

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

CRIMINAL APPLICATION (BA) NO. 352/2023

Kisan Dattatraya More V/s 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

Mr M.N.Ali, counsel for applicant.

Mr I.J.Damle, APP for non-applicant /State.

CORAM : URMILA JOSHI-PHALKE, J.

DATED : 18/07/2023.

1. Heard.
2. The present application is filed by the applicant for grant of bail under Section 439 of the Code of Criminal Procedure, 1973 in connection with Crime No. 277/2022 registered at Police Station Vasant Nagar, District Yavatmal for the offences punishable under Sections 409, 420, 467, 468, 471 read with Section 34 of the Indian Penal Code, 1860. The applicant is arrested on 07/11/2022.
3. The accusation against the present applicant on the basis of FIR lodged by one Ganpati Ukarde, on 18/09/2022 on an allegation that from 20/07/2022 till 23/08/2022 the present applicant and co-accused Supriya Sande, in furtherance of their common intention deceived the customers of State Bank India.

They have obtained a huge amount from number of customers and the amount was not credited in their bank accounts. Being a license holder, co-accused and the present applicant whether the agent of NICT Technologies Pvt. Ltd.. The co-accused was appointed by NICT Technologies Pvt. Ltd for Post Palodi Tq. Pusad, District Yavatmal as Service Delivery Partner. Being the Service Delivery Partner, the applicant and the co-accused committed fraud and withdrawn an amount of Rs. 4,27,050/- of various customers. On the basis of the said report, the Police have registered the crime against the present applicant.

4. As per the contention of the present applicant the agency was given to his wife namely Supriya who is the co-accused. Now, she is already released on anticipatory bail in the event of her arrest, in respect of the above crime. As far as the allegation against the present applicant is concerned, he has already deposited the amount of Rs. 4,27,050/-. Now, investigation is completed and charge-sheet is filed. All the offences are triable by the Court of Magistrate. There are no criminal antecedents against him. Considering that investigation is completed and further custody of the applicant is not required, he be released on bail.

5. The said application is strongly opposed by the State on the ground that present applicant and his wife with intention to deceive the various customers and committed an offence in furtherance of their common intention. During investigation it revealed that with the help of Kiosk Center, present applicant has misappropriated the amount of Rs. 4,27,050/-. Thus, prima-facie material against the present applicant to connect him with the alleged offence and prays for rejection of the application.

6. Heard learned counsel Mr. M.N.Ali for applicant. He submitted that the co-accused to whom the license was sanctioned is already released on anticipatory bail. As far as the role of the present applicant is concerned, he has already deposited the said amount. Now, investigation is completed and charge-sheet is filed, no purpose will be served by keeping the present applicant behind bar. Hence, he be released on bail.

7. Learned APP vehemently opposed the application by reiterating the grounds that prima-facie material is available against the present applicant to connect him with the alleged offence and prays for rejection for the application.

8. Having heard both sides. On perusal of the FIR and the investigation papers, it reveals that the license

was issued to the co-accused Supria, who is the wife of the present accused and they were working as a license holder and an agent of NICT Technologies Pvt Ltd. It further reveals that being a Service Delivery Partner, they have obtained the trust of the customers and with the help of that Kiosk Machine has misappropriated the amount of Rs. 4,27,050/-.

9. As far as the role of the present applicant is concerned, there is prima-facie material i.e. statement of the witnesses which shows the involvement of the present applicant in the alleged offence. However, now investigation is completed and charge-sheet is filed. The co-accused Supriya to whom the license was sanctioned is already released on bail. As observed by the Hon'ble Apex Court in the Case of ***Ramesh Kumar v/s State of NCT of Delhi reported in 2023 LiveLaw (SC) 496***. As far as the deposition of amount is concerned, Sub-section (2) of section 438 of the Cr. PC does empower the high court or the court of sessions to impose such conditions while making a direction under sub-section (1) as it may think fit in the light of the facts of the particular case and such direction may include the conditions as in clauses (i) to (iv) thereof. However, a reading of the precedents laid down by this Court referred to above makes the position of law clear that the conditions to be imposed

must not be onerous or unreasonable or excessive. In the context of grant of bail, all such conditions that would facilitate the appearance of the accused before the investigating officer/court, unhindered completion of investigation/trial and safety of the community assume relevance.

10. Thus merely because the appellant has deposited the amount is not sufficient to release him on bail. Considering for grant of anticipatory bail are concerned, considering the gravity of the offence, whether applicant would be available for trial and whether there is likelihood of flee away, if he is released on bail is to be taken into consideration. At this stage, there is nothing on record to show that there would be difficulty in securing presence of the applicant, therefore he be released on bail in the event of his arrest. The investigation is completed and the charge-sheet is filed, no purpose would be served by keeping the applicant behind bar. Accordingly, I pass the following order:

- a) Criminal application is allowed.
- b) The applicant is released on bail connection with Crime No. 277/2022 registered at Police Station Vasant Nagar, District Yavatmal for the offences punishable under Sections 409, 420, 467, 468, 471 read with Section 34 of the

Indian Penal Code, 1860, on executing P.R. Bond of Rs. 25,000/- with one solvent surety of like amount.

- c) The applicant shall not leave the jurisdiction of Police Station Vasantnagar, District Yavatmal Court without prior permission of the Court.
- d) The applicant shall not induce, threat or promise directly or indirectly in any manner by contacted any witnesses.
- e) The State is at liberty to move application for cancellation of bail, in case of breach of any condition.
- f) The applicant shall furnish his cell phone number and address along with address proof.

Criminal Application is disposed of.

JUDGE