

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

CRIMINAL APPLICATION (ABA) NO.325 OF 2022

Lokesh S/o Santosh Jain and another

Versus

State of Maharashtra, through P.S.O., P.S. 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

Shri P.W. Mirza, Advocate for the applicants.

Ms M.A. Barabde, A.P.P. for the non-applicants/State.

CORAM : ANIL S. KILOR, J.

DATED : 24/06/2022

1. The applicants are seeking pre-arrest bail in Crime No.509 of 2021, dated 02.11.2021, registered with Police Station Sitabuldi, District: Nagpur City, for the offences punishable under Sections 420, 406, 409 and 120-B of the Indian Penal Code and Section 3 of the Maharashtra Protection of Interest of Depositors (In Financial Establishments) Act.

2. Shri Mirza, learned counsel for the applicants submits that even if the allegations made in the First Information Report (FIR), are taken on its face value, the promise for assured returns was made by one Mr. Mehadia, who is the co-accused in the present matter and who was arrested immediately on lodgment of report.

3. He further shows that the complainant was not having any grivance till 2017 about non payment. He

further points out that if there was any default in payment of amount, the complainant ought to have availed the remedy for recovery of amount by filing a civil suit. However, he is trying to use police machinery for recovery.

4. Shri Mirza, learned counsel for the applicants submits that as the police have seized all documents including bank statements and other relevant documents, further custody of the applicants is not necessary.

5. He has pointed out that the matter was settled between the parties in 2018 and accordingly, the applicants and co-accused issued cheques to the complainant by handing it over to the complainant's lawyer. However, subsequently, it is revealed that the lawyer did not hand over it to the complainant. The said fact was pointed out to this Court in Criminal Application No.1236 of 2021. He further points out that, thereupon, the Division Bench of this Court directed to initiate disciplinary proceedings against the concerned lawyer. He thus, submits that after the matter was settled, filing of police complaint by the complainant is nothing but harassment to the applicants.

6. He further argues that the co-accused Shri Mehadia filed a proceedings before NCLT, in the said proceedings, a consultant has been appointed while passing the order of insolvency, for payments to be made to the

investors. Thus, he submits that the interest of the complainant is protected by the said order and therefore, custodial interrogation of the applicants is not necessary.

7. He lastly undertakes, on instructions, from the applicants that they would abide by any condition if imposed while granting bail, including attending the concerned police station.

8. On the other hand, Ms M.A. Barabde, learned APP strongly opposes the present application and submits that for further investigation, the custody of the applicants is necessary.

9. She further submits that to know the names of other investors and also to have the detail information about the immovable property of the applicants, custody is required.

10. She points out that the applicants had given assurance for 12% interest and this fact can be seen from the statement of accounts of the applicants wherein, the words used are “assured interest @ 12%”. Accordingly, she prays for rejection of the present application.

11. I have perused the charge-sheet and Case Diary.

12. The charge-sheet shows that the investigation against the applicants is going on. The footnotes in the charge-sheet, in relation to the present applicants, show that after collecting sufficient evidence against the applicants, charge-sheet will be filed.

13. During the investigation, the record was seized and recovered by the Investigating Agency, which relating to M/s Lokesh Metallic's of which the present applicants are the partners.

14. The proceedings namely Criminal Application No.1236 of 2021 filed by the present applicants and others, shows that certain cheques were handed over, in view of the settlement to the lawyer of the complainant. However, it was not handed over by the lawyer to the complainant. The said fact sufficiently shows that there was a settlement between the parties and the complainant accepted the cheques through his lawyer.

15. Moreover, there is nothing to show that if the applicants are released on bail, there is any possible possibility that the applicant would pressurize the prosecution witnesses or tamper with the prosecution evidence or he will not be available for the trial. Thus, I am of the opinion that the bail should be granted with certain stringent condition. Accordingly, I pass the following order:

- a) The criminal application is **allowed**.
- b) It is directed that in the event of arrest of the applicants in Crime No.509 of 2021, registered with Police Station Sitabuldi, District: Nagpur City, for the offences punishable under Sections 420, 406, 409 and 120-B of the Indian Penal Code and Section 3 of the Maharashtra Protection of Interest of Depositors (In Financial Establishments) Act, the applicants shall be released on bail on furnishing P.R. Bond of Rs.15,000/- each with one solvent surety in the like amount for each of the applicants.
- c) The applicants shall attend the concerned Police Station from 4th July, 2022 till 16th July, 2022 between 10.00 a.m. to 12.00 noon and shall cooperate the Investigating Agency in investigation and furnish necessary information/ documents if any requested by Investigating Agency, for the purpose of investigation.
- d) It is made clear that the information/ documents which the Investigating Agency requires for investigation, should be communicated to the applicants in writing with two days advance notice.

- e) The State is at liberty to apply for cancellation of bail, in case, applicants fail to cooperate in investigation.
- f) The applicant shall not leave the jurisdiction of the concerned Police station without permission of the Court.
- g) The applicant shall not tamper with the prosecution witnesses.
- h) The applicants shall not deal with any immovable property owned by the applicants and M/s Lokesh Metallic's, till filing of the charge-sheet.

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

[ANIL S. KILOR, J.]