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

CRIMINAL APPLICATION (BA) NO.382 OF 2023

Rakesh s/o Arun Khairkar

Vs.

State of Maharashtra, through Economic Offence Wing (Rural), Police Bhavan, Civil Lines, Nagpur, through Police Station Officer, P.S. Parshivni, District Nagpur.

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

Shri D.V. Chauhan, Advocate for applicant.
Shri I.J. Damle, APP for non-applicant/State.

CORAM : URMILA JOSHI-PHALKE, J.
ARGUMENTS HEARD ON : JUNE 22, 2023.
PRONOUNCED ON : JUNE 30, 2023.

The present application filed by the applicant for grant of bail under Section 439 of the Code of Criminal Procedure in connection with Crime No.342/2022 registered with Police Station, Parshioni, District Nagpur for the offence punishable under Sections 409,413, 420, 465, 467, 471 and 120B of the Indian Penal Code. The applicant is arrested on 03.0.2023.

2. The crime is registered on basis of a report lodged by informant namely Subhash Parasram Jadhav, who is working as a Block Development Officer, Panchayat Samiti, Parshioni, District Nagpur from 01.03.2023, alleging that since 05.07.2012, co-accused Sarita Chandrashekhar Neware, who is working at Education Department, Panchayat Samiti, Parshioni, who was allotted with work of

verification of life certificate, which requires for preparation of pension bills, payment orders, maintenance of pension payment register and deposit the sanction bills in the bank account of the said pensioners. As per the Government order, in the month of November every pensioner is required to give the certificate to the effect that he/she is alive. Therefore, in the month of December the name of the pensioners, who are not alive are to be deleted. However, in the year 2021, due to the outbreak of Covid-19 pandemic, the pension amount was disbursed to the pensioners' account without obtaining the said certificates as per the old list prepared, as per the Government order. In the month of March, 2022, the time limit prescribed by the Government came to an end with respect to exemption of certificate. Therefore, all the pensioners were called upon to produce the said certificate and accordingly 194 pensioners have submitted their respective certificate. Out of which, 19 pensioners did not submit that certificate. After they personally contacted, it was revealed that two pensioners are not alive and there was no information with regard to remaining 17 pensioners. The Junior Administrative Officer approached to the Bank and it revealed that names of 17 pensioners were different in the concerned bank. Out of said 17 accounts, one account was in the name of prime accused and one account was in the name of her husband. As per the said allegations, the co-accused was depositing the said amount in the respective accounts of 14 persons including her husband from 06.12.2014 till 29.03.2020. The total amount is ₹1,86,57,125/- was allegedly misappropriated by the co-accused by misusing her official position and powers.

3. The applicant came to know about the alleged crime when he came across the articles published in the newspapers. The investigating officer has called him and he duly attended the office of investigating officer as the applicant was apprehending arrest, he filed bail application but the same was rejected. Thereafter, he surrendered before the investigating agency.

4. The applicant is implicated on basis of confessional statement of co-accused, which was recorded on 06.12.2022. On the basis of only statement of the co-accused, the present applicant is implicated in the alleged crime. Infact from the charge-sheet and materials on record, except the confessional statement of co-accused no material on record to show that the applicant is involved in the said misappropriation. Even the investigation papers nowhere shows that the applicant has received any benefits out of the said misappropriated amount, which clarifies that the applicant is implicated in the alleged offence falsely. Now investigation is completed and charge-sheet is filed. There are no criminal antecedents against the present applicant and hence prayed that he be released on bail.

5. Said application is strongly opposed by the State on the ground that present applicant and other co-accused,

who were assigned with the duty to prepare the pension bills and to verify the same. The applicant was holding a responsible post. He has passed the said bills without verifying the same. The applicant was entrusted with the responsibility of verifying and scrutinizing the said bills before passing the same. The present applicant with the co-accused hatched the criminal conspiracy and misappropriated the huge Government amount thereby committed an offence. The documents clearly shows the *prima facie* involvement of the present applicant in the commission of the offence. The witnesses shown the involvement of the present applicant in the alleged offence. Thus, considering the *prima facie* involvement in the present offence, bail application deserves to be rejected.

6. Heard learned counsel Shri D.V. Chauhan for the applicant. He reiterated the contention and submitted that merely on the basis of confessional statement of the co-accused present applicant is implicated. The present applicant has obtained the loan of ₹15,48,000/- from the ICICI Bank and was repaying the same by EMI till his arrest. If the applicant was involved in misappropriation to the tune of ₹1,86,57,125/-, there was no occasion for the present applicant to obtain the loan. During investigation, the investigating officer could not collect the material to show that the present applicant is one of the beneficiary. As far as the allegation that the present applicant has passed the bills is concerned, only the negligence can be attributed to the

present applicant. Merely because there is dereliction in the duty cannot attract the criminal prosecution. Now investigation is completed and charge-sheet is filed therefore further custody of the present applicant is not required and no purpose will be served by keeping the present applicant behind the bars.

7. *Per contra,* learned APP submitted that the present applicant was shouldering the responsibility of verifying and scrutinizing the bills, without scrutinizing he has passed bills, which shows that he hatched the conspiracy with the co-accused and committed the offence of misappropriation. The present applicant was working as Accounts Officer and assigned with such duty to verify the same, which he has not complied with. Thus, there is sufficient material to connect the present applicant with the alleged offence though investigation is completed, if accused/applicant is released on bail, he would tamper the prosecution evidence and would not be available for the trial. He further submitted that statements of the witnesses namely; Pradip Mohod, Pradip Bamnote, Rajendra Bhongade, Mangala Narnavare and other witnesses, who are specifically stated that in their statements that it was the responsibility of the present applicant to verify the said pension bills while passing it. During investigation, the investigating agency also found that the present applicant alongwith the co-accused has transferred the aforesaid pension amount in the account of Prakash Kachva, Imran

Ahamad, who are the accused in the present case. Thus, the total amount which was transferred comes to ₹2,74,93,990/-. Looking to the seriousness of the offence, the application for bail deserves to be rejected.

8. Having heard both the sides and on perusal of the investigation papers, admittedly the involvement of the present applicant reveals from the statement of the co-accused. In her confessional statement, she has stated that it was the present applicant who shared with her idea that the amount of the pension can be misappropriated by transferring the pension amount to the other account numbers and therefore she has transferred the said amount in the accounts of one Kailash Uike, Sagar Jathare and other accused persons. During investigation, the statements of the various witnesses are also recorded. Their statements are only to the extent that it was the responsibility of the present applicant to verify the said bills and after verifying the same pass it. Without verifying the said bills he has passed the said bills, which is sufficient to show that he shared the common intention with the co-accused and misappropriated the amount to the tune of ₹2,74,93,990/-. After going through the investigation papers, it reveals that the some amount was transferred in the name of the husband of the co-accused namely Chandrashekhar Neware. The amount of ₹21,75,056/- and amount of ₹18,66,221/- was transferred in the name of husband of the co-accused. Whereas, the amount of ₹26,02,651/- was transferred in the name of

Sarita Neware. The details of 14 persons in whose account pension amount was deposited are Prakash Kachva, Imran Ahamad, Ranu Shende, Mohd. Kaleem, Mangesh Kalambe, Sagar Jathare Irshad Khan, Kailash Uike, Vandana Kachva, Rhini Divate, Chandrashekhar Neware and Sarita Neware, Saikrupa Traders, Ramteke etc. Even confessional statement of the co-accused nowhere shows that some amount is also transferred in the name of the present applicant. Thus, the present applicant is not at all a beneficiary of the said amount. He has not received monetary benefits. At this stage, except the statement of co-accused nothing is on record to show that he hatched the conspiracy with the accused and misappropriated the amount. At the most it reveals from the investigation papers that there is delirication in the duty on the part of the present applicant as he has not verified the bills properly and signed bills by passing it. Admittedly, the entire material collected during investigation is in the nature of documentary evidence. Now the investigation is completed. Charge-sheet is also filed and the entire documents are already seized by the investigating agency.

9. In ***Satender Kumar Antil Vs. Central Bureau of Investigation and another;*** reported in ***(2022) 10 SCC 51,*** the Hon'ble Apex Court considered whether the economic offence should be treated as class of its own or otherwise and by referring the judgment of ***P. Chidambaram Vs. Directorate of Enforcement*** reported in ***(2020) 13 SCC 791***

held that the gravity of the offence, object of the Special Act and attending circumstances are few of the factors to be taken note of alongwith period of sentence. After all, an economic offence cannot be classfied as such, it may involve various activities and may differ from one case to another. Therefore, it is not advisable on the part of the court to categorize all the offences into one group and deny bail on that basis. Suffice it to said the law as law laid down in the case of *P. Chitambaram* referred supra and reproduced the paragraph 23 of the abovesaid decision. It is further held by the Hon'ble Apex Court that grant or refusal to grant bail lies in the discretion of the court. But at the same time, right to bail is not to be denied merely because of the sentiments of the community against the accused. The primary purposes of bail in a criminal case are to relieve the accused of imprisonment, to relieve the State of the burden of keeping him, pending the trial, and at the same time, to keep the accused constructively in the custody of the court, whether before or after conviction, to assure that he will submit to the jurisdiction of the court and be in attendance thereon whenever his presence is required. It is further observed by the Hon'ble Apex Court that we are conscious of the fact that the accused are charged with economic offences of huge magnitude. We are also conscious of the fact that the offences alleged, if proved, may jeopardise the economy of the country. At the same time, we cannot lose sight of the fact that the investigating agency has already completed investigation and the charge-sheet is already filed before the

Special Judge, CBI, New Delhi. Therefore, their presence in the custody may not be necessary for further investigation.

10. The same analogy is applicable in the present case also as the investigation is completed and charge-sheet is filed. The only allegation against the present applicant is on the basis of confessional statement of the co-accused. Entire material collected by the investigating officer is in the nature of the documentary evidence. Even assuming the allegation as it is, the only allegation against the present applicant is that he has not verified and scrutinized the bill and passed the bill. It is further alleged that he has hatched-up the conspiracy with the co-accused and committed offence. As far as conspiracy is concerned, the only material is the confessional statement of co-accused, which is not admissible. Considering the entire material and considering the fact that now investigation is filed, therefore presence of the present applicant may not be necessary for further investigation. In view of that, the application deserves to be allowed. Accordingly, I proceed to pass the following order:

ORDER

i. The application is allowed.

ii. The applicant- Rakesh S/o Arun Khairkar, in connection with Crime No.342/2022 registered with Police Station, Parshioni, District Nagpur for the offence punishable under Sections 409, 413, 420, 465, 467, 471 and 120B of the Indian Penal Code, shall be released on bail on he furnishing PR bond of ₹50,000/- with one solvent surety of like amount.

iii. The applicant shall attend the Police Station, Parshioni, District Nagpur as and when called by the investigating officer for investigation purpose.

iv. The applicants shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the present case.

v. The applicants shall furnish his cellphone number and address with the address proof.

With this, the application is disposed of.

JUDGE

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