IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

BAIL APPLICATION NO. 770 OF 2021

Deepak s/o Kedu Parkhe … Applicant
Versus
The State of Maharashtra … Respondent

….

Mr. M. P. Bhaskar, Advocate for applicant
Mr. S. N. Morampalle, APP for respondent

….

CORAM : R. G. AVACHAT, J.

RESERVED ON : 22nd NOVEMBER, 2021
PRONOUNCED ON : 03rd DECEMBER, 2021

PER COURT :-

. This is an application for bail. The applicant has been arrested in connection with C.R. No. 187/2014, registered with Jawahar Nagar Police Station, Taluka and District Aurangabad, for the offences punishable under Sections 420, 406, 465, 467, 468, 471, 120B, 107, 109, 114 read with Section 34 of Indian Penal Code and under Section 66-D of Information Technology Act, 2000 and under Sections 4, 5 and 6 of Price Chits and Money Circulation Scheme (Banning), Act, 1978 and under Sections 3 and 4 of the Maharashtra Protection of Interest of Depositors (In Financial Establishments) Act, 1999.

2. Heard.

Learned Advocate for the applicant would submit that the applicant has been behind the bars (since July-2014) for more than half of the term of imprisonment provided for the offences alleged to have been committed by him. According to him, the offence punishable under Section 467 I.P.C. is not made out. All the co-accused have already been enlarged on bail. Although the prosecution claims it to be a case of involvement of not less than Nine Crores of rupees, the amount involved is, in fact, not more than 1.7 Crore rupees. The movable and immovable property belonging to the applicant seized by the prosecution agency is worth more than One Crore. The applicant has been granted bail in other crimes. He has two minor children to look after them. Trial is not likely to be over in the near future. 100 witnesses have been cited by the prosecution.

The learned Advocate has referred to Section 436-A of the Code of Criminal Procedure and relied on the following authorities:-

(i) Bhim Singh vs. Union of India and others – Supreme Court Writ Petition(s) (Criminal) No (s). 310 of 2005;

(ii) Sanjay Chandra vs. CBI – 2011 DGLS(SC) 935;

(iii) Babanrao Tukaram Ranjane vs. State of Maharashtra – 2006(2) Bom.C.R.(Cri.) 40;

(iv) Kirtibhai Madhavlal Joshi & Ors vs. State of Gujarat – 2006 DGLS (SC) 270.

The learned Advocate, ultimately, urged for grant of bail.

3. The learned APP would, on the other hand, submit that it is an economic offence. Over hundred of persons have invested their hard and money. They have nothing been paid back. It is not only crime committed by the applicant. There are five other crimes registered against him. The learned APP would further submit that the trial is underway and likely to be over, shortly. He, therefore, urged for rejection of the application.

4. Section 436-A of the Code of Criminal Procedure, reads as under:

> ***"436-A. Maximum period for which an undertrial prisoner can be detained.*** *- Where a person has, during the period of investigation, inquiry or trial under this Code of an offence under any law (not being an offence for which the punishment of death has been specified as one of the punishments under that law) undergone detention for a period extending up to one-half of the maximum period of imprisonment specified for that offence under that law,*

> *he shall be released by the Court on his personal bond with or without sureties:*
>
> *Provided that the Court may, after hearing the Public Prosecutor and for reasons to be recorded by it in writing, order the continued detention of such person for a period longer than one-half of the said period or release him on bail instead of the personal bond with or without sureties:*
>
> *Provided further that no such person shall in any case be detained during the period of investigation, inquiry or trial for more than the maximum period of imprisonment provided for the said offence under that law."*

5. In the case of ***Sanjay Chandra*** *(supra)* the Hon'ble Supreme Court has observed thus:

> *"(B) Indian penal code, 1860 – Sections 420-B, 468, 471 & 109 – Criminal Trial – Bail – Object, purpose and relevant factors – Constitutional right of personal liberty – Charges qua cheating, forgery, abetment etc. besides, charges of illegal gratification and bribery – While rejecting bail applications of accused-appellants, Trial court as also High Court have listed factors, on which they think, are relevant for rejecting bail pleas – Those factors are, seriousness of charge; nature of evidence in support of charge; likely sentence to be imposed on conviction; possibility of interference with witnesses; objections of prosecution authorities; possibility of absconding from justice – In bail applications as laid down from earliest times that the object of bail is to secure appearance of accused at the time of his trial by reasonable amount of bail – Its object is neither punitive or preventative – Deprivation of liberty must be held to be a punishment, unless it can be required to ensure that accused will stand his trial when called for – Courts own more than verbal respect to the principle that punishment begins after conviction and that every man is deemed to be innocent*

> *until duly tried and duly found guilty – From earliest times, it was appreciated that detention in custody pending completion of trial could be cause of great hardship – Detention could be a necessity in some cases, but that; necessity is the test therein – Save in most extraordinary circumstances, deprivation of personal liberty only upon the belief that he will tamper with witnesses, if left at liberty, would be contrary to very concept of personal liberty enshrined in Constitution – Nor can it be permitted to refuse a bail as a mark of disapproval of former conduct whether the accused has been convicted for it or not, or to refuse bail to an unconvicted person to give him a taste of imprisonment as a lesson – Court had time and again has held that bail is the rule, rejection an exception – Refusal of bail is a restriction on personal liberty of an individual guaranteed under Article 21 of Constitution – Constitution of India, 1950 – Article 21 – Code of Criminal Procedure, 1973 – Sections 439, 437 & 88 – Prevention of Corruption Act, 1988 – Sections 13(2) & 13(1)(d). [Paras 13 to 16, 25 to 27]*"

6. The applicant is the Chairman and Managing Director of 'Super Power Investment Services India Ltd.' He lured hundreds of middle class persons to invest in his company, their hard-earned money, as against promise to pay them high returns. It is not the only crime he is alleged to have committed. He is a mastermind.

7. True, the applicant has been behind the bars for little over Seven years. However, the fact that it is an economic offence, cannot be lost sight of

8. It would not be desirable to make observations as regards merits of the case, since the trial is underway and about 40 witnesses have already been examined. Equal number of witnesses are yet to be examined.

9. Section 31 of the Code of Criminal Procedure, reads thus:

> "***31. Sentence in cases of conviction of several offences at one trial*** -
>
> *(1) When a person is convicted at one trial of two or more offences, the Court may, subject to the provisions of section 71 of the Indian Penal Code (45 of 1860), sentence him for such offences, to the several punishments prescribed therefor which such Court is competent to inflict; such punishments when consisting of imprisonment to commence the one after the expiration of the other in such order as the Court may direct, unless the Court directs that such punishments shall run concurrently.*
>
> *(2) In the case of consecutive sentences, it shall not be necessary for the Court by reason only of the aggregate punishment for the several offences being in excess of the punishment which it is competent to inflict on conviction of a single offence, to send the offender for trial before a higher Court:*
>
> *Provided that –*
>
> *(a) in no case shall such person be sentenced to imprisonment for a longer period than fourteen years;*
>
> *(b) the aggregate punishment shall not exceed twice the amount of punishment which the Court is competent to inflict for a single offence.*

> *(3) For the purpose of appeal by a convicted person the aggregate of the consecutive sentences passed against him under this section shall be deemed to be a single sentence.*"

10. The offence punishable under Section 467 I.P.C. is punishable with life imprisonment. In view of Section 57 of I.P.C. in calculating fractions of terms of punishment, imprisonment for life shall be reckoned as equivalent to imprisonment for twenty years. According to the prosecution, the applicant has been involved in not less than five similar crimes. The amount involved in all such crimes is said to be little over Twenty Crore rupees. Admittedly, all the investors have not been repaid their money. Although the applicant has been granted bail in four other crimes, the bail in those cases has been granted on the ground of he having been behind the bars for little over 2 – 3 years. The fact is that one and the same period of imprisonment is being used to seek bail in number of crimes. It needs no mention, that on proof of commission of offences, the imprisonment commences one after the another unless directed to run concurrently.

12. In short, the applicant has been involved in number of similar crimes. It is an economic offence. The amount involved in the

present crime is said to be little over Six Crore rupees. The trial is underway. About 40 witnesses have already been examined. If the trial could not be completed within a period of next one year, the applicant would be at liberty to revive his prayer for bail. In the fitness of things, this Court is not inclined to grant him bail.

13. In the result, the application fails. The same stands rejected.

[R. G. AVACHAT, J.]

SMS