

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

CRIMINAL APPLICATION (ABA) NO.165 OF 2023

Mrs. Teena W/o Waman Mohadikar Vs. State of Maharashtra

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

Court's or Judge's orders.

Shri S.G. Karmarkar, Advocate for applicant.
Shri M.J. Khan, APP for non-applicant/State.

CORAM : ANIL L. PANSARE, J.
DATE : APRIL 24, 2023.

The applicant is apprehending arrest in Crime No.811/2021 registered with Police Station, Pachpwali, Nagpur City, Nagpur for the offence punishable under Section s220, 34, 409 of the IPC and section 3 Maharashtra Protection of Interest of Depositors (In Financial Establishments) Act, 1999.

2. Having heard both side and having gone through the record, it transpires that charge-sheet has been filed. Learned APP submits that chargesheet has been filed under section 299 of the Code of Criminal Procedure (for short 'Code').

3. This appears to be yet another case where the investigating agency continuous with the misnomers that charge-sheet against absconding accused could not be filed and secondly that it could be filed under Section 299 of the Code.

4. The Hon'ble Supreme Court in the case of Dinesh Dalmia Vs. CBI reported in **2007 (8) SCC 770** while considering the aspect of filing the charge-sheet against absconding accused has held in paragraph 19 as under:

“19. A charge sheet is a final report within the meaning of Sub-section (2) of Section 173 of the Code. It is filed so as to enable the court concerned to apply its mind as to whether cognizance of the offence thereupon should be taken or not. The report is ordinarily filed in the form prescribed therefor. One of the requirements for submission of a police report is whether any offence appears to have been committed and, if so, by whom. In some cases, the accused having not been arrested, the investigation against him may not be complete. There may not be sufficient material for arriving at a decision that the absconding accused is also a person by whom the offence appears to have been committed. If the investigating officer finds sufficient evidence even against such an accused who had been absconding, in our opinion, law does not require that filing of the charge sheet must await the arrest of the accused.”

5. Thus, it is clear that when sufficient evidence against the absconding accused is collected, the investigating officer will be justified in filing the charge-sheet against him. The learned Magistrate or Special Judge will thereafter follow procedure in terms of provisions of the Code to secure the presence of the absconding accused.

6. Be that as it may, the accusation against the applicant is that she being a Vice President has to discharge a duty to protect the interest of the investors, which she has not done.

The applicant was Vice president of the Manjushree Sahakari Path Sanstha Lalganj, Nagpur for the period from year 2017 to 2019. The audit has been conducted. It has been revealed that FDs and loan transactions have been shown in the name fictitious names and that investors have been duped to the tune of Rs.70 lakh approximately.

7. While rejecting her application, the learned Sessions Court has observed that affairs of the society was not properly managed and therefore the administrator was appointed. Mismanagement and mal-fishing of the managing committee duped investors money.

8. Learned APP has opposed the application on the ground that the applicant in the capacity of Vice President is responsible for the policy decision that affect affairs of the society. However, he could not point out any such decision where the applicant is or otherwise responsible for the misappropriation.

9. Learned counsel for the applicant submits that all the managing committee members of the society have been released on regular bail. Nothing is to be recovered from the applicant. He submits that applicant never attended the managing committee meetings. Thus, except for the bald allegations, prima facie, the role of the applicant is not of direct involvement in the offence. Hence, following order:

ORDER

- (i) The application is allowed.
- (ii) In the event of arrest in Crime No.811/2021 registered with Police Station, Pachpwali, Nagpur City, Nagpur for the offence punishable under Sections 220, 34, 409 of the IPC and section 3 Maharashtra Protection of Interest of Depositors (In Financial Establishments) Act, 1999 applicant-Mrs. Teena W/o Waman Mohadikar, be released on bail on he furnishing P.R. Bond in the sum of Rs.25,000/- with one surety in the like amount.
- (iii) The applicant shall attend the Police Station, Pachpwali, Nagpur City, Nagpur as and when directed by the investigating officer, if so required.
- (iv) The applicant shall, at the time of execution of bond, furnish her address and telephone/mobile number(s) to the Investigating Officer and to the Court concerned and shall not change the same till the final disposal of the case.
- (v) The applicant shall not directly or indirectly make any inducement, threat or promise to any witness acquainted with the facts of the case so as to dissuade him/her from disclosing such facts to the Court or any Police Officer.
- (vi) The applicant shall not obstruct or hamper the police investigation and shall not play mischief with the evidence collected or yet to be collected by the Police.
- (vii) The applicant shall maintain law and order.
- (viii) In case of breach of any conditions, the learned

trial court is at liberty to cancel the bail after giving opportunity of hearing to both the sides.

The application is disposed of.

(Anil L. Pansare, J.)

Wagh