

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

CRIMINAL APPLICATION (ABA) NO. 204 OF 2023

Altaf S/o Mehendi Mohammad Jiwani 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 J.A. Malnas, Advocate for applicant.
Shri S.S. Doifode, APP for non-applicant/State.

CORAM : ANIL L. PANSARE, J.

DATE : APRIL 27, 2023.

Heard.

2. The applicant is apprehending arrest in Crime No.413/2022 registered with Police Station, Gadchiroli, District Gadchiroli for the offences punishable under Sections 420, 406, 34 of the Indian Penal Code read with Sections 3, 4 of the The Maharashtra Protection of Interest of Depositors (In Financial Establishments) Act.

3. Having heard both sides and having gone through the material placed before me, it transpires that on 22.10.2022 the investigating officer has filed charge-sheet against prime accused – Sonu Jamshed Thakur. The applicant alongwith 30 others have been shown as victim of the crime. The applicant is said to have been duped for ₹55,641/-. The total amount of misappropriation about is ₹2.62 crores.

4. Learned counsel for the applicant has invited my attention to the notice dated 17.09.2022 issued by the investigating officer to the applicant calling him to attend

the police station on the count that huge amount has been transferred in his account from the account of prime accused Sonu. He further submits that in response to the aforesaid notice he has attended the police station on 26.09.2022 and thereafter 4 to 5 times.

5. Thus, it appears that prior to the filing of charge-sheet, the applicant has been interrogated by the investigating officer. Despite such status, the applicant has not been made accused in the charge-sheet filed on 29.10.2022 rather the applicant has been shown as victim of the crime.

6. The investigating officer appears to have taken U-turn now and has come up with a case that the applicant is also responsible for the crime. There is no reason as to why could not this fact be revealed to investigating officer when the applicant was interrogated in September 2022, i.e. prior to filing charge-sheet against the prime accused. The only reason given is that the applicant has attended the police station but has not cooperated in the investigation. If that be so, there was absolutely no justification in showing the applicant as victim in the final report.

7. That apart, vide order dated 31.03.2023, the investigating officer was directed to proceed with the investigation in terms of law laid down by the Hon'ble Apex Court in the cases of ***Satender Kumar Antil V/s Central Bureau of Investigation and another***; reported in (2022) 10

SCC 51 and *Arnesh Kumar V/s State of Bihar*, reported in *(2014) 8 SCC 273* and also to abide by the Standing Order No.3 of 2022 dated 20.7.2022 issued by the Director General of Police, Mumbai.

8. If it is true that the applicant has not cooperated in the investigation, the investigating officer was at liberty to arrest him after recording reasons for the same in terms of the aforesaid rulings, which the investigating officer has not done till today. The applicant has, therefore, made out a case in his favour.

9. When enquired, learned counsel for the applicant submits that there are no criminal antecedents against the applicant.

10. Resultantly, the following order is passed:

ORDER

(i) The application is allowed.

(ii) In the event of arrest in Crime No.413/2022 registered with Police Station, Gadchiroli, District Gadchiroli for the offences punishable under Sections 420, 406, 34 of the Indian Penal Code read with Sections 3, 4 of the The Maharashtra Protection of Interest of Depositors (In Financial Establishments) Act, applicant- Altaf S/o Mehendi Mohammad Jiwani, be released on bail on he furnishing P.R. Bond in the sum of ₹50,000/- with one or two sureties in the like amount.

(iii) The applicant shall attend the Police Station, Gadchiroli on 02.05.2023 and 03.05.2023 between 4.00 pm to 6.00 pm; and thereafter, as and when directed by the investigating officer, till filing of the charge-sheet and shall cooperate in the investigation.

(iv) The applicant shall, at the time of execution of bond, furnish his 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.)

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