

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

Criminal Application (ABA) No. 238 of 2022

Sushil Ramesh Kolhe

Versus

The State of Maharashtra, through Police Station Officer, Police Station
Sitabuldi, Dist. Nagpur and another

Office Notes, Office Memoranda of
Coram, appearances, Court's Orders
or directions and Registrar's order

Court's or Judge's Order

Dr. Shri I.M.Quddusi, Senior Advocate assisted by
Shri G.B.Hemke, Advocate for the applicant.
Shri T.A. Mirza, APP for the State / Non-applicant

CORAM : ANIL S. KILOR, J.

DATED : 21st JUNE, 2022.

The applicant is seeking for grant of pre-arrest bail in Crime No.464 of 2020 registered with Police Station Sitabuldi, Dist. Nagpur for the offence punishable under Sections 406 and 420 read with Section 34 of Indian Penal Code and Section 3 of the Maharashtra Protection of Interest Depositors (In Financial Establishments) Act.

2. Shri Quddusi, learned Senior Advocate appearing for the applicant submits that there was no intention to make any default in payment and it can be

seen from the fact that the earlier company of the applicant has regularly paid the amount. However, because of Covid-19 the defaults were committed and accordingly the offence came to be lodged. It is submitted that the investigation is over and the chargesheet has already been filed. Accordingly, the custody of the applicant is not necessary. It is further submitted that the record has already been seized and there is nothing to recover from the applicant. It is further argued that the applicant is a power of attorney holder and he is no way connected with the alleged offence. However, he has been falsely implicated in the alleged offence.

3. On the other hand, learned Additional Public Prosecutor has strongly opposed the application. He submits that even after filing of this complaint, the police is receiving numerous complaints against the applicant and other accused persons and therefore though the chargesheet is filed, the investigation is going on. He submits that the custody of the applicant is necessary for further investigation.

4. Learned Additional Public Prosecutor further points out that the total amount involved in the alleged offence is about six crores and the applicant has

defaulted many investors and accordingly the provision of MPID is also applied to the case of the applicant.

5. I have perused the application and the documents filed alongwith application.

6. The offence involved in the present matter is an economic offence. In the case of *P. Chidambaram ..Vs.. Director of Enforcement*¹, the Hon'ble Supreme Court of India has observed thus:

“78. Power under Section 438 Cr.P.C. being an extraordinary remedy, has to be exercised sparingly; more so, in cases of economic offences. Economic offences stand as a different class as they affect the economic fabric of the society. In Directorate of Enforcement v. Ashok Kumar Jain (1998) 2 SCC 105, it was held that in economic offences, the accused is not entitled to anticipatory bail.

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80. Observing that economic offence is committed with deliberate design with an eye on personal profit regardless to the consequence to the community, in State of Gujarat v. Mohanlal Jitmalji Porwal it was held as under:- (SCC p.371, para 5)

“5.The entire community is aggrieved if the economic offenders who ruin the economy of the State are not

¹ (2019) 9 SCC 24

brought to book. A murder may be committed in the heat of moment upon passions being aroused. An economic offence is committed with cool calculation and deliberate design with an eye on personal profit regardless of the consequence to the community. A disregard for the interest of the community can be manifested only at the cost of forfeiting the trust and faith of the community in the system to administer justice in an even-handed manner without fear of criticism from the quarters which view white collar crimes with a permissive eye unmindful of the damage done to the national economy and national interest.....”

81. Observing that economic offences constitute a class apart and need to be visited with different approach in the matter of bail, in Y.S. Jagan Mohan Reddy v. CBI, the Supreme Court held as under:- (SCC p.449, paras 34-35)

“34. Economic offences constitute a class apart and need to be visited with a different approach in the matter of bail. The economic offences having deep-rooted conspiracies and involving huge loss of public funds need to be viewed seriously and considered as grave offences affecting the economy of the country as a whole and thereby posing serious threat to the financial health of the country.

35. While granting bail, the court has to keep in mind the nature of accusations, the nature of evidence in support

thereof, the severity of the punishment which conviction will entail, the character of the accused, circumstances which are peculiar to the accused, reasonable possibility of securing the presence of the accused at the trial, reasonable apprehension of the witnesses being tampered with, the larger interests of the public/State and other similar considerations.” [emphasis supplied]

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83. Grant of anticipatory bail at the stage of investigation may frustrate the investigating agency in interrogating the accused and in collecting the useful information and also the materials which might have been concealed. Success in such interrogation would elude if the accused knows that he is protected by the order of the court. Grant of anticipatory bail, particularly in economic offences would definitely hamper the effective investigation. Having regard to the materials said to have been collected by the respondent-Enforcement Directorate and considering the stage of the investigation, we are of the view that it is not a fit case to grant anticipatory bail.”

7. Considering the material collected by the Investigating Officer during the investigation and the fact that after lodgment of the complaint in the present matter the police are receiving the numerous complaints against the applicant and as such investigation is still

going on and therefore, the custody of the applicant is required for proper investigation.

8. In that view of the matter, I am not inclined to grant bail. Accordingly, I pass the following order :

i. Application is rejected.

[ANIL S. KILOR, J.]

SACHINDANAND
K NAIR

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