

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

CRIMINAL APPLICATION (BA) NO.1135 OF 2022

Uday Vijayrao Mundgaonkar (Pinjarkar)

Versus

State of Maharashtra

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

Court's or Judge's Order

Shri Anil S. Mardikar, Senior counsel with Shri N.R. Tekade, counsel
for the applicant.

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

CORAM : ANIL S. KILOR, J.

DATED : 22/11/2022

1. Heard.
2. The applicant is seeking bail in connection with Crime No. 0053 of 2022 registered with Police Station Kotwali, Tq. and District Akola for the offences punishable under Sections 406, 420, 465, 467, 468, 471 read with Section 34 of the Indian Penal Code, 1860 and Sections 3 and 4 the Maharashtra Protection of Interest of Depositors Act, 1999.
3. The case of the prosecution in short is that, the applicant is having three establishments and by floating a scheme with a promise to give handsome returns by way of interest, they lured the depositors to make the deposit in the scheme.
4. It is stated that, initially, the applicant regularly paid the interest to the depositors. However, later on, the

interest was not paid and thereupon, the complaint was lodged.

5. Shri Anil S. Mardikar, learned Senior Counsel for the applicant points out that, as per FIR the alleged defalcated amount is of 4,69,82,000/- (Rs. Four Crore Sixty Nine Lakhs Eighty Two Thousand only). Whereas, the properties of the accused attached by the Police is worth of Rs. 5,52,88,264/-(Rs. Five Crore Fifty Two Lakhs Eighty Eight Thousand Two Hundred and Sixty Four only) i.e. much more than the alleged amount of defalcation.

6. It is further submitted that, out of six accused persons, four co-accused have already been released on bail, and in view of the fact that, the charge-sheet has been filed after completion of the investigation, the further custody of the applicant is not necessary.

7. It is submitted that, considering the voluminous record and the fact that, till date even the charges are not framed, it is submitted that, there is no possibility that in near future, the trial will commence.

8. He further submits that, in the above referred backdrop in view of the judgment of the Hon'ble Supreme Court of India in the case of *Union of India Vs. K.A. Najeer*¹, the applicant may be released on bail.

9. On the other hand, learned APP strongly opposed the present application and submits that, the

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applicant is the main accused and some deterrence is required as such types of crimes are on rise.

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

11. From the charge-sheet it appears that, the total amount involved in this case is Rs. 4,69,82,000/- (Rs. Four Crore Sixty Nine Lakhs Eighty Two Thousand only). Whereas, the property of the accused attached by the Police is worth Rs. 5,52,88,264/-(Rs. Five Crore Fifty Two Lakhs Eighty Eight Thousand Two Hundred and Sixty Four only), so far.

12. Though in the reply it is stated that, the investigation agency has received more similar complaints, however, considering the fact that, the investigating agency has already seized all relevant records and documents and further attached and seized the immovable property of the applicant, nothing remained to be recovered from the applicant.

13. Moreover, till date, the charges are not framed and the trial has not commenced. Considering the voluminous record, there is no possibility that in near future, the trial will commence.

14. The Hon'ble Supreme Court of India in the case of *Union of India Vs. K.A. Najeeb* 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.

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.”

15. In the light of the above observations and the discussion made here-in-above, I am of the opinion that, there is no point in keeping the applicant in jail for uncertain period. In that view of the matter, I pass the following order:

- a) The criminal application is **allowed**.
- b) It is directed that in connection with Crime No. 0053 of 2022 registered with Police Station Kotwali, Tq. and District Akola for the offences punishable under Sections 406, 420, 465, 467, 468, 471 read with Section 34 of the Indian Penal Code, 1860 and Sections 3 and 4 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 Police Station 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.]