



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

CRIMINAL APPLICATION (APL) NO. 737 OF 2022

- 1) Lokesh S/o Santosh Jain,
Aged about 45 years, Occu. - Business,
R/o Plot no. 746, Golcha Marg,
Sadar, Nagpur, Tah. & Dist. Nagpur
- 2) Kartik S/o. Santosh Jain,
Aged about 42 years, Occu. - Business,
R/o Plot no. 746, Golcha Marg,
Sadar, Nagpur, Tah. & Dist. Nagpur

.... **APPLICANTS**

// VERSUS //

- 1) The State of Maharashtra,
Through Police Station Officer,
Police Station-Sitabuldi, Nagpur
Tah. & Dist. Nagpur.
- 2) The Economic Offence Wing,
Through Police Inspector,
Nagpur City, Administrative Building,
Civil Lines, Nagpur, Tah. & Dist. Nagpur.
- 3) Ashok S/o Purushottam Agrawal,
Aged 60 years, Occ. Chartered
Accountant, R/o. Flat No.4,
First Floor, Indrayani Apartment,
67, Farmland, Ramdaspath,
Dagdi Park Road, Nagpur.

.... **RESPONDENTS**

Mr. Firdos Mirza, Advocate for applicants.
Mr. S.M. Ghodeswar, Additional Public Prosecutor for respondent
Nos.1 and 2.
Mr. S.R. Kadam, Advocate for respondent No.3.

**CORAM : NITIN W. SAMBRE AND
VALMIKI SA MENEZES, JJ.**

DATED : 13.09.2023

ORAL JUDGMENT : (Per Nitin W. Sambre, J.)

1. Heard Mr. Firdos Mirza, learned counsel for the applicants, Mr. S.M. Ghodeswar, learned Additional Public Prosecutor for respondent Nos.1 and 2 and Mr. S.R. Kadam, learned counsel for respondent No.3.

2. The prayer is for quashing of the First Information Report (FIR) in Crime No.509/2021, registered with Police Station Sitabuldi, Nagpur on 02.11.2021 for an offence punishable under Sections 420, 406, 409, 120-B of the Indian Penal Code and Section 3 of the Maharashtra Protection of Interest of Depositors (In Financial Establishments) Act, 1999.

3. Apart from the merits of the matter, Mr. Mirza would specifically invite our attention to the view expressed by this Court in its judgment dated 24.08.2023, delivered in ***Criminal Application (APL) No.745/2022*** (*Pankaj S/o Nandlal Agrawal(Mehadia) and others Vs. State of Maharashtra and others*). According to Mr. Mirza, this Court has already quashed the prosecution against the similarly placed parties namely Pankaj S/o Nandlal Agrawal (Mehadia), Balmukund S/o Lalchand Keyal and Premlata wd/o Nandlal Mehadia. Mr. Mirza would urge that the reasons recorded in the aforesaid judgment for quashing can be read also in favour of the applicants in the present application as

the allegations are similar. According to him, the applicants are shown to be partners of M/s. Lokesh Metallic's, which Firm was managed by the accused person Pankaj Agrawal, referred above, based on Power-of-Attorney. According to him, once the offence is already quashed against the aforesaid accused persons, different view cannot be expressed as the allegations are similar.

4. While countering the aforesaid submissions, learned APP assisted by learned counsel for respondent No.3 would urge that the amount involved in the offence has gone to account of M/s. Lokesh Metallic's of which the applicants are the partners. According to him, once the amount has gone to the account of M/s. Lokesh Metallic's, the ingredience of the offence can be said to be satisfied. As such, he would submit that the case of the applicants is not *at par* with the other co-accused in Criminal Application No.745/2022.

5. We have appreciated the submissions.

6. In the light of the observations made by this Court in its judgment dated 24.08.2023, delivered in Criminal Application (APL) No.745/2022, this Court not only have gone into the entire gamut of the rival claims but has specifically recorded the findings in para 14, which reads thus :-

“14. To constitute an offence of breach of trust, again there is a requirement of dishonest intention. The heart of both penal provisions is dishonest intention which is materially lacking in the case. The inherent powers under Section 482 of the Code of Criminal Procedure can be exercised when such exercise is justified to prevent abuse of the process of Court. The Court must ensure that criminal prosecution should not be used as an instrument for seeking private vendetta or with ulterior motive. Culpable intention at the time of accepting investment is materially lacking which takes out applicants from the criminal liability. It would be an abuse of the process of Court to allow such action which would result in injustice and prevent promotion of justice. In view of above, the prosecution failed to make out a prima facie case to proceed, hence, we are inclined to invoke our inherent jurisdiction. Criminal Application is thus, allowed and disposed of.”

In the backdrop of the aforesaid observations, what can be noticed is this Court has already quashed the offence against the other similarly placed co-accused.

7. We are informed that the judgment of this Court is being questioned before the Apex Court. Be that as it may. Judgment referred above delivered in Criminal Application (APL) No.745/2022 is holding the field.

8. It can be inferred from the record that the case of applicants is at part and similar to co-accused who are granted relief by this

Court in Criminal Application (APL) No.745/2022, decided on 24.08.2023.

9. As such, in view of the relief granted by this Court to similarly placed accused in the very same crime, we deem it appropriate to allow the present application for the reasons which are already recorded in the order dated 24.08.2023 delivered in Criminal Application (APL) No.745/2022 (*Pankaj S/o Nandlal Agrawal (Mehadia) and others Vs. State of Maharashtra and others*).

10. The Criminal Application (APL) No.737/2022 stands allowed in terms of prayer clause (i). No costs.

(VALMIKI SA MENEZES, J.)

(NITIN W. SAMBRE, J.)

Kirtak