IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

BAIL APPLICATION NO.544 OF 2020

RIZWAN MOHAMMAD CHAMAN

VERSUS

THE STATE OF MAHARASHTRA

...

Mr. R.S. Deshmukh, Senior Counsel instructed by Mr. D.R. Deshmukh, Advocate, for the applicant

Mr. S.B. Narwade, APP for the respondent

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CORAM : SMT. VIBHA KANKANWADI, J.

DATE : 19th MARCH, 2021.

ORDER :

1 Present applicant came to be arrested in connection with Crime No.434/2019 registered with Jinsi Police Station, for the offence punishable under Section 420, 406, 120-B of the Indian Penal Code, 1860 and under Section 3 and 4 of the Maharashtra Protection of Interest of Depositors (in Financial Establishments) Act, 1999. Present application has been filed under Section 439 of the Code of Criminal Procedure, 1973.

2 Heard learned Senior Counsel Mr. R.S. Deshmukh instructed by learned Advocate Mr. D.R. Deshmukh for the applicant and learned APP Mr.

S.B. Narwade for the respondent.

3 It has been vehemently submitted by learned Senior Counsel Mr. R.S. Deshmukh instructed by learned Advocate Mr. D.R. Deshmukh for the applicant that one Pathan Anwar Khan Ismail Khan had lodged said report on 22.11.2019 contending that he was induced by the present applicant to invest his amount in Evergreen Business Solution (OPC) Pvt. Ltd. and had promised to double the amount within a certain period. Perusal of the First Information Report would show that he contends that time and again he has made transfers of funds/amounts in the account of the said company through net banking. He also says that he had received certain amount from the applicant. He then says that he had transferred certain amount in the account of the present applicant kept with Axis Bank, in the name of the wife of present applicant in various banks, of which account number was provided by them. It has been stated in the FIR that till 13.11.2018 he had received amount of Rs.3,00,000/-. However, thereafter when he did not receive any amount he had made inquiry and came to know that he has been cheated. Therefore, for establishing an offence under Section 420 of the Indian Penal Code when cheating since inception is the main criterion or ingredient that itself is absent. Now, the investigation is over and charge sheet is filed before the Special Judge vide Special Case No.161/2020. Therefore, further physical custody of the applicant is no longer required. There is another

offence registered against the present applicant with Jaipur Police Station in the State of Rajasthan, however, he has been released on bail. Photo copy of the order dated 01.06.2020 passed by the Special Judge (fake currency cases) and Additional District and Sessions Judge, Jaipur city has been produced and made available. It has been alleged that the present applicant has received the amount of Rs.1,43,69,500/-. Ingredients of Section 406 of the Indian Penal Code have not been made out. Now, there is settlement between the informant and the applicant as well as other investors. Affidavit in support of the prayer for regular bail filed by them was produced before learned Special Judge, Aurangabad. The wife of the present applicant was made as an accused No.2 and she has also been released on bail, in view of the said settlement. Under such circumstance, the applicant deserves to be released on bail. Further, if we see the chronology of transactions those have been given, it says that the transactions took place in the month of August, 2018 to December, 2018. But still for about a year there was no grievance made by the informant stating that he has been cheated. All the necessary documents are with the police and in the form of charge sheet they have been produced on record. Therefore, further physical custody is not required.

4 Per contra, the learned APP strongly opposed the application and an affidavit-in-reply has also been filed by Police Inspector Mr. V.M. Kendre attached to Jinsi Police Station, Aurangabad. It has been stated in the

affidavit that though the applicant is coming with a case that there is some settlement between him and the informant, yet, informant was not the only person who has been cheated. There are other persons, who had invested amount with the applicant and they have not received their amount back from the applicant. In fact, if the settlement is after taking cognizance of the offence even under M.P.I.D. Act, then such settlement cannot be looked into, taking into consideration the offence being economic offence and also anti social. Two of the accused persons are still absconding viz. Mohd. Jiyaullah Abdul Aziz and Sayyed Anis Sayyed Ahmed. Even the present applicant was absconding for a considerable time from the registration of the crime till his arrest on 11.01.2020. If he is released on bail, then possibility of he getting absconding cannot be ruled out. The statements of witnesses recorded between 26.12.2019 till 20.01.2020 have been produced on record showing that various other persons had also invested their amount with the applicant and they have not received their amount back. The applicant does not deserve any sympathetic approach.

5 At the outset, it is to be noted that a person invests his hard earned money just with a view that he should get more returns. There are various Government agencies, which are accepting the amount as savings, apart from the banks. The banks are always governed by the rules and regulations. Still there are certain banks, which have suffered losses and

were required to be wound up. The sufferer is the investor. Time and again, the Government as well as the Reserve Bank of India are issuing advisories to the people that they should beware about investing their hard earned money with such persons who have not registered their business or the business is not secured. Still it appears that people fall in the representations made to them and in view of earning a net return they part with their hard earned money. In order to protect such investors, M.P.I.D. Act was introduced and when cognizance of an offence has been taken under the provisions of said Act, then larger interest of the public is required to be taken. So also, as regards economic offences are concerned, in **P. Chidambaram vs. Directorate of Enforcement, (2019) 9 SCC 24**, following observations are made.

> "67. Ordinarily, arrest is a part of procedure of the investigation to secure not only the presence of the accused but several other purposes. Power under Section 438 Cr.P.C. is an extraordinary power and the same has to be exercised sparingly. The privilege of the pre-arrest bail should be granted only in exceptional cases. The judicial discretion conferred upon the court has to be properly exercised after application of mind as to the nature and gravity of the accusation; possibility of applicant fleeing justice and other factors to decide whether it is a fit case for grant of anticipatory bail. Grant of anticipatory bail to some extent interferes in the sphere of investigation of an offence and hence, the court must be circumspect while exercising such power for grant of anticipatory bail. Anticipatory bail is not to be granted as a matter of rule and it has to be granted only when the court is convinced that exceptional circumstances exist to resort to that extraordinary remedy.

70. We are conscious of the fact that the legislative intent behind the introduction of Section 438 Cr.P.C. is to safeguard the individual's personal liberty and to protect him from the possibility of being humiliated and from being subjected to unnecessary police custody. However, the court must also keep in view that a criminal offence is not just an offence against an individual, rather the larger societal interest is at stake. Therefore, a delicate balance is required to be established between the two rights - safeguarding the personal liberty of an individual and the societal interest. It cannot be said that refusal to grant anticipatory bail would amount to denial of the rights conferred upon the appellant under Article 21 of the Constitution of India."

6 In the case of **P. Chidambaram vs. Directorate of Enforcement** (supra) the Hon'ble Apex Court has further observed thus -

76. Power under Section 438 Cr.P.C. being an extraordinary remedy, has to be exercised sparingly; more so, in cases of economic offences. Economic offences stand as a different class as they affect the economic fabric of the society. In Directorate of Enforcement v. Ashok Kumar Jain, (1998) 2 SCC 105, it was held that in economic offences, the accused is not entitled to anticipatory bail.

78. Observing that economic offence is committed with deliberate design with an eye on personal profit regardless to the consequence to the community, in State of Gujarat v. Mohanlal Jitamalji Porwal and others, (1987) 2 SCC 364, it was held as under -

> "5. ….The entire community is aggrieved if the economic offenders who ruin the economy of the State are not brought to book. A murder may be committed in the heat of moment upon passions being aroused. An economic offence is committed with cool calculation and deliberate design with an eye on personal profit regardless of the consequence to the community. A disregard for the interest of the community can be manifested only at the cost of forfeiting the trust and faith of the community in the system to administer justice in an even-handed manner without fear of criticism from the quarters which view white collar crimes with a permissive eye unmindful of the damage done to the national economy and national interest….."

79. Observing that economic offences constitute a class apart and need to be visited with different approach in the matter of bail, in Y.S. Jagan Mohan Reddy v. CBI, (2013) 7 SCC 439, the Supreme Court held as under :-

> "34. Economic offences constitute a class apart and need to be visited with a different approach in the matter of bail. The economic offences having deep-rooted conspiracies and involving huge loss of public funds need to be viewed seriously and considered as grave offences affecting the economy of the country as a whole and thereby posing serious threat to the financial health of the country.
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> 35. While granting bail, the court has to keep in mind the nature of accusations, the nature of evidence in support thereof, the severity of the punishment which conviction will entail, the character of the accused, circumstances which are peculiar to the accused, reasonable possibility of securing the presence of the accused at the trial, reasonable apprehension of the witnesses being tampered with, the larger interests of the public/State and other similar considerations."

> 81. 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.

Though these observations are in respect of anticipatory bail, they are equally applicable to regular bail.

7 Here, in this case, in the FIR, the informant has stated that he had parted with amount of Rs.1,46,69,500/-. His friend Ahmed Khan Yakub Khan was cheated for Rs.2,70,000/-. After the said FIR was registered, statements of other witnesses were also taken and it was revealed that the applicant has cheated other persons also, whose statements have been recorded. The said amount had gone up to Rs.1,49,17,750/-. It has been tried to be submitted on behalf of the applicant that Sections 3 and 4 of M.P.I.D. Act are not attracted. We are required to consider the prima facie case and it appears from the statements of witnesses what amount they had given to the applicant and in pursuant to the representation made by the applicant to them was “deposit”. Now, it has not been brought on record, as

to how much amount has been paid by the present applicant to certain persons by way of settlement. Merely by making payment of certain persons only we cannot come to a conclusion that, that settlement is sufficient to absolve him. Anyway that alleged settlement is after the cognizance of the offence was taken. In such kind of offences it is always treated that such offence is against public at large. Except the fact that applicant was arrested on 11.01.2020 and he is in jail till today, there is other point, which would be in his favour. Present applicant has not invoked Section 436-A of the Cr.P.C. . Further, even if for the sake of argument it is taken that he can approach the Court by taking benefit of Section 436-A of Cr.P.C., yet it would be in the discretion of the Court to grant such application.

8 As regards cheating from inception is concerned, certain facts of a case may disclose that everything was going smoothly till a particular period. Here, in this case also, the informant is saying that he got amount of Rs.3,00,000/- from the applicant, but if we consider the statements of the witnesses, then it can be seen that many of them have not got any amount from the applicant. Therefore, it would be for the Trial Court to consider on the basis of the final evidence as to whether there was intention to cheat since inception or not. Taking into consideration the magnitude of the offence, it is against the public at large, many witnesses have been affected, cheating is to the extent of huge amount and the principle that in economic

offences the Court should be slow in granting bail, so also, the fact that the applicant appears to have absconding for a considerable period, he does not deserve to be released on bail. Hence, his application stands rejected.

(Smt. Vibha Kankanwadi, J.)

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