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

CRIMINAL APPLICATION (BA) NO. 321 OF 2021
Prashant S/o. Ashok Satralkar Vs. State of Maharashtra

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

Mr. S.P. Dharmadhikari, Senior Advocate a/b Mr. K.H. Dodani, Advocate for the applicant.
Mr. I. J. Damle, APP for non-applicant/State.

CORAM : AVINASH G. GHAROTE, J.
DATE : 22/03/2022

Heard Mr. Dharmadhikari, learned Senior counsel alongwith Mr. Dodani, learned counsel appearing for the applicant and Mr. Damle, learned APP appearing for the non-applicant/State.

2. The applicant has been arraigned for the offence punishable under Sections 420, 465, 467, 468, 471, 306, 511, 120-B read with Section 34 of the Indian Penal Code in Crime No. 297/2020. The First Information Report is dated 07-07-2020. The applicant has been arrested on 01-09-2020 and the charge-sheet has been filed on 27-11-2020.

3. Mr. Dharmadhikari, learned Senior counsel submits that Memorandum of Understanding (for short "MOU") came to be entered between the Nagpur Diocesan Trust Association (NDTA) and the applicant as a Treasurer and one Sujit Ashok Kumar as a Secretary on 07-09-2018 (page no. 35) under which, on the strength of a claim that a change report has been submitted under Section 22 of the Maharashtra Public Trust Act (in short, 'MPT Act') with the Charity Commissioner, Nagpur, by the applicant and other persons, the complainant entered into the aforesaid MOU agreeing to enter into further agreement/deed of development upon acceptance of the change report. It was also agreed, that in case, the change report was not accepted, the amount received by the applicant and Mr. Sujit Ashok Kumar would stand refunded with interest. He further invites my attention to the terms of this agreement bearing term nos. 3, 4, 6, 8, 9 & 10 to contend, that there was no suppression of any material position from the complainant at the time of entering into the MOU. Not only this, the MOU in clause-10 further indicates, that the inspection and verification of the position stated in the MOU was done by the complainant himself, who having satisfied himself regarding the representations made therein had entered into the said MOU and parted with consideration of Rs. 20 lakh to the applicant. He therefore contends, that there was no representation which was false as nothing was concealed from the complainant, who was throughout aware of the factual position. He further contends, that since the MOU dated 07-09-2018 indicates, that the applicant had received an amount of Rs. 20 lakh under the said MOU in order to show his *bonafide,* the applicant is willing to deposit an amount of Rs. 10 lakh, as Rs. 5.06 lakh has already been seized from the bank account of the applicant and so also an amount of Rs. 8.10 lakh has been reinvested by the applicant in the company of the complainant, the receipt in respect of which dated 05-11-2018 is at page no. 106. Relying upon ***Sanjay Chandra Vs. Central Bureau of Investigation, (2012) 1 SCC 40, paras 21 to 25*** and the fact that the co-accused Sujit S/o Ashok Kumar has been released on bail by order dated 21-09-2021, it is contended, that the applicant is also entitled to be released on bail.

4. Mr. Damle, learned APP for the non-applicant/State, vehemently contends, that the applicant had no connection with NDTA whatsoever, in spite of which he represented himself to be a Treasurer of the NDTA and mislead the complainant in entering into the MOU. Reliance is placed upon the communication dated 15-10-2020 issued by the Deputy Charity Commissioner, Nagpur (page 430), which indicates, that the names of the applicant as well as other persons claiming along with him to be the office bearers of the NDTA does not figure in Schedule-I. He further submits, that even the change report filed by the applicant, has not been decided and was pending, in view of which, it was not permissible for him to make the representation as indicated from the aforesaid MOU. He further contends, that this is a case in which the applicant who was earlier employee of the NDTA and was removed from the employment, for his illegal acts, has tried to meddle with the affairs of the NDTA by claiming himself to be an office bearers by the NDTA, and therefore, he has given false representation, based upon which, the complainant has parted with money. Further reliance is placed upon the seizure of the documents as well as stamps of the NDTA from him (page 571).

5. It is not in dispute, that the entire genesis of the present application stems from the MOU dated 07-09-2018 (page 35), where under the applicant claiming himself to be the Treasurer of the NDTA on the basis of the change report submitted to the Office of the Charity Commissioner, Nagpur, under Section 22 of the MPT Act, which was pending consideration entered into the MOU dated 07-09-2018 under the terms of which it was agreed that in case the change report was accepted and the position of the applicant was legally recognized by the Office of the Charity Commissioner as the Treasurer and that of Mr. Sujit Kumar as Secretary of the NDTA, then in that contingency, deed of development would be executed in favour of the complainant alongwith all other members of the Managing Committee of the NDTA as would be accepted by the Charity Commissioner, in respect of immovable properties of NDTA as listed in the MOU. A perusal of the MOU indicates, that it is not even a concluded contract but an agreement to agree to enter into an agreement of development based upon the contingency of the Charity Commissioner having accepted the change report as submitted by the applicant. Clause-4 of the said MOU is clear and specific in that regard, which position is reiterated in Clause-12. Not only this, Clause-12 further contemplates, that in case, the change report is not so accepted, the amount received by the applicant and the other signatory to the said MOU would be refunded with interest if any. Further Clause-10 of the said MOU indicates, that the documents and representation made by the applicant had been seen, inspected and verified by the complainant including the change report pending before the Charity Commissioner, Nagpur. It is therefore apparent, that nothing was suppressed from the complainant at the time of entering into the MOU which as indicated above was merely an agreement to agree based upon the contingency of the change report being accepted and the new Managing Committee accepting to enter into a further agreement. It is thus apparent, that when the complainant had entered into the said MOU, he was fully conscious as to the nature of the transaction as well as the representations and rights claimed by the applicant. This being the position, the allegation that the applicant by entering into aforesaid MOU has committed the offence under Sections 420, 465, 467, 468, 471, 306, 511, 120-B read with Section 34 of the Indian Penal Code, *prima- facie* does not appeal to reason, as it is a case of the MOU consciously being entered into by the complainant and not otherwise. Not only this, the co-accused Sujit Ashok Kumar, has also been enlarged on bail by this Court by an order dated 21-09-2021 passed in Criminal Application (BA) No. 541 of 2021 on conditions. Thus, in view of the statement made by Mr. Dharmadhikari, learned Senior Counsel appearing for the applicant, regarding the willingness of the applicant to deposit a sum of Rs. 10 lakh and the fact, that the applicant has been arrested on 01-09-2020 and the charge-sheet has been filed on 27-11-2020 and nothing now remains to investigate and in view of what has been said in ***Sanjay Chandra*** (supra), a prima facie case for bail is made out, in view of which, I do not consider it appropriate to continue the further incarceration of the applicant. Hence, the following order.

ORDER

1. The application is allowed.
2. The applicant Prashant S/o Ashok Satralkar be released on bail in Crime No. 297/2020 for the offence punishable under Sections 420, 465, 467, 468, 471, 306, 511, 120-B read with Section 34 of the Indian Penal Code, on executing P.R. Bond of Rs. 1 lakh with two solvent sureties of the like amount, subject to the condition of depositing Rs. 10 lakh in Sessions Case no. 66/2021 pending with the District and Sessions Judge – 13, Nagpur.

3. The bail order shall become operative only after depositing of the said amount to the learned Sessions Court, Nagpur, who upon such deposit shall direct investment of the amount in an interest carrying Fixed Deposit during the continuation of the trial.

4. The applicant shall not tamper with the prosecution evidence or try to influence the prosecution witnesses directly or indirectly.

5. The applicant shall attend each and every date before the learned Sessions Court, Nagpur and shall ensure that the trial is not protracted on his count.

6. The applicant shall not leave the country, except with the permission in writing of the learned Sessions Court, Nagpur.

7. Violation of any of the above conditions shall result in cancellation of bail.

8. It is clarified, that the observations made in this application are only *prima-facie* in nature and shall not affect the trial or the decision making by the learned Sessions Court, Nagpur.

JUDGE

B.T.Khapekar