

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

Criminal Application (BA) No. 520 of 2022

Rakesh Singh

Versus

State of Maharashtra, Officer-in-charge of Police Station Jalalkheda,
Nagpur District (Rural), 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 Rukhmini Bobde, Advocate a/w Shri Rohan
Chhabra, Advocate for the applicant.

Shri V.A.Thakare, APP for the State / Non-applicant

Shri R.D.Nikam, Police Inspector is personally present.

CORAM : ANIL S. KILOR, J.

DATED : 14th JUNE, 2022.

The applicant is seeking bail under Section 439 of the Code of Criminal Procedure in Crime No. 304 of 2018 dated 22nd October, 2018 registered with Police Station Jalalkheda Police Station for the offence punishable under Sections 120-B, 201, 409, 411, 413, 420, 467, 468, 471 of Indian Penal Code and Section 3 of the Maharashtra Protection of Interest of Depositors Act and Section 66(e) of Information Technology Act.

2. Ms. Bobde, learned counsel for the applicant submits that after completion of the

investigation the chargesheet has been filed and no further custody of the applicant is necessary.

3. She has further argued that the applicant was arrested on 24th July, 2020 and almost for 2 years, the applicant is in jail.

4. She further states that even if quantum of alleged defalcated amount is not disputed, admittedly valuation of the attached property, is much more than the alleged amount of defalcation.

5. Ms. Bobde, learned counsel for the applicant further submits that the applicant is permanent resident of Nagpur and he owned immovable property and further as he does not have any passport, there is no flight risk associated with the applicant, if he is released on bail.

6. She points out that due to Covid-19 some defaults in repayment of loan had occurred. However, there was no intention to deceive the bank. She submits that in this case there is no complaint made by the bank about defalcation but it was made by some farmers.

7. It is pointed out that earlier the non-applicant received total 11 complaints, however, subsequently seven farmers had withdrawn their complaints.

8. Ms. Bobde, learned counsel for the applicant further argues that as per the Forensic Audit report, it has come on record that the amount was not directly transferred in the applicant's account but it was transferred to the farmer's account first and then in the account of the applicant, wherefrom it was transferred into the accounts of various 63 traders. The amount which was transferred in the accounts of traders is more than 25 crores.

9. It is argued that even though the provisions of M.P.I.D Act do not attract, the offence came to be registered under Section 3 of the Maharashtra Protection of Interest of Depositors Act. It is further submits that while arguing the first bail application the said point was raised and on realization of the said mistake, the prosecution has recorded the statement of the complainants wherein they first time used the word 'deposit'. Accordingly, she prays for grant of bail to the applicant.

10. Learned Additional Public Prosecutor strongly opposed the application and at the outset he submits that this Court has rejected earlier application of the applicant on merit and there is no change in circumstances as such the present application is not maintainable.

11. In reply to the same, Ms. Bobde, learned counsel for the applicant submits that this Court while rejecting first bail application has granted liberty to move a fresh application in case there will be no progress in trial in next six months. She points out that the present application has been filed after a lapse of period of nine months and therefore, it cannot be said that this application is not maintainable.

12. Learned Additional Public Prosecutor further submits that the statement of farmers are sufficient to show the involvement of the applicant in the alleged offence which is serious in nature.

13. It is submitted that defalcation amount is huge and though chargesheet is filed, further investigation is going on.

14. Ms. Bobde, learned counsel for the applicant in reply submits that in supplementary chargesheet filed after making further investigation subsequent to filing of chargesheet, the charges in the same are made against the officer of NCMSL and bank officers and not against the applicant. Therefore, it is submitted that it cannot be said that supplementary chargesheet is against the applicant. Accordingly, she submits that as far as applicant is concerned, the

investigation is over and custody of the applicant is not necessary.

15. Shri Thakre, learned Additional Public Prosecutor submits that it is an economic offence and the amount defalcated is of the farmers. Hence, he prays that this Court may not consider the prayer of the applicant for grant of bail.

16. In the light of submissions made by the learned counsel for the applicant and learned Additional Public Prosecutor, I have perused the chargesheet and the First Information Report.

17. It can be seen that as per the First Information Report the defalcated amount is Rs.51,87,36,057/-. Whereas, the property attached is amounting to more than 99 crores. Thus, it is clear that the property attached is worth more than the defaulted amount.

18. There is no criminal antecedents of similar nature, to the discredit of the applicant.

19. The forensic audit report shows that major portion of alleged amount of defalcation was transferred in the accounts of 68 traders. The statement of traders available on record show that they received the amount relating to business transaction.

20. Thus, *prima facie* at this stage it cannot be said that the amount is defalcated or the applicant is beneficiary.

21. The accused no.2 the wife of the applicant who was the guarantor in all cases, has already been released on bail. Whereas, the applicant is an introducer in all cases. He signed all loan documents as introducer. Thus, the case of the applicant is on a better footing than the case of the guarantor. Hence, the applicant is entitled for parity.

22. The applicant is in jail from last two years and there is no progress in the trial, even the charge is not framed. It is pointed out that there are about 105 witnesses and considering the number of witnesses even if trial commences in near future, it will take long time to conclude.

23. In the above referred backdrop, there is no point in keeping the applicant in jail for uncertain period and if it is done, it will amount to punishing the applicant before he has been actually convicted on finding him guilty in the alleged offence.

24. As far as the documentary evidence is concerned, the prosecution has already recovered the same and nothing is remained to be recovered or seized from the applicant.

25. In the above referred backdrop, I am of the opinion that the applicant is entitled for grant of bail. Accordingly, I pass the following order:

- i. Criminal application is allowed;
- ii. It is directed that the applicant shall be released on bail in Crime No. 304 of 2018 dated 22nd October, 2018 for the offence punishable under Sections 120-B, 201, 409, 411, 413, 420, 467, 468, 471 of Indian Penal Code and Section 3 of the Maharashtra Protection of Interest of Depositors Act, registered with non-applicant Jalalkheda Police Station, Nagpur District (Rural), Nagpur on furnishing P.R.Bond of Rs.1,00,000/- with a solvent surety in the like amount;
- ii. The applicant shall attend the concerned Police Station as and when his presence is required;
- iii. The applicant shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case, as also not tamper with the evidence;
- iv. The applicant shall not leave the jurisdiction of the concerned police station without permission of the Court.
- v. Hamdast is granted.

[ANIL S. KILOR, J.]

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