

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

CRIMINAL APPLICATION (BA) NO.773 OF 2022

(DNYANESHWAR GOVINDRAO BAWANE....VS.. STATE OF MAH. THR. PSO PS RANA PRATAP
NAGAR, NAGPUR)

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Shri S.P.Bhandarkar, Adv a/w Shri Saurabh Bhende, Advocate for Applicant.
Shri T.A.Mirza, A.P.P. for Non-applicant /State.

CORAM : ANIL S. KILOR, J.
DATED : AUGUST 02, 2022.

1. Heard.
2. The applicant is seeking bail in Crime No. 0251 of 2020, registered with Police Station Ranapratap Nagar, District Nagpur, for the offences punishable under Sections 420, 406, 409, 120-B read with Section 34 of the Indian Penal Code, Section 3 of the Maharashtra Protection of Interest of Depositors (In Financial Establishments) Act, 1999 and Section 45(s) of the Reserve Bank of India Act, 1934.
3. Shri Bhandarkar, learned counsel for the applicant submits that the first application for grant of bail, filed by the applicant was rejected by this Court vide order dated 30/06/2021 with liberty to the applicant to approach this Court after one year. He further points out that, as the second application was moved before completion of the period of one year, it was rejected on 21/02/2022, on the said ground.

4. He submits that, the present application was filed on 04/07/2022 i.e. after more than a period of one year after dismissal of the first application on 30/06/2021.

5. He submits that after rejection of the first application there are change in circumstances as two accused persons were granted bail by this Court. He has drawn attention of this Court to the order passed by this Court in Criminal Application (BA) No. 759 of 2021 dated 11/04/2022 and order dated 27/06/2022 passed in Criminal Application (BA) No. 1358 of 2021, granting bail to the co-accused. He, accordingly prays for grant of bail on the principle of parity.

6. It is further submitted that, except the applicant, all other accused persons involved in the present crime, have been released on bail and the case of the applicant is not different than the co-accused who have been released on bail.

7. He lastly submits that the applicant is in jail since 17/11/2020 and there is no likelihood or possibility that in near future the trial will commence. He, therefore, submits that keeping the applicant in jail for uncertain period, when his custody is not necessary after filing of the charge-sheet and further in view of the fact that all other accused persons have already been released, would amount to pre-trial punishment. Accordingly, he prays for grant of bail.

8. Shri Mirza, learned A.P.P. strongly opposed the application and submits that the offence is serious and earlier as this Court has rejected the bail application of the applicant on merits, this Court may not consider the request of the applicant.

9. I have perused the charge-sheet, F.I.R. and the orders passed by this Court subsequent to rejection of the first application of the applicant.

10. This Court, on 30/06/2021 rejected the application of the applicant with liberty to the applicant to move afresh after one year if trial does not commence. The applicant, however, even before completion of the one year filed another application and accordingly it was rejected.

11. The record further shows that, this court on 11/04/2022 and thereafter on 27/06/2022 allowed the prayers of two co-accused viz. Devendra Bhimrao Gajbhiye and Ramesh Surajlal Bisen for grant of bail.

12. It can be seen that all other accused persons have already been released on bail. In the said backdrop, nothing has been pointed out by the learned A.P.P. that the applicant is not similarly circumstanced with the co-accused who have been released on bail.

13. Considering the role attributed to the applicant and the role attributed to the other co-accused, who have been granted bail, I do not find that the role of the applicant is different than the role attributed to the other accused persons who have been released on bail.

14. Thus, considering the above referred fact, I am of the opinion that the applicant is entitled for grant of bail on the principle of parity.

15. In the case of *Union of India ..vs.. K.A. Najeed*, reported in **(2021)3 SCC 713** 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/s 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 43-D(5) of UAPA per se 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 statute 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 43-D(5) of UAPA being used as the sole metric for denial of bail or for wholesale breach of constitutional right to speedy trial.”

16. In the light of the above referred observations made by the Hon’ble Supreme Court of India, I am of the opinion that as the applicant is in jail for a substantive period and as there is no likelihood that the trial will commence in near future, on this count also 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.251 of 2020, registered with Police Station, Ranapratap Nagar, Nagpur for the offences punishable under Sections 420, 406, 409, 120-B read with Section 34 of the Indian Penal Code, Section 3 of the Maharashtra Protection of Interest of Depositors (In Financial Establishments) Act, 1999 and Section 45(s) of the Reserve Bank of India Act, 1934, on furnishing P.R.Bond of Rupees Fifty Thousand with one or two solvent sureties in the like amount;
- iii) The applicant shall attend the concerned Police Station as and when his presence is required;
- iv) 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;

- v) The applicant shall not leave the jurisdiction of the concerned police station without permission of the Court.
- vi) The applicant shall attend the trial before the Special Court regularly on every date unless exemption is granted by the Special Court.

The Criminal Application is **disposed of** accordingly.

JUDGE

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