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

CRIMINAL APPLICATION (BA) NO.359/2023
Pravin s/o Pramod Dhomne
..vs..
State of Mah., thr.PSO PS Ramnagar, Gondia, Tahsil and District Gondia

Office Notes, Office Memoranda of Coram, appearances, Court orders or directions and Registrar's orders	Court's or Judge's Order

Shri P.Bapat, Counsel for the Applicant.
Shri S.M.Ghodeswar, Additional Public Prosecutor for the State.

CORAM : URMILA JOSHI-PHALKE, J.
CLOSED ON : 10/07/2023
PRONOUNCED ON : 03/08/2023

1. By this application, moved under Section 439 of the Code of Criminal Procedure, the applicant seeks regular bail in connection with Crime No.469/2021 registered with the non-applicant police station for offences punishable under Sections 420, 409, 467, 468, and 471 read with Section 34 of the Indian Penal Code and Sections 3 and 4 of the Maharashtra Protection of Interest of Depositors (In Financial Establishments) Act, 1999 (the MPID Act).

2. The applicant is arrested on 23.5.2022 and since then he is in jail.

3. The accusations against the applicant are that the applicant, who is the President of the Sant Narhari Nagri Sahakari Pat Sanstha, Gondia (the Sanstha), and other co-

accused, who are office bearers / Directors and employees, have committed misappropriation of deposits by depositors by making fake entries and thereby committed the offence as aforesaid.

4. As per contentions of the applicant, on the basis of Audit Report, a responsibility was fixed on all the Directors and the applicant being the President of the Sanstha. There was no intention to cheat or defraud any depositors. It is also reflected from chargesheet that amount to the tune of Rs.7.00 lacs is paid to depositors. Now, the applicant is behind the bars since the date of his arrest. Investigation is already completed and chargesheet is already filed. No purpose will be served by keeping the applicant behind the bars. As such, he be released on bail.

5. The application is opposed by the State on the ground that amount of Rs.57,91,103/-, alleged to be misappropriated, was enhanced upto Rs.75,62,253/-. As per the Audit Report, investors deposited amount Rs.2,62,72,629/-. The investors have not received their amounts. The applicant diverted the aforesaid amount by personally withdrawing the said amount by presenting cheques signed by himself. The amount of Rs.12,71,150/- is spent by the applicant which is not

disclosed in the said details. The investigating agency attempted to seize the bank account of the applicant. However, the applicant has withdrawn the amount from his account. Thus, a *prima facie* material is revealed against the applicant. Hence, the application deserves to be rejected.

6. Heard learned counsel Shri P.Bapat for the applicant and learned Additional Public Prosecutor Shri S.M.Ghodeswar for the State.

7. Learned counsel for the applicant submitted that as per the Audit Report, the President, the Vice-President, and all Directors are held responsible for the said misappropriation. However, the Directors are already released on bail. The similar allegations are made against the applicant. Now, the investigation is completed and chargesheet is filed. In view of the said, the applicant be released on bail.

8. Learned Additional Public Prosecutor for the State submitted that considering the allegations against the applicant, the application deserves to be rejected.

9. Having heard both the sides and perused the investigation papers, it reveals that the applicant is the President of the Sanstha. The other accused are the office

bearers, Directors, and employee of the Sanstha. On the basis of the Audit Report prepared and conducted by complainant Aniruddha Prabhakar Joshi, the offence came to be registered against the applicant and other co-accused wherein it is alleged that after 2018, monthly meetings of the Directors were not held. The fake entries of the various deposits, accepted by the Sanstha, were taken. The salaries are shown to be given excessive to the employees and misappropriated the amount of Rs.6,93,453/-. The agents have collected the amount which was not shown to be credited in their accounts. It is further alleged that excess amount was disbursed to some depositors and thereby there is misappropriation of Rs.57,91,103/- . The Audit Report shows that the President and the Directors with the help of Managers of the Sanstha have committed the misappropriation by showing the interest amount against the name of customers and balance amount was misappropriated. The loans were disbursed without following any rules. The amount of Rs.11,89,000/- was shown to be paid to the employees and the said amount is misappropriated. Thus, Auditors held the President, Vice-President, Directors, and the employees responsible for the said misappropriation. During the investigation, statements of various customers were recorded which show that though they have invested amounts, by fixing it in fixed deposits, the said amounts were not disbursed to them and they were duped.

10. The statement of Auditor Rajesh Keshavrao Sahare shows that during Audit of years 2015-2016, 2016-2017, 2017-2018, and 2018-2019, he brought to the notice that due to mismanagement on the part of the President, the Vice-President, and the Directors, the Sanstha is in loss and he gave some suggestions to improve financial condition of the Sanstha. However, no action was taken by the office bearers / President, and the Vice President of the Sanstha.

11. The statement of another Auditor Muktanand Tarachand Dhomne also shows illegalities and irregularities committed by the applicant as well as other Directors, Vice-President, and the Secretary.

12. The statement of one Arvind Madhukar Kohale, also shows that some vouchers are prepared in the name of his firm. However, the said amount is not received by him. His bogus signatures were made on vouchers and amount was shown to be paid to him. In fact, he neither signed on the vouchers nor withdrawn the amount.

13. Thus, from the investigation papers it reveals that

not only the Directors, office bearers, and employees of the Sanstha have committed irregularities and illegalities but also the depositors who are small businessmen, labourers, who have invested amounts, are misappropriated by the applicant and the other Directors.

14. Now, the investigation is completed and chargesheet is filed. Some of the Directors of the Sanstha are released on bail by observing that on considering and comparing the signatures, none of signatures match with each other and there is major difference in signatures. There is no investigation made by the Investigating Officer regarding verification of the said signatures and they are released on bail.

15. Admittedly, the alleged crime registered is the economic offence. The amounts, invested by the poor investors, are misappropriated and the investors have lost their amounts. The accusations against the applicant are that he being the President of the Sanstha is responsible for the said activities. There is no dispute that the small businessmen, labourers, agriculturists have invested their amounts and they have not received their amounts back.

16. The question for consideration is, whether further custody of the applicant is required or not.

17. In the cases of **Chanda Deepak Kochhar vs. Central Bureau Of Investigation, reported in 2023 SCC OnLine Bom 72; Venugopal Nandlal Dhoot vs. Central Bureau of Investigation, reported in 2023 SCC OnLine Bom 161, and P.Chidambaram vs. Directorate of Enforcement, reported in (2019) 9 SCC 24** grant of bail in the cases of economic offences is considered.

In the case of **P.Chidambaram vs. Directorate of Enforcement** cited *supra*, it is held that "thus from cumulative perusal of the judgments cited on either side including the one rendered by the Constitution Bench of this Court, it could be deduced that the basic jurisprudence relating to bail remains the same inasmuch as the grant of bail is the rule and refusal is the exception so as to ensure that the accused has the opportunity of securing fair trial. However, while considering the same the gravity of the offence is an aspect which is required to be kept in view by the Court. The gravity for the said purpose will have to be gathered from the facts and circumstances arising in each case. Keeping in view the consequences that would befall on the society in cases of financial irregularities, it has been held that even economic offences would fall under the category of "grave offence" and in such circumstance while considering the application for bail in such matters, the Court will have to deal with the same, being sensitive to the nature of allegation made

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against the accused. One of the circumstances to consider the gravity of the offence is also the term of sentence that is prescribed for the offence the accused is alleged to have committed. Such consideration with regard to the gravity of offence is a factor which is in addition to the triple test or the tripod test that would be normally applied. In that regard what is also to be kept in perspective is that even if the allegation is one of grave economic offence, it is not a rule that bail should be denied in every case since there is no such bar created in the relevant enactment passed by the legislature nor does the bail jurisprudence provides so. Therefore, the underlining conclusion is that irrespective of the nature and gravity of charge, the precedent of another case alone will not be the basis for either grant or refusal of bail though it may have a bearing on principle. But ultimately the consideration will have to be on case to case basis on the facts involved therein and securing the presence of the accused to stand trial."

The said aspect of economic offense is considered in the cases of **Chanda Deepak Kochhar vs. Central Bureau Of Investigation** and **Venugopal Nandlal Dhoot vs. Central Bureau of Investigation** cited *supra*.

18. In the light of the facts of the present case,

responsibility of the misappropriation is fixed by the Auditors on the entire body of the Directors as well as the applicant who is the President of the Sanstha. There is a *prima facie* material against the applicant.

19. Insofar as offences alleged against the applicant are concerned, the same are under Sections 420, 409, 467, 468, and 471of the Indian Penal Code.

Section 420 of the Indian Penal Code provides punishment not more than seven years of imprisonment.

Section 409 of the Indian Penal Code provides punishment of life imprisonment or with imprisonment of either description for a term which may extend to ten years and fine.

Section 467 of the Indian Penal Code provides punishment of life imprisonment or with imprisonment of either description for a term which may extend to ten years, and fine.

Section 468 of the Indian Penal Code provides punishment with imprisonment of either description a term which may extend to seven years, and fine.

And Section 471 of the Indian Penal Code provides punishment in the same manner as if he has forged such documents.

20. Thus, maximum punishment is up to ten years for the offence alleged against the applicant.

21. Considering the allegations levelled against the applicant and considering the other Directors are already released on bail, the application of the applicant deserves to be allowed by imposing certain conditions, as per order below:

ORDER

(1) The criminal application is **allowed**.

(2) Applicant Pravin s/o Pramod Dhomne, in connection with Crime No.469/2021 registered with the non-applicant police station for offences punishable under Sections 420, 409, 467, 468, and 471 read with Section 34 of the Indian Penal Code and Sections 3 and 4 of the Maharashtra Protection of Interest of Depositors (In Financial Establishments) Act, 1999, be released on bail on his executing a P.R.Bond in the sum of Rs.50,000/- with one solvent surety of the like amount.

(3) The applicant shall attend the concerned police station once a month i.e. first Saturday of such month between 11:00 am and 1:00 pm.

(4) The applicant shall not directly or indirectly make any inducement and threat or promise to any person acquainted with the facts of the present case.

(5) The applicant shall furnish his cell phone number(s) and address with proof. Additionally, he shall furnish names of his two relatives and addresses with proofs.

(6) Needless to mention that the observations made in this order are purely *prima facie* for deciding the present application for grant of bail only and learned Judge before whom the trial will be conducted shall not get influenced by the said observations.

The criminal application stands **disposed of**.

(**URMILA JOSHI-PHALKE, J.**)

!! BrWankhede !!