

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

CRIMINAL APPLICATION (BA) NO.547 OF 2022

Khemchand @ Khemdeo Sitaramji Maharkure **Versus** State of Maharashtra, thr. PSO PS Kotwali, 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

Shri S.P. Dharmadhikari, Senior counsel with Shri C.S. Dharmadhikari and Shri Raghav Bhandakkar, counsel for the applicant.

Shri S.A. Ashirgade, A.P.P. for the non-applicant/State.

Shri W.R. Kapse, counsel for the Assist to Prosecution.

Shri N.R.Tekade, counsel for complainant.

CORAM : ANIL S. KILOR, J.

DATED : 22/08/2022

1. The applicant is seeking bail in connection with Crime No. 217 of 2019, registered with Police Station Kotwali, Tq. and District Nagpur, for the offences punishable under Sections 409, 420, 467, 471, 120B and 34 of the Indian Penal Code, 1860 and Section 3 of the Maharashtra Protection of Interest of Depositors Act, 1999.

2. Shri Dharmadhikari, learned senior counsel for the applicant submits that, in pursuance of directions issued by the learned Magistrate under Section 156 of the Code of Criminal Procedure, the FIR in this case was registered on 13/07/2019.

3. It is submitted that, the applicant was arrested on 25/12/2020, and since then he is in jail.

4. He submits that, there are in all eleven accused persons, out of which three are absconding and eight were arrested and seven of them have been released on bail.

5. It is further submitted that, the Investigating Officer has seized the properties more than worth of Rs. 20 Crores. It is pointed that, the bank accounts of the applicant are attached. Thus, in the above referred backdrop, it is prayed that the applicant may be released on bail.

6. It is submitted that, the charge-sheet is of 9500 pages and total witnesses are 799. It is further submitted that, as the trial is not yet commenced and considering the voluminous record and number of witnesses, there is no possibility that in near future, the trial will commence or it will be concluded. He, therefore, submits that, keeping the applicant is in jail for uncertain period will amount to per-trial punishment. For this purpose, he has placed reliance the judgment of Hon'ble Supreme Court of India in the case of *Union of India Vs. K.A. Najeeb*.

7. On the other hand, learned APP strongly opposed the present application and submits that, from the audit reports, it can be seen that, the applicant is the main accused, who has duped the investors by Rs. 79 Crores.

8. The learned APP further relied upon an affidavit of the applicant dated 04/09/2019, wherein he has stated that the Board of Directors are not responsible for

any financial irregularities but he himself is responsible for everything.

9. The learned APP submits that, this affidavit is sufficient to show the involvement of the applicant and it is sufficient for rejection of the bail application.

10. The learned APP has argued that, as the amount is huge and considering the nature of allegations and seriousness of the offence, this Court may not grant bail to the applicant.

11. Shri W.R.Kapse, learned counsel, who is assisting the prosecution and appearing on behalf of one of the investor, reiterates the submissions of the learned APP and prays for rejection of the present application.

12. Shri N.R.Tekade, learned counsel, who is also assisting the prosecution on behalf of one of the investor, who has deposited Rs. 17 Lakhs in the society, reiterates the submission of learned APP and in addition submits that, if this Court is of the opinion of to grant bail to the applicant, in that case a condition that the applicant shall deposit amount of Rs. 17 Lakhs of his client, in this Court, be imposed.

13. I have perused the Charge-sheet and the FIR.

14. In this case, the FIR was lodged on 13/07/2019 alleging financial irregularities in the Society namely Jai Shriram Urban Credit Co-operative Society, Ltd., Nagpur. The allegations are that, the accused persons have duped the investors by Rs.79,54,26,963/-. However,

as per the statements of investors the amount is around Rs. 24 Crores.

15. The applicant being the Chairman of the said Society, was arrested on 25/12/2020 and since then he is in jail.

16. The Charge-sheet was filed on 19/03/2021, after completion of the investigation.

17. In this Case, out of total 11 accused one is absconding and seven are released on bail.

18. I have perused the Orders passed by this Court granting bail to the co-accused persons including the Manager. This Court while granting bail to one Vitthal Damuji Mehar, has observed that, it is extremely debatable whether material collected by the Investigating Officer is sufficient to establish conspiracy. Though the said observations is restricted to the role attributed to the said co-accused. However, after going through the material collected by the Investigating Officer, I am of the opinion that the said finding would equally apply to the present applicant, as well.

19. The Hon'ble Supreme Court of India in the case of *Union of India Vs. K.A. Najeeb*¹ has observed thus:-

“15.This Court has clarified in numerous judgments that the liberty guaranteed by Part III of the Constitution would cover within its protective ambit not only due procedure and fairness but also access to justice and a speedy

¹ (2021) 3 SCC 713

trial. In Supreme Court Legal Aid Committee (Representing Undertrial Prisoners) v. Union of India, it was held that undertrials cannot indefinitely be detained pending trial. Ideally, no person ought to suffer adverse consequences of his acts unless the same is established before a neutral arbiter. However, owing to the practicalities of real life where to secure an effective trial and to ameliorate the risk to society in case a potential criminal is left at large pending trial, the courts are tasked with deciding whether an individual ought to be released pending trial or not. Once it is obvious that a timely trial would not be possible and the accused has suffered incarceration for a significant period of time, the courts would ordinarily be obligated to enlarge them on bail.

17. It is thus clear to us that the presence of statutory restrictions like Section 43D (5) of UAPA perse does not oust the ability of the Constitutional Courts to grant bail on grounds of violation of Part III of the Constitution. Indeed, both the restrictions under a Statue as well as the powers exercisable under Constitutional Jurisdiction can be well harmonised. Whereas at commencement of proceedings, the Courts are expected to appreciate the legislative policy against grant of bail but the rigours of such provisions will melt down where there is no likelihood of trial being completed within a reasonable time and the period of incarceration already undergone has exceeded a substantial part of the prescribed sentence. Such an approach would safeguard against the possibility of

provisions like Section 43D (5) of the UAPA being used as the sole metric for denial of bail or for wholesale breach of constitutional right to speedy trial.”

20. In the teeth of the above referred observations of the Hon’ble Supreme Court of India I revert back to the facts of the present case. In this case, the investigating Officer has attached the property more than worth of Rs.20 Crores.

21. The investigation is completed and charge-sheet has been filed. There is nothing to suggest that the applicant will tamper with the prosecution evidence or pressurize the prosecution witnesses. Further there is nothing to suggest there is any flight risk.

22. In the above referred backdrop, considering the number of witnesses and the voluminous charge-sheet, there is no possibility that in near future, the trial will commence or it will be concluded. In the circumstances, there is no point in keeping in jail to the applicant for uncertain period, otherwise it would amount to pretrial punishment.

23. As far as the affidavit of the applicant dated 04/09/2019, on which the learned APP and learned counsel assisting the prosecution, have relied upon, it can only be said that it would not be safe to rely upon it at this stage. In the circumstances, I pass the following order:

- a) The criminal application is **allowed**.

- b) It is directed that in the applicant in Crime No. 217 of 2019, registered with Police Station Kotwali, Tah. & Dist. Nagpur, for the offences punishable under Sections 409, 420, 467, 471, 120B and 34 of the Indian Penal Code, 1860 and Section 3 of the Maharashtra Protection of Interest of Depositors Act, 1999, the applicant shall be released on bail on furnishing P.R. Bond of Rs.25,000/- with one solvent surety in the like amount.
- c) The applicant shall attend the concerned Economic Offence Wing on 1st and 16th day of each month between 10.00 a.m. to 12.00 noon, till the culmination of the trial.
- d) The State is at liberty to move application for cancellation of bail, in case of breach of any condition or the applicant repeats the similar offence
- e) The applicant shall not tamper with the prosecution witnesses.

The criminal application is **disposed of**, accordingly.

[ANIL S. KILOR, J.]