IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO. 1020 OF 2021

Prashant Dhumal s/o Rameshrao Dhumal ..PETITIONER

VERSUS

State of Maharashtra ..RESPONDENT

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Mr. S.N. Menchirel, Advocate for petitioner
Smt. D.S. Jape, A.P.P. for respondent - State

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CORAM : R.G. AVACHAT, J.
DATED : 28th MARCH, 2022

PER COURT :

1. Heard.

2. The challenge in this petition is to the order dated 11th August, 2021 passed by the learned Additional Sessions Judge, Court No.10, Aurangabad refusing to grant bail to the petitioner on the ground of default in filing of charge-sheet (Section 167(2) of the Code of Criminal Procedure).

3. The petitioner is one of the accused in Crime No. 184 of 2019 registered with M.I.D.C. CIDCO Police Station, Dist. Aurangabad initially for the offences punishable under Sections 420, 406, 120B read with Section 34 of the Indian Penal Code ('I.P.C.') and under Sections 3 and 4 of the

Maharashtra Protection of Interest of Depositors (In Financial Establishments) Act, 1999 ('M.P.I.D.').

4. The petitioner was arrested on 09th June, 2021. According to learned counsel for the petitioner, the charge-sheet was supposed to be filed within sixty days of the arrest of the petitioner since offence under Section 406 of the I.P.C. is punishable with imprisonment which may extend to three years, while offences under Sections 3 and 4 of the M.P.I.D. are punishable with imprisonment which may extend to six years. According to him, on 56th day of the arrest of the petitioner, the investigating officer invoked Section 409 of the I.P.C. It was only with a view to defeat the petitioner's right to secure bail on the ground of default in filing charge-sheet. Learned counsel has relied on the following authorities of the Hon'ble Supreme Court :-

i) State of Maharashtra Vs. Mrs. Bharati Chandmal Varma @ Ayesha Khan in Appeal (Crl.) No. 1227 of 2001 dated 04th December, 2001

ii) M. Ravindran Vs. The Intelligence Officer, Directorate of Revenue Intelligence in Criminal Appeal No. 699 of 2020 dated 26th October, 2020

iii) State of West Bengal Vs. Dinesh Dalmia in Appeal (Crl.) No. 623 of 2007 dated 25th April, 2007

According to learned Counsel, the police authorities could have registered a separate crime for the offence punishable under Section 409 of the I.P.C. and made investigation on his arrest, if required. It was a separate and altogether distinct offence. Addition of Section 409 of the I.P.C. would not extend the period of limitation of sixty days required for filing of charge-sheet. He would reiterate that same was done only with a view to ensure the petitioner does not get bail. He, therefore, urged for grant of the petition.

5. Learned A.P.P. would, on the other hand, submit that Section 409 of the I.P.C. was invoked in the very crime registered against the petitioner and others. While the said section was invoked, statutory period of sixty days for filing the charge-sheet was not over, nor did the petitioner had preferred an application for default bail before Section 409 of the I.P.C. was invoked. In view of learned A.P.P., the order refusing to grant the petitioner default bail was, therefore, justified.

6. Considered the submissions advanced. Perused the authorities relied on. Learned counsel did not advert this Court's attention to the allegations in the F.I.R. and the police papers. It is however necessary to advert to the F.I.R. The petitioner, his wife and twelve others are the accused in the case. The case of the prosecution is that the petitioner claims to be the owner of the Commodity Trade Art ('C.T.A.'). He got acquainted with the informant. He is alleged to have induced the informant to invest a sum of Rs.7 lakh with C.T.A. The petitioner allegedly offered the informant 10% per month interest on the amount of investment. The transaction dates back to

2013/14. The informant was initially paid some amount towards interest on the amount in deposit. The petitioner however, thereafter, did not pay any amount. He started avoiding to meet the informant and talk on phone. Co-accused – Nandu Shendge and Mahesh Purnapatre gave the informant a cheque under the signature of the petitioner of Rs.7 lakhs. They also assaulted the informant.

7. In short, the petitioner induced the informant to invest a sum of Rs.7 lakh with a promise of high returns. Neither the amount in deposit nor anything in return thereon was paid to the informant. Based on the F.I.R. dated 03rd May, 2019 the crime came to be registered against the petitioner and others. It was found during investigation that the petitioner and the co-accused have similarly duped other investors/depositors as well. The amount involved is Rs.3,02,22,400/-. The petitioner was found to have been operating a finance company by name Trupti Finance Pvt. Ltd. It was thus realised that it was an offence punishable under Section 409 of the I.P.C. as well, as the finance company was nothing short of doing banking business.

8. Learned counsel for the petitioner submitted that the petitioner was not a banker. His license in that regard was revoked long back. There is however noting to substantiate his contention. The fact remains that the investigating officer rightly invoked Section 409 of the I.P.C. in the very

crime. Necessarily, the period of limitation for filing the charge-sheet would be of ninety days from the date of arrest of the petitioner. Learned J.M.F.C. had already been informed of having invoked Section 409 of the I.P.C. In this factual backdrop, the application moved by the petitioner for default bail has rightly been turned down.

9. The facts of Bharati Chandmal Varma's case (supra) would indicate that the respondent therein was arrested on 01st July, 2001 for the offences punishable under Sections 489A, 489B, 489C, 120B and 420 of the I.P.C. The respondent preferred an application for bail on the ground that charge-sheet was not laid within ninety days. Sanction for invocation of MCOC Act was granted on 21st April, 2001 and thereafter investigation was conducted into the offence under the MCOC Act. Finally the charge-sheet was laid on 12th July, 2001 i.e. ninety days after the arrest of the respondent therein. It has been observed by the Apex Court thus :-

> *"For the application of the proviso to Section 167(2) of the Code there is no necessity to consider when the investigation could legally have commenced. That proviso is intended only for keeping an arrested person under detention for the purpose of investigation and the legislature has provided a maximum period for such detention. On the expiry of the said period the further custody becomes unauthorized and hence it is mandated that the arrested person shall be released on bail if he is prepared to and does furnish bail. It may be a different position if the same*

> *accused was found to have involved in some other offence disconnected from the offence for which he was arrested. In such an eventuality the officer investigating such second offence can exercise the power of arresting him in connection with the second case. But if the investigation into the offence for which he was arrested initially had revealed other ramifications associated therewith, any further investigation would continue to relate to the same arrest and hence the period envisaged in the proviso to Section 167(2) would remain unextendable."*

The issue involved therein was as to whether a new period of ninety days would commence from the date when the approval was accorded under Section 23 of the MCOC Act for initiating investigation for any offence under the said Act. The respondent therein was granted default bail on the ground of the investigating agency not completing investigation within ninety days from the date of first remand of the respondent. The question involved therein was basically whether the period of ninety days is to be counted from the date of sanction granted to invoke MCOC Act. Admittedly, the charge-sheet was not filed within ninety days from the first remand of the respondent therein.

10. In the case of M. Ravindran (supra), the additional complaint came to be filed by the investigating officer after 180 days of the arrest of the applicant therein. Same suggests that within 180 days of the arrest of the

applicant therein, no charge-sheet was filed. It was a case for offence punishable under the NDPS Act.

11. The issue involved in the case of Dinesh Dalmia (supra) was altogether different.

12. For the reasons given hereinabove, criminal writ petition fails. Same is, therefore, dismissed.

(R.G. AVACHAT, J.)

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