IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

APPLICATION FOR CANCELLATION OF BAIL NO. 94 OF 2022

The State of Maharashtra
Through Police Station Officer,
Vazirabad Police Station,
Nanded. .. Applicant

VERSUS

Nandlal Kesharsinh
Age : Major Occ. Chairman,
R/o. Bhana House, 19/303, RSC 21,
Borivali (West) Mumbai. .. Respondent

Mr. S. B. Narwade, A.P.P for the Applicant/State;
Senior Advocate Mr. Rajendrraa Deshmukkh along with Mr. Vishal A. Chavan instructed by Mr. Manoj D Shinde, Advocate for respondent

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CORAM : S. G. MEHARE, J.

Reserved on : 27.07.2023
Pronounced on : 09.10.2023

ORAL ORDER :

1. The prosecution has filed this application under Section 439(2) of the Code of Criminal Procedure for cancellation of the bail granted to the respondent/accused under Section 167(2) of the Code of Criminal Procedure in Crime No. 206 of 2018 for the offence punishable under Sections 420, 406, 467, 468, 120(B) read with

Section 34 of the Indian Penal Code and under Section 3 and 4 of the Maharashtra Protection of Interest of Depositors (in Financial Establishment) Act, 1999 (herein after referred to as M.P.I.D. Act) by the learned Sessions Judge-2, Nanded dated 07.03.2022.

2. The police had registered a crime on the complaint that he had purchased the economic policy plan from Phenomenal Health Care Services Co. Limited Mumbai from the persons engaged in the business of the policy. Out of various policies, he chose to purchase the economic policy and invested a one-time amount of Rs. 12,500/- in which it was promised that after nine years of his investment, he would be getting Rs. 25,000/-. As per the policy terms, the medical expenses for six years, the accident, and the expenses up to Rs. 2,00,000/- for heart attack were covered. He had invested money on 04.05.2007. On 3.5.2016, he went to the Office of the Phinominal Health Care Services Co. Limited and produced the original policy and receipt of the deposit. However, only Rs. 12,500/- was returned to him, but the returns, as promised, were not paid. He was kept waiting for the further benefit. One Ajay Tiwari, who was in charge of the branch at Nanded and head of the Office, was one of Santosh Singh. One fine morning on 25.04.2018, the Office of the company was closed, then he

learnt that he was cheated. On the above allegations, the crime mentioned above was registered.

3. The present respondent/accused is the chairman of the company. He was arrested on 05.01.2022. He had undergone the police custody, and then he was in the magisterial custody.

4. Since the Police did not file the report/charge sheet under Section 173(1) of the Code of Criminal Procedure, the accused moved an application under Section 167(2) of the Code of Criminal Procedure for default bail. The learned trial Court on considering the material before it granted the bail after verifying whether any report/charge sheet had been submitted by police on 7.3.2022 till 4.15 p.m. The learned trial Court held that the charge sheet ought to have been filed within sixty days since sixty days were completed on the day of the application for default bail.

5. It has always been a controversy which clause (i) and (ii) of sub-section 2 of Section 167 of the Code of Criminal Procedure is applicable for filing the charge sheet against the accused. Section 167 of the Code of Criminal Procedure provides the time limit for filing the charge sheet based on the term of imprisonment. The term of imprisonment is always based on the nature of the crime alleged and

committed by the accused. Where an offence is punishable with death, imprisonment for life or imprisonment for a term of not less than ten years has been committed, the Magistrate is not authorized to detain the accused in custody for a total period exceeding 90 days. Where the imprisonment for the alleged offence committed by the accused in any other case except clause (i) of Section 167(2) of the Code of Criminal Procedure, the Magistrate ceases his power to put the accused in custody for a period exceeding 60 days.

6. To seek default bail, the accused has to apply to the Court and be prepared to furnish the bail for default bail. This is the legal proposition of the law dealing with the application and rights of the accused for default bail.

7. The learned A.P.P would argue that considering the allegations levelled against the respondent/accused, he has committed the offence punishable under Sections 420, 406, 467, 468, and Section 34 of the Indian Penal Code with Sections 3 and 4 of the M.P.I.D Act. The charge sheet was filed on 29.03.2023, within 90 days from the production of the accused before the Magistrate. He emphasized that the offence punishable under Section 467 provides for the imprisonment for life or with imprisonment of either description for a term which may extend to 10 years; therefore, the case of the applicant falls under clause (i) of

the sub section 2 of Section 167 of the Code of Criminal Procedure. He would further argue that the learned trial Court has ignored the sections applied and erroneously granted the bail with misconception of law that the charge sheet ought to have been filed within sixty days from his production date. He has vehemently argued that the offence registered against the respondent/accused is serious; there was a huge misappropriation of the investor's money, and poor investors have been duped. He also argued that the learned Sessions Court, while granting default bail, has ignored the material evidence on record and passed perverse orders. Hence, it deserves to be cancelled.

8. To bolster his argument, he relied on the case of;

(i) ***Abdul Salim Shaikh (Siddique)and another Vs. State of Maharashtra 2014 All M.R. (Criminal) 4612***,

(ii) ***Bhupinder Singh and others Vs. Jarnail Singh and another 2006 AIR (SC) 2622***

(iii) Rakesh Kumar Paul Vs. State of Assam 2017 DGLS (SC) 809.

9. Per contra, the learned Senior counsel for the respondent/accused has vehemently opposed the arguments of learned A.P.P. He submits that Section 467 of the Indian Penal Code and other sections applied in the crime are not punishable with death,

punishment for life or imprisonment for a term not less than ten years. Referring to Section 467 of the Indian Penal Code, he further advanced the argument that imprisonment for the offence under section 467 of the Indian Penal Code can be awarded for a period of less than ten years, and it does not provide the minimum sentence would not be less than ten years. Therefore, the case of the accused falls under Section 167(2)(a) clause (ii) of the Code of Criminal Procedure. To bolster his argument, he relied on the case of ***Rajeev Chaudhary Vs State of (NCT) of Delhi 2001(5) SCC 834*** in which the term "not less than" has been interpreted "would mean that the imprisonment should be of ten years or more and would cover only those offences for which punishment could be imprisonment for a clear period of 10 years or more.

10. Further, he relied on the ***Rakesh Kumar Paul and Others Vs State of Assam AIR 2017 SC 3948,*** wherein the contents of Section 167 (2)(a)(ii) of the Code of Criminal Procedure 1978 were considered. The Hon'ble Shri. Justice Madan B. Loku, in paragraph No. 25, has opined that the words "not less than" occurring in clause (i) to proviso (a) of Section 167(2) of the Code of Criminal Procedure (and in other provisions), must be given their natural and obvious meaning which is to say, not below a minimum threshold and in the case of Section 167

of the Code of Criminal Procedure these words must relate to an offence punishable with minimum of 10 years imprisonment. In the same judgment, the Hon'ble Justice Prafulla C. Pant, as regards the offences for which the punishment imposed may be extended up to ten years, has observed that in paragraph No. 72, which reads thus ;

> 72. From the above analogy, I am of the opinion that the intention of the Legislature was that if an offence was punishable with imprisonment up to ten years, then it falls within the provision of Section 167(2)(a)(i) of the Code, and the permissible period for investigation is ninety days. The intention of the Legislature in extending the permissible time period from sixty days to ninety days for investigation is to include the offences in which the sentence awardable is at least ten years or more. Therefore, as discussed above, though the expression "not less than ten years" used in Section 167(2)(a)(i) of the Code has created some ambiguity, the real intention of the Legislature seems to include all such offences wherein an imprisonment which may extend to ten years is an awardable sentence. In other words, for offences wherein the punishment may extend to ten years imprisonment, the permissible period for filing the charge sheet shall be ninety days, and only after the period of ninety days, only after the period of ninety days, the Accused shall be entitled to bail on default for non filing of the charge sheet. (In the present case, admittedly, the charge sheet is filed within ninety days). I may further add that since the expression "not less than ten years" has caused ambiguity in interpretation, the best course for the Legislature would be to clear its intention by using the appropriate words.

11. In a nutshell, the observations in the above paragraph are where the offence is punishable with imprisonment, which may extend to 10 years; the permissible period for filing the charge sheet shall be 90 days, and only after a period of 90 days the accused shall be entitled to bail on default for non-filing of the charge sheet.

12. In the above case, Hon'ble Justice Deepak C Gupta formulated the question in paragraph No. 87, which reads thus:-

> *The petitioner was arrested on 04.11.2016 and was remanded to judicial custody on 05.11.2016. The period of 60 days of arrest would expire either on 03.01.2017 or 04.01.2017, which will make no difference as far as this case is concerned. Period of 90 days will expire on 02.02.2017. It is also not disputed that the police filed charge sheet on 24.01.2017.*
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> *The petitioner had filed a regular bail application before the trial court, which was rejected on 20.12.2016. He moved an application in the High Court for grant of bail. In this bail application, no specific prayer was made for grant of 'default bail'. However, the perusal of the impugned order dated 11.01.2017 whereby this bail application was rejected, clearly shows that main contention of the counsel for the petitioner was that the petitioner was entitled to grant of 'default bail' because 60 days had expired but this prayer did not find favour with the High Court, which was of the view that since the offence was punishable by imprisonment up to 10 years, the investigating agency was entitled to get 90 days to complete investigation and the Accused could apply for grant of 'default bail' thereafter.*

Two issues arise for consideration in this case :

(d) When an Accused is charged with an offence in which the punishment imposable is up to 10 years, whether the Accused is entitled to grant of bail in terms of Section 167(2) of the Code if the Investigating agency does not file the charge-sheet within a period of 60 days.

(e) Whether an Accused can be enlarged on bail Under Section 167(2) even though he may not have made an application in writing Under Section 167(2) of the Code but has orally argued that he is entitled to grant of 'default bail'.

13. In paragraph No. 91, it has been observed that" We are only concerned with interpretation of the phrase "for a term not less than ten years" occurring in Section 167 (2)(a)(i), which provides a period of 90 days where the investigation relates to an offence punishable with death, imprisonment for life or imprisonment for a term not less than 10 years and in paragraph No. 113 (2) it has been opined that the finding have been recorded that Section 167(2)(a)(i) of the Code of is applicable only in cases where the accused is charged with (i) offences punishable with death and any lower sentence; (ii) offences punishable with life imprisonment and any lower sentence and (iii) offences punishable with minimum sentence of 10 years.

14. The learned Senior counsel has also relied upon the case of ***Nandlal Singh Kesar Singh Versus The State of Maharashtra Bail Application No. 784 of 2022*** decided on August 24, 2022 and order passed by this Court in ***Bail Application No. 712 of 2023 Irfan Moiuddeen Saiyyed And Others Versus The State of Maharashtra*** (3rd of May 2023) He also relied on the case of ***1. Smt. Shalini Verma w/o Shri Rupendra Verma 2. Rupendra Kumar Verma S/o Shri Setram Verma Versus State of Chhattisgar through the District Magistrate Raipur District Raipur Chhattisgarh CRMP No. 2551 of 2018 of the Hon'ble Chhattisgarh High Court dated 13th March 2019.***

15. ***Rajeev Chaudhary Versus State (N.C.T.) of Delhi 2001 SC 34*** was discussed in the case of ***Rakesh Kumar Paul***. He also relied on the case of ***Alnesh Akil Somji Vs. The State of Maharashtra Bail Application No. 271 of 2022 of Bombay High Court decided on 25.04.2022***. He also relied on the case of ***Som Nath and Others Versus State of Punjab Cri. Misc. No. M-10219 of 2011 (O and M) of Punjab And Haryana High Court at Chandighar on 28.04.2011***. In the case of Rakesh Paul, the term of punishment applied for clause (i) and clause (ii) of Section 167(2) of the Code of Criminal Procedure has been interpreted that for the application of clause (i) of 167 (2) of the Code of Criminal Procedure the period of filing charge sheet is 90 days is where the

offence punishable with death, imprisonment for life and imprisonment for a term not less than 10 years for all other offences the period of submitting the charge sheet is 60 days.

16. In the case at hand, the police had applied Section 467 of the Indian Penal Code against the accused, which provides imprisonment for life or for a term which may extend to ten years. In the said section, two imprisonments are provided. Firstly, the imprisonment for life and, secondly, imprisonment of either description, which may extend to ten years. The term 'which may extend to a certain period' is not covered under Section 167(2) (i) of the Code of Criminal Procedure. However, the punishment for life imprisonment is covered under said clause (i).

17. The question here is whether sections applied by the investigating officer shall be accepted by the Court of Magistrate or trial Court as it is. There shall be no quarrel that for attracting the section or the offence punishable under a particular Act, there shall be prima facie allegations to form an opinion that a particular offence is punishable under a particular section of the Indian Penal Code or any other law. While dealing with an application under Section 167 (2) of the Code of Criminal Procedure, the only material before the Magistrate or trial Court is a first information report or remand papers, and the Magistrate to opine what offence is made out from the said

material and not the sections applied by the Investigating Officer. Such material is the only source to decide in which clause of Section 167 (2) the prosecution case falls.

18. The Court has discussed above the allegations levelled by the complainant against the company. His allegations were simply that the documents were created with a promise to pay a certain return after a certain period. However, at the time of maturity, the returns as promised were not paid to him. Let's read the definition of the term' forgery' under Section 460 of the Indian Penal Code. It is creating a false document to enter into any express or implied contract with intent to commit fraud. The offence of forgery is punishable under Section 465 of the Indian Penal Code.

19. To constitute an offence punishable under Section 467 of the Indian Penal Code, there shall be allegations that the accused has forged a document which purports to be valuable security or a Will, or an authority to adopt a son or which purports to give authority to any person to make or transfer any valuable security or to receive the principal, interest or dividends thereon or to receive or delivere any money, movable property or valuable security or any document purporting to be an acquaintance or receipt an acknowledgement payment of money or an acquaintance of receipt of movable property

or valuable security. In short, Section 467 of the Indian Penal Code has specifically provided the nature of the document forged by the accused.

20. Considering the allegations in the case at hand, the documents the company allegedly created were in the nature of a promise to pay after some time on investing the particular amount. Reading the F.I.R, which was the only document before the Magistrate or trial Court, it was difficult for the Court to opine that an offence punishable under Section 467 of the Indian Penal Code was made out. When the material for applying Section 467 of the Indian Penal Code was insufficient before the Court granted default bail, it was unjustifiable to rely mindlessly upon the sections applied by the investigating officer. Barring Section 467 of the Indian Penal Code, all the other sections applied against the accused were neither provided imprisonment for life imprisonment nor imprisonment for not less than ten years as prescribed in Section 167 (2) (i) of the Code of Criminal Procedure. Therefore, the Court opines that clause (ii) sub-section (2) of Section 167 of the Code of Criminal Procedure would apply, which provides 60 days for filing the charge sheet.

21. There was no quarrel that the default bai was granted; sixty days were over.

22. The discussion made above leads this Court to hold in the facts and circumstances of the case and absence of sufficient material to believe that an offence punishable with imprisonment for life or not less than ten years is made out, the learned Additional Sessions Judge has correctly granted the bail under Section 167 (2) (ii) of the Code of Criminal Procedure. Hence, the order :-

ORDER

The application stands dismissed.

(S. G. MEHARE)
JUDGE

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