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

CRIMINAL APPLICATION (ABA) NO.617/2019
Shri Prakash s/o Shyamsundar Sharma
..vs..
State of Mah., thr. PSO PS Dhantoli, Nagpur

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

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Ms Ashwini Kathane, Counsel for the Applicant.
Shri N.B.Jawade, Addl.P.P. for the State.

CORAM : V.M.DESHPANDE, J.
DATED : SEPTEMBER 30, 2019.

1. Heard learned counsel Ms Ashwini Kathane for the applicant and learned Additional Public Prosecutor Shri N.B.Jawade for the State.

2. Learned counsel Ms Ashwini Kathane for the applicant, submitted that the present applicant is unnecessarily dragged in Crime No.181/2019 registered with Dhantoli Police Station, District Nagpur for offences under Sections 420, 406, 409, 120B, 465, 467, 468, 475, and 477A of the Indian Penal Code read with Section 3 of the Maharashtra Protection of Interest of Depositors (in Financial Establishments) Act, 1999 and under Sections 65 and 66B of the Information and Technology Act, 2000. Learned counsel made elaborate submissions on the basis of an Auditor's Report of Shrikant Shridhar Supre, a Special Auditor appointed for Navodaya Urban Cooperative Bank Limited to show that the applicant is not having any control in respect of banking transactions

and his name is being falsely implicated in crime. It is also her submission that there is nothing to show that the applicant received any amount. It is also her submission that the applicant is a daily vendor and his daily income is between Rs.300/- and Rs.400/-. It is also her submission that in pursuance to order passed by this Court on 9.9.2019, the applicant attended police station and joined investigation. She, therefore, submitted that the application of the applicant be allowed and *interim* order be confirmed.

3. Learned Additional Public Prosecutor Shri N.B.Jawade for the State, filed a detailed reply on behalf of Police Inspector, Economic Offence Wing, Crime Branch, Nagpur, since after registration of crime, investigation was entrusted by higher-up of police department to the said wing. It is stated in the reply that though the applicant attended the said Economic Offence Wing, as directed by this Court, he only gave evasive replies. Mere attendance to the Economic Offence Wing by the applicant was not a reason for granting *ad interim* bail in favour of the applicant. It was expected from the applicant to extend full cooperation to Investigating Officer, however the reply, which is on affidavit by Prashant Mane, Police Inspector, Economic Offence Wing, Crime Branch, Nagpur City, shows otherwise.

4. Though it is case of the applicant that he is a petty vendor and his earning is only Rs.300/- to Rs.400/-, in paragraph No.7 of the reply on behalf of the

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prosecution, it is stated that the Investigating Officer obtained details from the Destination Travel and Vacations Planner, Dhantoli, Nagpur which show that the applicant is a frequent flier of Domestic as well as International Destination. In the reply, it is stated that the applicant has flown for 25 times within domestic destination and some of these visits were with co-accused of the present crime. Passport of the applicant, as per the reply, shows that the applicant visited countries Sri Lanka and Nepal. This particular investigation clearly belies the applicant that he is petty vendor and his earning is Rs.300/- to Rs.400/-. Not only that, the Investigating Officer stated on oath before this Court that the applicant was found to be flying with co-accused in the present crime, that is a very serious matter.

5. The reply shows that for one of *modus operandi* of bank officials and Board of Directors of the Bank is to withdraw amount as bank expenses, procedure is explained by Investigating Officer in paragraph No.3 of the reply. Total Rs.3.5 Crores were withdrawn as banking expenses. Out of that, it is shown that the present applicant received Rs.5.00 lacs on voucher under his signature from account which was meant for bank expenses. There was no occasion for him to receive Rs.5.00 lacs towards banking expenses when even according to the applicant, he is not employee or concern with the said bank.

6. According to the reply, the applicant was

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granted overdraft facility on 2.6.2015 and account was created i.e. A/c No.100520216000001 from Besa Beltarodi Branch of Navodaya Urban Cooperative Bank Limited. Statements of loan accounts show that the applicant has withdrawn Rs.1,06,36,000/- in cash on 2.6.2015. Similarly, on the very same day, at Mahal Branch of Navodaya Urban Cooperative Bank Limited, another loan account was created in the name of the applicant i.e. A/c No.100920216000011 and Rs.1,08,52,500/- were withdrawn in cash on 2.6.2015. The reply shows that during the course of investigation, statement of Branch Manager, Besa Beltarodi Branch, Navodaya Urban Cooperative Bank Limited, was recorded which clearly shows that the said Manager was on leave from 2.6.2015 to 4.6.2015. On 2.6.2015, co-accused Niti Patkar was discharging her duties as Branch Manager and she processed overdraft proposal of the applicant and handed over cash to the applicant.

7. All these recitals in the reply are supported by documentary evidence in possession of the Investigating Officer which show that at least at this stage the applicant cannot be said to be an innocent as tried to be portrayed by his counsel.

8. Petty depositors who deposited their amounts with Navodaya Urban Cooperative Bank Limited have already lost their amounts and it is reported to this Court that the said Bank is now under liquidation. It appears that the applicant in connivance with bank officials and directors played a definite role to

cheat petty depositors to swindle their hard earned money.

9. The Honourable Apex Court is of view that economic offence is committed to gain personal profit, as it could be seen in the case of **<u>the State of Gujarat vs. Mohanlal Jitamalji Porwal</u>**, reported at **<u>(1987)2 SCC 364</u>**. The Honourable Apex Court has ruled in the said matter that the entire community is aggrieved if the economic offenders who ruin the economy of the State are not brought to book. It is further observed in the said reported case that a murder may be committed in the heat of moment upon passions being aroused. However, an economic offence is committed with cool calculation and deliberate design with an eye on personal profit regardless of the consequence to the community.

10. The Honourable Apex Court in one of most recent decisions, in Criminal Appeal No.1340/2019 decided on 5.9.2019 in the case of **<u>P.Chidambaram vs. Directorate of Enforcement</u>**, in paragraph No.81 has ruled as under:

> *"Grant of anticipatory bail at the stage of investigation may frustrate the investigating agency in interrogating the Accused and in collecting the useful information and also the materials which might have been concealed. Success in such interrogation would elude if the Accused knows that he is protected by the order of the court. Grant of*

> *anticipatory bail, particularly in economic offences would definitely hamper the effective investigation. Having regard to the materials said to have been collected by the Respondent-Enforcement Directorate and considering the stage of the investigation, we are of the view that it is not a fit case to grant anticipatory bail."*

11. In view of the law aforesaid laid down by the Honourable Apex Court, full opportunity is required to be given to Investigating Officer.

12. The discussion, as made in preceding paragraphs, leads me to pass following order:

ORDER

(a) The criminal application is rejected and disposed of accordingly.

(b) *Interim* order granted by this Court on 9.9.2019 stands vacated.

(c) It is expected from Investigating Officer to proceed with the matter in accordance with law.

JUDGE

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