived of bail due to failure to adhere to the same, because such undertaking was given by the applicant under duress and when he was in custody. The learned senior counsel urged that the application for bail filed by the applicant deserved to be considered independent of earlier orders passed by the trial Court, this Court and the Hon'ble Supreme Court. Reliance was placed on judgment of the Hon'ble Supreme Court in the case of **Sanjay Chandra .vs. CBI – (2012) 1 Supreme Court Cases 40.**

14. On the other hand, while opposing the bail application, Mr. Sanjay Doifode, learned Additional Public Prosecutor appearing on behalf of the non-applicant-State, submitted that the offences registered against the applicant were serious. They involved financial fraud perpetrated by the applicant along with other accused on innocent depositors and the fraud committed by the accused in the present case was worth of several crores of rupees. It was submitted that the

money of the innocent depositors was found with the applicant and that he could not feign ignorance about the activities of Wasankar Wealth Management Ltd. and that the applicant was also equally involved in duping innocent depositors. It was submitted that the seriousness and extent of financial fraud in the present case was an important factor to be taken into consideration by the Court while dealing with the prayer for grant of bail made by the applicant. It was submitted that the applicant, from the very beginning had sought to change his stand, in order to escape custody. The applicant had indulged in abuse of the process of law, as noted by the Hon'ble Supreme Court, while rejecting Criminal Application No. 459 of 2016 filed by the applicant. It was submitted that in the said application a specific prayer had been made for permitting the applicant to offer specified immovable property as security in lieu of making payment in terms of the undertaking given by him. Therefore, according to the learned APP, the applicant could not be permitted to seek bail by offering the same property by way of security. The learned APP relied upon judgments in the case of **State of Bihar .vs. Amit Kumar – (2017) 13 Supreme Court Cases 751, Rajesh Ranjan Yadav .vs. CBI – (2007) 1 Supreme Court Cases 70 and Dr. Vinod Bhandari .vs. State of M.P. – 2015 ALL MR (Cri)**

**1236 (SC)** amongst others.

15. Having heard learned counsel for the parties, while considering question of grant of bail, in the present case the background facts enumerated above become significant. Although, the learned senior counsel appearing on behalf of the applicant is right in contending that individual liberty is a precious right that can be curtailed only in limited circumstances, it is equally important that the said right is considered in the context of the collective interest of the society at large. The learned senior counsel relied upon the judgment of the Hon’ble Supreme Court in the case of **Sanjay Chandra .vs. CBI** (supra) in support of his contentions, wherein the Hon’ble Supreme Court granted bail to the accused. But, grant or refusal of bail depends on facts and circumstances of each case.

16. The Hon’ble Supreme Court in the case of **Masroor .vs. State of U.P. – (2009) 14 Supreme Court Cases 286** has held as follows:-

> *“15. There is no denying the fact that the liberty of an individual is precious and is to be zealously protected by the courts. Nonetheless, such a protection cannot be*

> *absolute in every situation. The valuable right of liberty of an individual and the interest of the society in general has to be balanced. Liberty of a person accused of an offence would depend upon the exigencies of the case. It is possible that in a given situation, the collective interest of the community may outweigh the right of personal liberty of the individual concerned."*

Thus, it is evident that the collective interest of the society/community is also to be given due weightage while considering the question of grant of bail to an accused. A balance is to be achieved while deciding upon such question of grant or refusal of bail.

17. The present case is concerned with serious allegations against the accused regarding allurement and duping of innocent depositors and their moneys being fraudulently siphoned away. As per the charge sheet and the material on record, the allegations against the applicant pertain to an active role in siphoning away of such moneys of depositors to the tune of crores of rupees, thereby assisting the other accused in causing grave financial loss to innocent depositors by committing financial fraud of large proportions.

It has been held by the Hon'ble Supreme Court in the case of **State of Bihar .vs. Amit Kumar** (supra) that socio economic offences constitute a class apart and that they need to be visited with a different approach in the matter of bail because such socio economic offences have deep rooted conspiracies affecting the moral fiber of the society, causing irreparable harm.

18. A perusal of the record in the present case shows that sufficient material has been found against the applicant on the basis of which in the charge sheet, specific role has been attributed to the applicant in conspiring with the other accused for siphoning away of amount of more than Rs.9 Crores. At the time when the applicant was first arrested, it was found that the said amount along with interest was more than Rs.14 Crores. Thus, there is voluminous material placed on record by the respondent-State showing involvement of the applicant in the present case along with other accused, which has caused widespread financial loss to a number of innocent depositors. The applicant has been charged with having committed offences not only under the provisions of the IPC but also the provisions of the MPID Act. The role of the applicant cannot be said to be marginal, given the material placed on record.

19. It is not just the seriousness of the offences with which the applicant has been charged, but the manner in which the applicant has been approaching the trial Court, this Court and the Hon'ble Supreme Court is also a relevant factor. Although, it is the right of an individual to approach the Courts for relief and no fault can be found on that count, but the applicant in the present case has been making statements before the Court, resiling from them and suppressing facts from the Court while enjoying liberty from being placed behind bars. In fact, the Hon'ble Supreme Court while allowing the appeal of the State, by judgment and order dated 7.9.2017, found that the applicant had indulged in manifest abuse of the process of law while obtaining an order for defreezing of his bank accounts from the learned Single Judge of this Court.

20. The facts of the present case show that after being arrested on 04.01.2016, the applicant remained in custody only till 11.01.2016, when he was released on bail, on the basis of an undertaking given by him. The applicant never intended to abide by the said undertaking and he moved an application on 9.2.2016 itself, seeking modification of the order dated 11.01.2016 passed by the trial Court granting him conditional

bail. The conditions imposed in the said order were in terms of the undertaking given by the applicant himself. As per the undertaking, the applicant was to deposit amounts of Rs.1,50,00,000/- every month starting from 15.02.2016, but, he moved the application for modification of the order without making a single deposit. He pursued the said application and other applications filed before this Court, and it was only after the Hon'ble Supreme Court allowed the appeal filed by the State on 7.9.2017 and thereafter when the second round of an application for modification moved by the applicant before the trial Court culminated in dismissal of his special leave petition on 8.1.2018, that the applicant could be again arrested on 18.1.2018. The applicant effectively enjoyed bail without abiding by the undertaking given by him before the trial Court for a period between 11.01.2016 and 18.01.2018.

21. Along with the aforesaid facts, the finding of the Hon'ble Supreme Court in the order dated 7.9.2017 passed in the appeal filed by the State shows that the applicant indulged in manifest abuse of process of law by suppressing before the learned Single Judge of this Court that he had withdrawn an application making similar prayers before the Division Bench of this Court. In this situation, by the judgment and order dated

7.9.2017, the Hon'ble Supreme Court allowed the appeal of the State and dismissed Criminal Application No. 459 of 2016. This has an important bearing on the question of grant or refusal of bail to the applicant. In the said Criminal Application No.459 of 2016, the prayer clause of which has been quoted above, while praying for relaxation of conditions imposed by the trial Court at the time of granting bail by order dated 11.01.2016, the applicant specifically prayed for permission to offer immovable property i.e. MIDC Leasehold Plot Nos. D-12, D-13 and D-67 situate at mouza Sonegaon, Nagpur, MIDC Hingna Road, Nagpur, as security in lieu of deposit of cash deposits. As the Criminal Application No. 459 of 2016 was specifically dismissed by the Hon'ble Supreme Court by its judgment and order dated 7.9.2017 passed in Criminal Appeal No. 1580 of 2017, the said prayer for offering the immovable property by way of security in lieu of deposit of cash amounts for grant of bail stood rejected.

22. Thereafter, the applicant again applied for modification of order dated 11.01.2016 passed by the trial Court on 30.10.2017, wherein the aforesaid prayer for offering immovable property as security in lieu of deposit of cash amounts, was reiterated. Upon rejection of the said

application, the applicant moved this Court by way of appeal in which a Division Bench of this Court held that the appeal could not be entertained. It was in the special leave petition filed by the applicant challenging the said order that liberty was granted by the Hon'ble Supreme Court to the applicant to approach the trial Court for grant of bail. When the applicant approached the trial Court in pursuance of the said liberty, he again stated that he was ready to give the said property for security. The application was rejected by the trial Court and it is thereafter that the applicant has now approached this Court.

23. The aforesaid sequence of events clearly demonstrates that from the very beginning the applicant was not sincere about the undertaking given by him before the trial Court, on the basis of which order dated 11.01.2016 was passed by the trial Court granting him conditional bail. In order to resile from his undertaking , the applicant moved various applications and petitions before the trial Court and this Court, carrying them in appeal before the Hon'ble Supreme Court, repeatedly making the prayer of permission to offer the said immovable property as security in lieu of deposit of amounts, which he had undertaken when the order dated 11.01.2016 was passed. As noted above, the said prayer of offering

immovable property as security stood specifically rejected by order of the Hon’ble Supreme Court dated 7.9.2017 passed in Criminal Appeal No.1580 of 2017. Despite the aforesaid facts, while pressing the instant application for bail, the applicant has again reiterated his prayer for grant of bail on the condition of offering the said immovable property as security in lieu of deposits.

24. The learned senior counsel has raised twofold contentions in support of the said prayer of the applicant. Firstly, that the distinction between the offer made initially regarding the said immovable property and the offer now made in respect of the said property was that earlier the property was encumbered and that now the applicant had taken steps to ensure that the said immovable property was unemcumbered. According to the learned senior counsel appearing for the applicant, this was a significant subsequent development which merited consideration. Secondly, the learned senior counsel submitted that when the said immovable property was earlier offered as security and such prayer stood rejected, by order passed by the Hon’ble Supreme Court on 7.9.2017, the applicant had been behind bars only for about six days, while now when the applicant has offered the

said property for security, he has already been in custody for about six months. It was further contended that as per the valuation report placed on record, the aforesaid immovable property offered by the applicant was worth more than the total amount allegedly siphoned away by the applicant in connivance with the main accused and that it could certainly be kept as security by the respondent-State, on the basis of which the applicant could be granted bail.

25. It is clear from the facts of the present case, particularly judgment and order dated 7.9.2017 passed by the Hon’ble Supreme Court in Criminal Appeal No. 1580 of 2017 that the ground on which the applicant is seeking bail in the present application by offering the said immovable property for security, stood rejected by the said judgment and order of the Hon’ble Supreme Court. Another relevant aspect of the present case is that the facts on record show the applicant as being a person approaching the Court with unclean hands. The applicant never intended to abide by the undertaking given by him in the first place, on the basis of which he enjoyed bail from 11.01.2016. He suppressed facts from the learned Single Judge of this Court, thereby obtaining an order of defreezing his bank accounts, which later stood set aside by the aforesaid

judgment and order of the Hon’ble Supreme Court. Despite specific prayer of offering the said immovable property as security being rejected by the Hon’ble Supreme Court, the applicant has been reiterating the said prayer repeatedly and hence, such an applicant does not deserve exercise of discretion by the Court in his favour while considering his bail application.

26. Apart from this, the distinction sought to be made on behalf of the applicant to the effect that the said immovable property could be accepted as security for grant of bail as it had become unencumbered, does not carry his case any further because in Criminal Application No.459 of 2016, the applicant had specifically prayed for permission to offer the very same property as security by making it free from all encumbrances, which was rejected by the Hon'ble Supreme Court by dismissing the said application. Even otherwise, the respondent-State has specifically pointed out that the said immovable property consists of leasehold plots taken on lease from the Maharashtra Industrial Development Corporation (MIDC) and that such leasehold property cannot be kept as security with any Court, because the lessee does not hold any title as owner in the said property. This Court does not

propose to examine the merits of the said contention raised on behalf of the State, in the backdrop of the fact that the offer in respect of the very same property as security made in Criminal Application No. 459 of 2016 stood specifically rejected by the order dated 7.9.2017 passed by the Hon'ble Supreme Court.

27. As regards, the applicant having undergone about six months of incarceration and that being a distinction from the earlier situation when the applicant had undergone only about six days behind bars, the prayer for grant of bail cannot be granted only the basis of the said fact. The present case concerns serious financial fraud committed by the accused, including the applicant herein which affected large number of innocent depositors. The fact that the applicant has remained behind bars for about six months cannot be the only consideration while exercising discretion. Other factors are also significant which include the possibility of the applicant influencing the witnesses by threat, inducement and other means and the possibility of protracting and delaying the trial upon being released on bail. It is no doubt true that the if the trial is not conducted in an expeditious manner and the applicant is kept in jail, it would be a matter of serious concern. But the same can be taken care of by appropriate directions for

expediting the trial. In the case of **Dr. Vinod Bhandari .vs. State of M.P.** (supra), while confirming the order of the High Court declining bail, despite the accused therein having been in custody for about one year, the Hon’ble Supreme Court directed that steps could be taken for the trial to be expedited so that the right of the accused for speedy trial was taken care of. Thus, merely because the applicant has been in custody for about six months cannot be the sole ground for grant of bail to the applicant in the present case.

28. It is also relevant that in the present case the applicant *prima facie* has no means by which he can account for the huge amount of money siphoned of fraudulently from innocent depositors. The learned senior counsel for the applicant relied upon the provisions of the MPID Act to contend that the Court could take action under Section 8 for attachment if it found that there were *mala fide* transfers made in favour of the applicant. But, it was fairly conceded that the applicant had no property that could be attached by the Court by exercising the power under the said provision. In any case, that is a matter which the trial Court could consider.

29. In view of the above, this Court is unable to accept

the contentions raised on behalf of the applicant to exercise discretion in his favour for grant of bail. Accordingly this application is dismissed. But, in the facts and circumstances of this case, the trial Court is directed to expedite the trial.

**(Manish Pitale, J. )**

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**halwai/p.s.**