

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

Criminal Application (BA) No. 1022 of 2018

Pramod S/o Kajodimal Agrawal

Vs.

The State of Maharashtra through P.S. Dhantoli, Nagpur.

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

Court's or Judge's orders

Mr. R.M. Daga, Advocate for applicant.
Mr. A.D. Sonak, APP for non-applicant / respondent.

CORAM : MANISH PITALE, J.

DATED : JUNE 03, 2019

The present application for grant of bail has been filed by the applicant, claiming *inter-alia* that he has already remained in custody for substantial period of time, which is much more than half the maximum amount of sentence that could be imposed against him and as against certain offences he has been in custody for more than the maximum sentence that could have been imposed upon him.

2. In view of the aforesaid specific stand taken on behalf of the applicant, this Court had directed the Superintendent of Central Prison, Nagpur to submit a report as regards period already undergone by the applicant.

3. The applicant is an accused in FIR dated 20/04/2009, wherein initially offences under Sections 406 and 420 R/w 34 of the Indian Penal Code were registered against the applicant.

4. The allegation against the applicant was that being President of a particular society he had lured the persons to invest amounts by making false promises of handsome return on such investment. It is alleged that the amounts deposited by such gullible persons were not returned with the handsome return promised by the applicant. Chargesheet in the present matter was filed on 29/1/2015, wherein further offences under Section 409 of the IPC and under Section 3 of the Maharashtra Protection of Interest of Depositors (In Financial Establishments) Act, 1999 were also added. The applicant was arrested on 24/04/2009 after registration of FIR. He applied for regular bail but the said application was rejected by this Court and he was granted temporary bail for only 45 days and that too upon imposing certain conditions by order dated 06/05/2010. Thereafter, the applicant applied for extension of the period of temporary bail, but, by order dated 27/6/2011, the said application was rejected and this Court observes that the cases pending against the applicant before Courts below ought to be expedited. On a challenge raised by the applicant against the aforesaid orders passed by this Court, the Hon'ble Supreme Court granted interim protection to the

applicant, but, eventually, the Hon'ble Supreme Court disposed of the Special Leave Petition filed by the applicant by permitting the applicant to approach the Trial Court for grant of regular bail and in the meanwhile granted him protection from arrest for a further period of two weeks from 14/09/2012.

5. In this backdrop, the applicant surrendered on 13/01/2013. It is undisputed that he has continued in custody from the said date.

6. On the application for regular bail being moved by the applicant, the Trial Court has rejected the same by order dated 16/01/2018, mainly on the ground that offence under Section 409 of IPC is also registered against the applicant, wherein maximum sentence of life imprisonment can also be imposed. It was also recorded by the Trial Court in its order that the applicant does not deserve grant of regular bail, as charges levelled against him are serious and possibility of his absconding cannot be ruled out.

7. The learned counsel for the applicant has invited attention of this Court to the report submitted by the Superintendent of Central Prison, Nagpur in pursuance of the above mentioned specific directions given by this Court by order dated 02/11/2018. A perusal of aforesaid report shows that till date the applicant has remained in custody for a period of about

7 years and 11 months. It is pointed out by the learned counsel for the applicant that except offence under Section 409 of IPC, as regards of the other offences in respect of which allegations have been made against the applicant, he has already undergone more than maximum sentence prescribed for such offences. In this backdrop, the learned counsel for the applicant has placed reliance on the Judgment / Order of the Hon'ble Supreme Court in the cases of **Virender Kumar Yadav Vs. Central Bureau of Investigation (2016) 14 Supreme Court Cases 99**, **Sharad T. Kabra Vs. Union of India 2018 ALL MR (Cri) 1392 (S.C.)** and **Rafiq Vs. State of Maharashtra (2018) 13 Supreme Court Cases 159**. On the basis of aforesaid Judgments / Orders of the Hon'ble Supreme Court, it is contended on behalf of the applicant that he deserves to be released on bail, for having already undergone about 7 years and 11 months in custody.

8. On the other hand, learned APP appearing for non-applicant State has contended that in the chargesheet offence under Section 409 of IPC has also been added which prescribes maximum punishment of life imprisonment. On this basis, it is contended that even if the applicant has been in custody for about 7 years and 11 months, the position of law relied upon by the applicant cannot come to his aid. On this basis, it is contended that the application deserves to be rejected.

9. Having regard to the contentions of rival parties, there is no dispute about the fact that the applicant has already remained in custody for 7 years and 11 months. A perusal of chargesheet shows that as regards offences alleged to have been committed by the applicant, except for Section 409 of IPC the maximum sentence provided for all the other offences is either 7 years or less. It clearly shows that the applicant has already undergone custody for a period more than maximum sentence that could be imposed for the said offences. The position of law relied upon by the learned counsel for the applicant shows that in such cases where the accused had already remained in custody for substantive period of maximum sentence that could be imposed or for period more than such sentence, bail ought to be granted. The learned counsel for the applicant has also relied on Section 436(A) of the Code of Criminal Procedure, which provides that when the accused have undergone detention for a period extending upto one-half of the maximum period of imprisonment specified for such offence, he ought to be released by the Court on personal bond with or without sureties.

11. The Sessions Court has emphasized on the fact that Section 409 of IPC prescribes maximum punishment of life imprisonment and that, therefore, the applicant is not entitled to grant of bail, despite

having undergone substantive period in custody. This is the tenor of the arguments raised on behalf of APP also. A perusal of aforesaid provision i.e. Section 409 of IPC shows that sentence that can be imposed under the aforesaid provisions is either 10 years imprisonment or extending up to life imprisonment. This clearly shows that the applicant having already undergone custody of about 7 years and 11 months has suffered incarceration for a substantial period of the sentence prescribed under Section 409 of IPC. Following the position of law laid down by the Hon'ble Supreme Court in the aforesaid Judgments / Orders relied upon by the learned counsel for the applicant and applying section 436(A) of the Code of Criminal Procedure to the facts of the present case, it becomes clear that the present application deserves to be allowed.

12. In so far as the apprehension on behalf of the non-applicant State about the possibility of the applicant absconding, specific conditions can certainly be imposed while releasing the applicant.

13. In view of above discussion, the present application is allowed.

14. The applicant is directed to be released on bail on furnishing PR bond of Rs.50,000/- (Rs. Fifty Thousand) with surety of like amount on further

condition that the applicant shall remain present before the Trial Court on each date till completion of the trial.

15. In the facts and circumstances of the present case, the Trial Court is directed to complete the trial as expeditiously as possible.

16. It is pointed out by the learned APP that this Court while granting temporary bail to the applicant had imposed the condition of deposit of passport with the Crime Branch. It is contended that the same condition may be imposed while allowing the present application. Hence, it is further directed that the applicant shall deposit his passport with the Crime Branch, if not already deposited as per the order dated 06/5/2010 passed by this Court, within a period of one week from today.

JUDGE