

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

CRIMINAL APPLICATION (BA) NO.619 OF 2022

Mangesh s/o Vilas Giradkar **Versus** State of Maharashtra, through P.S.O., P.S. Gadchiroli, Dist. Gadchiroli.

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

Court's or Judge's Order

Shri S.Bhandarkar, Advocate for the applicant.

Ms K.R.Deshpande, A.P.P. for the non-applicant/State.

CORAM : ANIL S. KILOR, J.
DATED : 14/09/2022

Heard.

2. The applicant is seeking bail in connection with Crime No. 671/2017, registered with Police Station Gadchiroli, District: Gadchiroli, for the offences punishable under Sections 420, 406 read with Section 34 of the Indian Penal Code and Section 3 of the Maharashtra Protection of Depositors Act, 1999.

3. The prosecution story is that, the complainant lodged the complaint, alleging that he invested the amount in the company i.e. SJSV Land Developers India Limited (SJSV) with an assurance by the company and the present applicant, who is the Regional Manager, that the company will pay 12% interest on the invested amount. However, on maturity of deposits, the said company failed to return the amount.

4. Shri S.K. Bhandarkar, learned counsel for the applicant submits that, the applicant was the Regional Manager and in that way, his role was not more than an employee of the company. He submits that, if there is any breach of promise of return of the amount of maturity of deposit, it is by the Company and its Director and not by the employees like the applicant. He, therefore, submits that applicant has been falsely implicated in the alleged offence.

5. It is submitted that, after completion of the investigation, the charge-sheet has been filed and considering the period of incarceration of the applicant i.e. about 32 months, his further custody is not necessary. Accordingly, he prays for grant of bail.

6. On the other hand, Ms Kalyani Deshpande, learned APP strongly opposes the present application. The learned APP has drawn attention to the statement of witnesses to show the role and involvement of the applicant in the alleged offence. Accordingly, she prays for rejection of the present application.

7. I have perused the charge-sheet and the application.

8. This Court, while rejecting the first application of the applicant vide order dated 07/10/2021, granted liberty to move a fresh if there is no progress in trial in three months from the date of the said order. It is informed by the learned counsel for the applicant and the learned APP that,

till date there is no substantive progress in the trial and charge is framed.

9. The applicant is in jail from 06/01/2020 and the maximum punishment would be seven years. Thus, it can be seen that the applicant has already undergone substantive incarceration.

10. In the case of *Union of India Vs. K.A. Najeed*¹ the Hon'ble Supreme Court of India 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 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.

1 (2021) 3 SCC 713

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.”

11. The applicant is not the Director or Managing Director of the company, in which the complainant had himself invested the amount. Whereas, the applicant is an employee and was working in a capacity as Regional Manager. Therefore, *prima-facie*, even if any promise was made by the applicant, the same was made as per the policy of the company.

12. In this case, the investigation is completed and the charge-sheet has been filed. Thus, in the light of the

above observation made by the Hon'ble Supreme Court of India in the case of *Union of India Vs. K.A. Najeeb (supra)*, I am of the opinion that, the applicant is entitled for grant of bail. Accordingly, I pass the following order:

- a) The criminal application is **allowed**.
- b) It is directed that in connection with Crime No. 671/2017, registered with Police Station Gadchiroli, District: Gadchiroli, for the offences punishable under Sections 420, 406 read with Section 34 of the Indian Penal Code and Section 3 of the Maharashtra Protection 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 Police Station on 1st of each month between 09.00 a.m. to 10.00 a.m., till the culmination of the trial.
- d) The applicant shall not tamper with the prosecution witnesses.

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

[ANIL S. KILOR, J.]