

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

BAIL APPLICATION NO. 626 OF 2022

Deepshri W/o Vinay Badhe	]	
Age : 38 Years, Occupation : Service	]	
R/o Mahesh Nagar, Aakashwani,	]	
Aurangabad	]	... Applicant.

Versus

The State of Maharashtra	]	
(Through Police Station, Gangapur)	]	... Respondent.

...

Mr. A. S. Barlota, Advocate for the Applicant.
Mr. A. M. Phule, APP for the Respondent – State.

CORAM : SMT. VIBHA KANKANWADI, J.

RESERVED ON : 18th AUGUST, 2022.

PRONOUNCED ON : 27th SEPTEMBER, 2022.

ORDER :

1. Present application has been filed under section 439 of the Code of Criminal Procedure by the applicant who has been arrested in Crime No. 201 of 2019, registered with Osmanpura Police Station, District Aurangabad for the offences punishable under sections 420, 406, 467, 468, 471, 379, 506, 120-B read with section 34 of Indian Penal Code.

2. Before turning to the facts of the case, the brief history is required to be noted. After the registration of the offence the applicant had filed

application under section 438 of the Code of Criminal Procedure (for short, "*Cr.P.C.*"), bearing No. 2128 of 2019 before the Sessions Judge, Aurangabad, it came to be rejected on 20th November 2019. Therefore, she filed Anticipatory Bail Application No. 1511 of 2019 under section 438 of Cr.P.C. before this Court. She had given undertaking that she will not create any third party interest in respect of the agricultural land as well as two flats she is holding. However, the said matter got adjourned from time to time, considering the rise of pandemic situation. Subsequently, that application came to be withdrawn by her on 14th December 2020.

3. In the meantime, notice under section 41(A)(1) of Cr.P.C. came to be issued on three occasions to her and she had complied with the summons and appeared before the Investigating Officer. Accused No.2-Omprakash Prasad Singh was arrested and released on regular bail. During the pendency of the application before this Court, she had again moved an application for seeking anticipatory bail, bearing No. 635 of 2020 before the learned Sessions Judge on 27th April 2020 and it came to be allowed on 04th May 2020. The investigation was thereafter completed and charge-sheet was filed before the learned Judicial Magistrate First Class on 4th August 2020. It has been numbered as R.C.C. No.1357 of 2020. The withdrawal of the application before this Court was in view of the bail granted to her by the learned Sessions Judge, thereafter, the informant had preferred Criminal M.A. No. 150 of 2020

seeking cancellation of the anticipatory bail granted to the applicant. That application came to be allowed and the bail granted to applicant came to be cancelled by order dated 28th January 2021 by imposing costs of Rs.2,00,000/- (Rupees Two Lakhs Only). She preferred writ petition before this Court and in the said writ petition the order regarding imposing costs was set aside. However, she came to be arrested on 18th September 2021 and since then she is in magisterial custody.

4. Heard learned Advocate Mr. A. S. Barlota for the applicant and learned A.P.P. Mr. A. M. Phule for the Respondent – State.

5. It has been vehemently submitted on behalf of the applicant that the investigation is already completed and charge-sheet has been filed. The applicant came to be arrested in view of the order of cancellation of bail. Now, the further custody of the applicant is not required and she has substantially in jail since 18th September 2021. The matter has not progressed and in fact the informant is interested in delay the trial. Further, the evidence collected by the Investigating Agency, which is part of charge-sheet would disclose that the employees of SMK Global States are somewhat supporting the prosecution story, but other witnesses, viz. Sk. Nadeem, CA Sachin Sancheti, Shrenik Sancheti, bank employees Abhaysingh Pawar, Krishnakumar Agrawal, who are the independent witnesses do not certify the allegation of embezzlement. In fact, the informant himself has stated that there were dues towards

professional tax, service tax, GST, EPF & ESIC and it can be only because of inaction on the part of the informant. The delay in lodging the F.I.R. has not been explained at all. The applicant has been made as a scapegoat in order to evade the monetary benefits. The bank statement on record does not support the case of the informant that sufficient balance was there in the bank account. Further, now when the informant, who has been allowed to participate in the entire process under section 302 of Cr.P.C. is following delaying tactics and therefore the applicant needs to be released on bail.

6. Per contra, the learned APP strongly opposed the application and submitted that as per the prosecution story the informant Karbhari R. Jadhavar is the Managing Director of SMK Global Security Solutions India Private Limited. It provides security personnel to various companies, Banks, Malls, University etc. The applicant was the Chief Executive in the said company and Accused No.2 Omprakash Prasad Singh was the Accountant between 2009 to 2019. They had not deposited amount in EPF as well as ESIC of the security guards of the company. During that period the said amount has been misappropriated by them. The misappropriation amount in the F.I.R. has been wrongly quoted, but by supplementary statement the informant has stated that it is to the tune of Rs.1,50,00,000/- (Rupees One Crore Fifty Lakhs Only). The evidence collected forming part of the charge-sheet would show that there were about 650 – 700 employees/security guards in the company

and it was the duty of the company to pay its contribution towards the provident fund and the insurance of those employees. Documents in the nature of false challan, distribution of salary of Rs.20,00,000/- etc. have been prepared. Under such circumstance, when strong evidence is available against the applicant and by suppressing the pendency of her application before this Court, when the anticipatory bail was taken by the applicant from the Sessions Judge, the cost was imposed. Therefore, taking into consideration her conduct, the bail granted was cancelled. Even after arrest of the applicant, she had preferred regular bail before this court by filing Bail Application No. 1307 of 2021 and after hearing the learned Advocate for the applicant for some time, when disinclination was shown by this Court, the said application came to be withdrawn on 8th December 2021. The informant has been granted opportunity to conduct the matter in view of Exhibit-29 in R.C.C. No.1357 of 2020 under section 302 of Cr.PC.. It appears that PW-1 Jitendra Rathod was examined under section 309(2) of Cr.PC. by the learned Judicial Magistrate First Class on 5th August 2022. Therefore, the trial is going on. Under such circumstance, no case is made out for granting bail to the applicant.

7. Learned Advocate for the applicant has relied on the decision in ***Satender Kumar Antil Vs. Central Bureau of Investigating and Anr.***, reported in ***2022 LiveLaw (SC) 577***, wherein taking into consideration overcrowding of under trial prisoners in jails of India certain directions have been issued. The

ratio laid down in *Sanjay Chandra Vs. CBI; (2012) 1 SCC 40*, has been reiterated. As regards economic offences are concerned, though the decision in *P. Chidambaram Vs. Directorate of Enforcement, (2020) 13 SCC 791* has been reiterated yet in this case now because of the adamant attitude of the informant the trial is not progressed. The trial court is ready to take up the matter and both the accused are willing to go ahead with the matter. Under such circumstance, informant cannot do such activities, which will hamper the speedy trial of the accused.

8. At the outset, it is to be noted that this Court had called the states report from the learned Judicial Magistrate First Class and it is informed that the charge came to be framed on 3rd March 2022, and thereafter, the application was presented by the informant under section 302 of Cr.P.C. for conduct of the prosecution through Advocate S. G. Ladda on 21st September 2021. That application came to be allowed on 22nd September 2021. However, no steps were taken by the informant by filing application for issuance of witness summons. The Court was required to issue the witness summons on two occasions on 8th March 2022. The summonses were reported on 8th March 2022 with remark that, “the informant was not found on the address”. Again, on 16th June 2022 with the same remark, the witness summons has been received. However, the handwriting expert’s opinion/report has been produced before the learned Judicial Magistrate First Class on 27th July 2022. It has

been then stated by the learned Magistrate that, if the parties cooperate then maximum period that would be required for disposal of the case would be 9 months. It will not be out of place to mention here that from the photocopy of the certain orders of the applications which are before the learned Judicial Magistrate First Class, Court No.9, Aurangabad that even though the Advocate for the accused are present, witnesses are present, learned Advocate for the informant, who has been allowed to conduct the case, does not remain present. In fact, in VC order below Exhibit-29 under section 302 of Cr.P.C., it was granted on condition that the informant shall not take unnecessary adjournments or shall not adopt delay in tactics. It appears that on 5th August 2022, when the learned Advocate appearing for the informant remained absent, the learned Judicial Magistrate First Class has used his powers under section 309(2) of Cr.P.C. and started with the examination-in-chief of PW-1 Jitendra Rathod. His cross examination was recorded. Thereafter, it appears that at about 2.50 p.m. a pursis has been filed on behalf of learned Advocate S. G. Ladda, who was allowed to conduct the prosecution. In fact, under which provisions of law such pursis can be filed that to under the signature of the junior would be a separate question and it appears that unnecessary allegations have been tried to be made against the learned Magistrate. Such practice is required to be deprecated and it can be seen by a detailed order passed below Exhibit-1 on the same day, the facts have been put on record by the learned Magistrate. In fact, this is the correct practice that has been

adopted by the learned Magistrate. Even the accused has right for speedy trial. It can be understood that at a particular time an Advocate would be busy in another court, but then such fact will have to be brought on record by the concerned Advocate, he cannot under such circumstance give preference to other matter and neglect the another or should not make any provision of/or intimation to another Court. Suffice it to say that, the learned Advocate who has been allowed to conduct the matter would give due preference to this matter also.

9. Now turning towards the present case, it appears that the misappropriation is of huge amount of Rs.1,50,000,00/-, whether there was delay in reporting the case and whether that delay has been explained or not would considered by the learned Magistrate. In *Satender Kumar Antil (Supra)*, as regard economic offences, which have been put in category-D, which has been observed thus:-

66. What is left for us now to discuss are the economic offences. The question for consideration is whether it should be treated as a class of its own or otherwise. This issue has already been dealt with by this Court in the case of P. Chidambaram v. Directorate of Enforcement, (2020) 13 SCC 791, after taking note of the earlier decisions governing the field. The gravity of the offence, the object of the Special Act, and the attending circumstances are a few of the factors to be taken note of, along with the period of sentence. After all, an economic offence cannot be classified as such, as it may involve various activities and may differ from one case to another. Therefore, it is not advisable on the part of the court to

categorise all the offences into one group and deny bail on that basis. Suffice it to state that law, as laid down in the following judgements, will govern the field:-

Precedents

- **P. Chidambaram v. Directorate of Enforcement**, (2020) 13 SCC 791:

“23. Thus, from cumulative perusal of the judgments cited on either side including the one rendered by the Constitution Bench of this Court, it could be deduced that the basic jurisprudence relating to bail remains the same inasmuch as the grant of bail is the rule and refusal is the exception so as to ensure that the accused has the opportunity of securing fair trial. However, while considering the same the gravity of the offence is an aspect which is required to be kept in view by the Court. The gravity for the said purpose will have to be gathered from the facts and circumstances arising in each case. Keeping in view the consequences that would befall on the society in cases of financial irregularities, it has been held that even economic offences would fall under the category of “grave offence” and in such circumstance while considering the application for bail in such matters, the Court will have to deal with the same, being sensitive to the nature of allegation made against the accused. One of the circumstances to consider the gravity of the offence is also the term of sentence that is prescribed for the offence the accused is alleged to have committed. Such consideration with regard to the gravity of offence is a factor which is in addition to the triple test or the tripod test that would be normally applied. In that regard what is also to be kept in perspective is that even if the allegation is one of grave economic offence, it is not a rule that bail should be denied in every case since there is no such bar created in the relevant enactment passed by the legislature nor does the bail jurisprudence provide so. Therefore, the underlining conclusion is that irrespective of the nature and gravity of charge, the precedent of another case alone will not be the basis for

either grant or refusal of bail though it may have a bearing on principle. But ultimately the consideration will have to be on case-to-case basis on the facts involved therein and securing the presence of the accused to stand trial.”

- **Sanjay Chandra v. CBI, (2012) 1 SCC 40:**

“39. Coming back to the facts of the present case, both the courts have refused the request for grant of bail on two grounds: the primary ground is that the offence alleged against the accused persons is very serious involving deep-rooted planning in which, huge financial loss is caused to the State exchequer; the secondary ground is that of the possibility of the accused persons tampering with the witnesses. In the present case, the charge is that of cheating and dishonestly inducing delivery of property and forgery for the purpose of cheating using as genuine a forged document. The punishment for the offence is imprisonment for a term which may extend to seven years. It is, no doubt, true that the nature of the charge may be relevant, but at the same time, the punishment to which the party may be liable, if convicted, also bears upon the issue. Therefore, in determining whether to grant bail, both the seriousness of the charge and the severity of the punishment should be taken into consideration.

40. The grant or refusal to grant bail lies within the discretion of the court. The grant or denial is regulated, to a large extent, by the facts and circumstances of each particular case. But at the same time, right to bail is not to be denied merely because of the sentiments of the community against the accused. The primary purposes of bail in a criminal case are to relieve the accused of imprisonment, to relieve the State of the burden of keeping him, pending the trial, and at the same time, to keep the accused constructively in the custody of the court, whether before or after conviction, to assure that he will submit to the jurisdiction of the court and be in attendance thereon whenever his presence is required.

46. We are conscious of the fact that the accused are charged with economic offences of huge magnitude. We are also conscious of the fact that the offences alleged, if proved, may jeopardise the economy of the country. At the same time, we cannot lose sight of the fact that the investigating agency has already completed investigation and the charge-sheet is already filed before the Special Judge, CBI, New Delhi. Therefore, their presence in the custody may not be necessary for further investigation. We are of the view that the appellants are entitled to the grant of bail pending trial on stringent conditions in order to allay the apprehension expressed by CBI.”

10. Therefore, these observations do not entitle the applicant for bail at this stage. Secondly, the past conduct on the part of the applicant is required to be considered. When the application was pending before this Court yet by suppressing that fact she approached the subordinate Court and the anticipatory bail came to be granted to her. The third fact that is also required to be considered that the learned Magistrate has stated that the matter would require at least 9 months for its disposal. Of course, he is hopeful for the cooperation from the informant's Advocate. Under such circumstance, the case is not made out for releasing the applicant on bail. However, liberty can be granted to the applicant to approach this court, if the trial does not get over within a period of one year. The period of one year is required to be given taking into consideration the bulky records and the witnesses to be examined. Though, the list contains about 25 witnesses, yet the bank records from the year 2009 to 2019 and other documents are involved in this case.

11. With these observations, following order is passed :-

ORDER

- (i) The Bail Application stands rejected.
- (ii) The learned Judicial Magistrate First Class, Court No.-9, Aurangabad is directed to expedite the trial of R.C.C. No.1357 of 2020 and dispose it of on merits, as early as possible, and not later than one year from the date of receipt of writ/authenticate communication of this order.
- (iii) This Court is also expressing hope that the informant will not cause any delay in conducting the matter.

(SMT. VIBHA KANKANWADI, J.)

Tandale/-