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

CRIMINAL APPLICATION (BA) NO.127 OF 2021

Prasad s/o Prabhakar Agnihotri
..vs..
State of Maharashtra, thr. P.S.O.

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

Shri D.V. Chauhan, Advocate for Applicant.
Mrs. S.S. Jachak, A.P.P. for Non-applicant/State.

CORAM : VINAY JOSHI, J.
CLOSED FOR ORDER ON : 03/05/2021
DATE OF PRONOUNCEMENT : 07/05/2021

Hearing was conducted through Video Conferencing.

2. The applicant who is arrested in Crime No.396 of 2019 registered with Sakkardara Police Station, District Nagpur for the offences punishable under Section 409, 420, 467, 468, 471, 120(B) of the Indian Penal Code read with Section 3 of the Maharashtra Protection of Interest of Depositors (in Financial Establishments) Act 1999 (hereinafter referred to as "the M.P.I.D. Act") is seeking regular bail in terms of Section 439 of the Code of Criminal Procedure. The investigation is complete and charge-sheet has been filed. This is first bail application after the filing of charge-sheet.

3. On the basis of report lodged by the investor namely Shri Harshwardhan Zhanzad, Police Station Sakkardara carried out the initial investigation. It was

revealed in the initial investigation that the amount invested by several depositors was not refunded despite maturity of the fixed deposits and the said amount was approximately Rs.1 Crores. In the meantime, investigation was transferred to the Economic Offences Wing (E.O.W.), Crime Branch, Nagpur who carried out further investigation and unearthed malpractices about the entire functioning of the Credit society. It was revealed that the Board of Directors by joining hands with the Applicant Prasad Agnihotri, had prepared forged loan cases in the name of fictitious or gullible persons whose documents were used for preparation of fictitious loan accounts. The Applicant Prasad Agnihotri was indulging into share business. He has obtained document of various person under the guise of trading in share business and had misused those documents for the purpose of preparing bogus loan cases. It was transpired that approximately amount of Rs.1.94 Crores was misappropriated by using said *modus operandi* .

4. Learned Counsel for the Applicant by denying the charges would submit that the Applicant was neither in the management of Credit Society nor having any decision making power. It was Chairman and Board of Directors who have sanctioned the loans. The Applicant had not received the amount of embezzlement. It is submitted that the Chairman of the Credit society namely Arun Faltankar vide resolution dated 23.03.2016 took entire responsibility to repay the duped amount. Moreover, it is submitted that, till date the Applicant has repaid amount of Rs.25 lakhs with the Credit Society. It is submitted that all the Directors of the Credit Society are already released on bail.

The main accused i.e. Chairman of the Society Arun Faltankar is on temporary bail since last one year. The investigation is complete and since last one year the applicant is languishing in jail.

5. The State resisted the bail by reply affidavit dated 26.02.2021. Initial portion of reply contains the allegation about the mismanagement and malpractices occurred in the Society. It is contended that, during investigation conducted by E.O.W., it was transpired that 89 bogus loan cases have been prepared. The Applicant facilitated to siphone amount in the name of fictitious person by joining hands with the Chairman and Directors of the Society. The Applicant has brought the documents of innocent persons in whose name bogus loan cases have been prepared. Moreover, the Applicant had received the loan amount and thus, he had active role in the entire embezzlement. It is pointed out that several persons have stated in their statements that the Applicant took their identity documents under the guise of doing share trading and had used them to prepare bogus loan cases. Lastly, the State expressed that, if the applicant is released on bail, he may tamper with the prosecution evidence which would hamper the smooth process of the trial.

6. The alleged crime consists of two parts, first relates to mismanagement and siphoning of money which relates to the Chairman and Directors of the Credit Society. The second part relates to the applicant alleging misappropriation of Rs.1.94 Crores by joining hands with the Directors of the Credit Society. It was alleged that the Applicant got sanctioned loans in the name of gullible

persons by misusing their documents and had received the amount. Statement of some of the person discloses that the Applicant took their identity documents for some other purpose which were used for preparation of loan cases.

7. Though it is alleged that the Applicant had received the entire loan amount, however, the State is unable to show that entire loan amount was either credited in the account of the Applicant or he had withdrawn the same. Admittedly, the Applicant is a stranger to the Society, therefore, he has no role in sanctioning the loans in the name of fictitious persons. Unless, the Chairman and some Directors are involved in the transaction, there could be no disbursement of loan in the name of fictitious persons. Admittedly, Directors of the Credit Society are released on bail. The Chairman Arun Faltankar against whom principal allegations lies is on temporary bail since last one year.

8. Learned Counsel for the Applicant would submit that Chairman Arun Faltankar was the main culprit. He is pointed out a resolution of the Society dated 23.03.2016, under which Arun Faltankar undertook to repay the entire embezzled amount of Rs.1.94 Crores. Statement of the witnesses for instance of Shri Vaidya indicated that the Applicant has taken their identity documents for the purpose of opening De-mat account. It is a matter of evidence to prove that the Applicant has handed over those documents to the authorities for preparation of bogus loan cases. Learned Counsel for the Applicant would submit that the Applicant has deposited near-about Rs.25 lakhs with the Bank. In that regard, he has shown certain

receipts (Page nos. 753 to 755) under which the Applicant deposited the amount with the Credit Society. Since, the decision making power vests with the Chairman of the Credit Society, applicants role cannot be construed as grave than the persons in authority.

9. Learned A.P.P. has tendered the compilation of documents to show the role of the Applicant. True, there are some statements which bears reference that they have handed over identity documents to the Applicant. It appears from the statements that the key role is played by the co-accused Arun Faltankar who was the Chairman and under his dominance all the fictitious loans were sanctioned. Certain debit vouchers are produced, however, they did not disclose that the entire loan amount was received by the Applicant. Though there is material to show the involvement of the Applicant, however, *prima facie* he can not said to be sole beneficiary to the transaction. Moreover, the Applicant has repaid loan amount to certain extent which requires consideration.

10. The Applicant is in jail from 11.03.2020 i.e. for the period more than one year. Already, investigation is complete and charge-sheet has been filed. Learned Counsel for the Applicant would submit that, there are no criminal antecedents and the Applicant would abide by every conditions which may be imposed. While agitating claim for bail, learned Counsel for the Applicant has relied on the decisions in the cases of ***Suresh G. Motwani vs. State fo Maharashtra and ors. [2004]50 SCL 9 (Bom), Dataram Singh vs. State of Uttarpradesh and anr. (2018) 3 SCC 22 and P. Chidambaram vs. Central Bureau of***

Investigation (2020) 13 SCC 337. To Grant or refuse bail is the discretion of the Court. The primary purpose of bail is to release accused from pre-trial detention unless it is must. Though, it has been contended by the prosecution that there is possibility of the applicant tampering with the witnesses, however, no material is placed in support of said contention. It is not a case that mere presence of the applicant at large would intimidate the witnessess. Nature of offence no where indicate that there are chances of repeation of crime. The entire case is largely depending upon the documents which are already seized during the course of investigation. The charge-sheet is bulky and several witnesses are to be examined. Certainly, trial will take considerable time for disposal in accordance with law. The trial is yet not begun and due to current pandemic situation, it is unpredictable as to when the trial would commence apart from its completion. No circumstances are pointed to show that detention of the applicant is must and necessary.

11. Having regard to all these facts, I do no see any good reason to detain the applicant in custody, that too, after the completion of the investigation and filing of the charge-sheet. In view of that, the Applicant is entitled for bail, hence the following order.

(a) The Criminal Application is allowed.

(b) The Applicant Prasad s/o Prabhakar Agnihotri is released on bail in connection with the Crime No.396 of 2019 registered with Sakkardara Police Station, District Nagpur for the offences punishable under Section 409, 420, 467, 468, 471, 120(B) of the Indian Penal Code read with Section 3 of the Maharashtra Protection of Interest of Depositors (in Financial Establishments) Act 1999, on his executing P.R. bond of Rs.1,00,000/- with one solvent surety in the like amount.

(c) The Applicant shall attend the Economic Offences Wing (E.O.W.), Crime Branch, Nagpur on every alternate Monday of each month in between 10.00 am to 12.00 noon till conclusion of trial.

(d) The applicant shall surrender his passport, if any, with the Investigating Officer and in case, he do not hold passport, he shall swear to an affidavit to that effect.

(e) The Applicant shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case, as also shall not tamper with the prosecution evidence, in any manner.

(f) The Applicant shall provide his residential address to the concerned Investigating Officer and shall not change his place of residence without prior intimation to the concerned Investigating Officer.

JUDGE

Trupti