

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

Criminal Application (BA) No. 1049 of 2018

Sharatchandra Das

Vs.

State Through P.S. Khaparkheda, Nagpur Rural

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

Court's or Judge's orders

Mr. A.C. Dharmadhikari, Advocate for applicant.
 Mr. J.Y. Ghurde, APP for non-applicant.

CORAM : MANISH PITALE, J.

DATED : JUNE 25, 2019

The applicant herein is one of the nine accused persons as per FIR dated 24/09/2018, registered against them for the alleged offences under Sections 406, 420, 409 R/w 34 of the Indian Penal Code. The applicant was the Secretary and other accused persons were office bearers of Babasaheb Ambedkar Coal Mines Backward Class Workers Co-operative Society Ltd. The allegation against the accused persons and particularly against the applicant as he was the Secretary of the said Society, is that between the period 01/04/2012 to 31/03/2015, they had caused misappropriation of an amount of Rs.1,04,82,190/-, thereby committing the aforesaid offences.

2. The applicant was arrested on 28/09/2018. On 22/12/2018, this Court granted temporary bail to

the applicant on following conditions.

“i. The applicant is enlarged on temporary bail up to 30/01/2019. Within this period, he shall show this Court about the accounts in respect of expenditure etc. of the amount of approximately Rupees One Crore.

ii. The Administrator / Receiver who is in possession of the accounts / entire record shall co-operate the applicant / accused Sharatchandra Das.

iii. The applicant / accused shall produce the copies of all the relevant record before this Court showing that he has not misappropriated any amount.

iv. The applicant be released on temporary bail till 30/01/2019 on furnishing PR bond in the su of Rs.50,000/- with one solvent surety in like amount.

v. On 30/01/2019, the applicant shall remain present before this Court with all satisfactory documents / explanations. If he fails to satisfy this Court about expenditure etc. of approximate amount of Rupees One Crore, then he shall surrender before the jail authorities.”

3. Thereafter, the said temporary bail granted to the applicant was continued and it has operated till date.

4. The learned counsel for the applicant contended that the FIR pertaining to the said alleged offences was filed on 24/09/2018 for the period 01/04/2012 to 31/03/2015, thereby showing the FIR was belated. It is further submitted that the allegation of misappropriation could be examined and can be

enquired into on the basis of documents already available with the investigators, particularly the record pertaining to the said Society, as also the documents that would be available with the Auditor of the Society. It was further pointed out that a Receiver stood appointed on the said Society on 06/05/2015 and that the entire record was in the custody of the said Receiver, thereby indicating that when the applicant was co-operating the investigation, there was no necessity to continue his custody. It was further pointed out that the applicant had been behind bars for about three months already and that no purpose would be served by putting him behind bars again. It was further pointed out that after temporary bail was granted by this Court on 22/12/2018, the applicant had co-operated with the investigation and he had made himself available before the police authorities as well as the Auditor. As per report dated 05/03/2019, it was reported that the applicant had not been able to satisfy the doubts and objections raised by the Auditor. It was submitted that the said approach of the investigators was unreasonable and that when the applicant was co-operating fully with the investigation and he undertook to do so in future, the present application deserved to be allowed.

5. On the other hand, the learned APP appearing on behalf of the non-applicant State submitted that this case concerned misappropriation of

huge amount of money and that being Secretary of the Society, the applicant was the main accused. It was submitted that since the applicant had failed to satisfy the Auditor regarding doubts and objections, it was necessary that the present application be rejected so that the applicant could be taken into custody again and thorough investigation could be undertaken.

6. A perusal of material on record shows that the FIR was filed on 24/09/2018, pertaining to the alleged misappropriation that took place between the period 01/04/2012 to 31/03/2015. It appears that after the appointment of the Receiver in the year 2015, it took more than three years for such misappropriation to be noticed, resulting in registration of aforesaid FIR. In the FIR, not only the applicant was made an accused but, all office bearers were shown as accused. But, the investigators appear to be of the opinion that being the Secretary of the Society, the main accused is the applicant and it is he who would be able to explain as to in what manner such a huge amount stood allegedly misappropriated.

7. The nature of the allegation in the present case indicates that the evidence against the accused persons would predominantly be documentary in nature and that it would take expertise of the Auditors and specialists in accounts to nail the accused. The applicant on his part on the grant of temporary bail

claims to have co-operated with the investigation and explained in his own way the doubts / objections regarding the reconciliation of accounts. It appears that the Auditor and the investigators are not satisfied with the same and that they wish to further investigate into the matter.

8. It is also undisputed that Receiver stood appointed on the Society in the year 2015 itself and that, therefore, it is the Receiver who is in possession of the entire accounts and records of the Society. In this situation, the investigators ought not have any difficulty in taking the custody of the entire record and also to take such relevant portion of the record available with the Auditor pertaining to relevant period, so that detailed investigation into the matter could be conducted.

9. In view of the above, it is difficult to understand as to how further custody of the applicant would assist the investigators, as long as the applicant co-operates with the investigation. Thus, he can be released by putting certain conditions for grant of bail. By keeping the applicant behind bars would perhaps not serve any purpose. Therefore, this Court is of the opinion that the present application deserves to be allowed.

10. In view of the above, the application is

allowed on the following conditions.

(a) The applicant shall be released on bail on furnishing PR bond of Rs.50,000/- with surety of like amount.

(b) The applicant shall co-operate with the investigation.

(c) The applicant shall attend Police Station Khaparkheda, Nagpur Rural once in a week i.e. on every Sunday between 10:00 A.M. to 5:00 P.M., till filing of chargesheet.

(d) The applicant shall not tamper with the evidence or influence the witnesses.

11. The application is allowed in above terms.

JUDGE