

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

CRIMINAL APPLICATION (BA) NO.1339 OF 2020

(Kishanlal s/o Bansram Merawat Vs. State of Maharashtra thr. PSO PS Gadchiroli,
Dist. Gadchiroli)

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

Court's or Judge's orders.

Mr. A. Vyas, Advocate with Mr. Ishant Tambi, Advocate for Applicant.
Mr. M.K. Pathan, APP for Non-Applciant/State.

CORAM: ROHIT B. DEO, J.

DATE: 30th JULY, 2021.

Hearing was conducted through video conferencing and the learned counsel agreed that the audio and visual quality was proper.

2. The applicant is seeking bail under Section 439 of the Criminal Procedure Code, 1973 (Code) in connection with Crime 04/2019 registered with Police Station Gadchiroli, District Gadchiroli for offences punishable under sections 420, 406, 409, 120(B) read with section 34 of the Indian Penal Code, section 3 of the Maharashtra Protection of Interest of Depositors (In Financial Establishments) Act, 1999 (MPID Act) and the amended sections 36, 74, 75 and 447 of the Companies Act, 2013.

3. At the very outset, I may note that although the provisions of section 447 of the Companies Act are invoked

by the Investigating Officer, the twin conditions stipulated in section 212 of the enactment may not come into play, in as much as the Court is precluded from taking cognizance of an offence punishable under section 447 of the Companies Act in the absence of a complaint by the appropriate authority/officer.

4. The crime is registered on the basis of first information report dated 04.01.2019 lodged by Mr. Sudhakar Kadukar with the Gadchiroli Police Station alleging that the applicant and other Directors of Sunshine Hi-Tech Infracon Limited entered into a criminal conspiracy to induce gullible investors to deposit money with the company. According to the first informant, to give effect to the conspiracy, the Directors and other officers of the company conducted a seminar at Gadchiroli, presented a rosy picture of the future business plans, induced the applicant and others to act as agents of the company, and to collect the deposits from the investors.

5. It would not be necessary to make an elaborate reference to the contents of the report. The gist is that the company did not repay the principal much less the interest or profit assured, and closed down the Gadchiroli branch. Another relevant allegation is that in 2015 the Securities and Exchange Board of India (SEBI) prohibited the company to collect deposits.

6. I have perused the material on record. The learned APP Mr. Pathan would submit, that the prosecution has made out a strong *prima facie* case on the basis of the material on record. While I am inclined to *prima facie* agree with the submission, bail cannot be denied as a pre-trial punishment. The existence of a strong *prima facie* case is, but, one of the relevant considerations and *ipso facto* does not disentitle an accused from bail.

7. The accused and other Directors of the company are facing similar prosecutions in Rajasthan and Madhya Pradesh. The learned counsel for the applicant Mr. Vyas submits, and the submission is substantiated by photo-copy of the order placed on record, that the Rajasthan High Court has bailed out the applicant. Mr. Vyas further submits that acting under a statute, which is similar if not *pari materia*, with the MPID, the Madhya Pradesh authority has already seized the property of the applicant. While the Rajasthan High Court was not dealing with entitlement to bail in offence under Section 409 of IPC, the factual gravamen appears to be similar.

8. I am consciously refraining from delving deep in the existence of the ingredients of section 409 IPC. However, the submission that in the teeth of the allegations, the said provision may not apply, is arguable and will have to be tested on the basis of evidence, by the trial court.

9. The applicant is in custody in connection with the present offence since 27.01.2020. It is fairly stated by Mr. Pathan that considering the prevailing situation and the workload of the Special Court, it would not be possible to assure the court that the trial will be expeditiously concluded.

10. The next question is addressing the apprehension of the prosecution, and which is not unjustified, that the applicant may not be available to face the trial in Gadchiroli. Mr. Pathan points out that it was only on production of warrant that the custody was obtained and that as many as six accused, out of the eight, who are named in the charge-sheet, are absconding. In response, Mr. Vyas fairly states that the applicant shall allay the apprehension of the prosecution by undertaking to furnish a heavy personal bond and to furnish two sureties, who shall be respected and respectable persons, of means to satisfy the bond if necessary, and who are permanent residents of Gadchiroli.

11. Considering that qua the applicant, the investigation is complete, the charge-sheet is filed, and in particular the assurance given by the learned counsel Mr. Vyas, I am inclined to grant bail.

12. The application is allowed.

13. The applicant be released on bail on furnishing personal bond of Rs.1,00,000/- and two solvent sureties of like amount, who shall be respectable, respected, and having the means to satisfy the bond, and who are permanent residents of Gadchiroli. Needless to observe, before accepting the sureties the jurisdictional court shall satisfy that the conditions imposed *supra* are satisfied.

14. The applicant shall attend each and every date of hearing scrupulously, unless he is exempted by the jurisdictional court. Failure to attend the dates of hearing may entail cancellation of bail, if an appropriate motion is moved by the prosecution.

15. The applicant shall, within forty-eight hours of release, furnish to the I.O. his current address and phone numbers and shall update the I.O. of any change.

16. The applicant shall not make any attempt to influence the witnesses, directly or indirectly.

17. The applicant shall not leave the country without the permission of the trial Court.

18. The application is disposed of accordingly.

JUDGE