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

CRIMINAL APPLICATION (ABA) NO.292 OF 2023

Mohammad Taha Khan
Vs.
State of Maharashtra, Through the Economic Offence Wing, Nagpur

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

Mr. A. S. Mardikar Senior Advocate a/b Mr. S. H. Mansoori, Advocate with Mr. N. A. Sheikh, Advocate for applicant.
Mr. I. J. Damle, APP for respondent/State.
Mr. R. K. Thakkar, Advocate for the original informant.

CORAM : URMILA JOSHI-PHALKE, J.
RESERVED ON : 08/08/2023
PRONOUNCED ON :19/08/2023

1. By this application, being moved under Section 438 of the Code of Criminal Procedure, the applicant seeks anticipatory bail in connection with Crime No.87/2023 registered with Economic Offence Wing, Nagpur for the offences punishable under Sections 406, 420, 120-B read with 34 of the Indian Penal Code.

2. The applicant is apprehending arrest at the hands of police as crime is registered against him on the basis report lodged by Jayesh Haribhai Chandarana alleging that present applicant through one Hitesh Revatkar introduced a scheme 'Trade Profit Fund' and assured the complainant on investing Rs. 2 Crores, he can get Rs.3.2 Crores. The said Hitesh Revatkar narrated all the details of the scheme and induced him to deposit the amount through RTGS. On 28.02.2023 at about 10.30 a.m. informant

met co-accused Hitesh Revatkar and Avinash Bhorekar and went at Rangunwala Building, Bhaldar Pura, Phawara Chowk, Nagpur in the office of P. Bhagat and Company, wherein he was induced to deposit Rs.2 Crores however, he had not agreed for the same. On 01.03.2023 and 06.03.2023 again co-accused Hitesh Revatkar communicated with him and insisted him to deposit the amount. By trusting Hitesh Revatkar who is Advocate by profession and represented the informant in various litigations. The informant trusted him and invested an amount of Rs. 2 Crores however, he had not received any returns. Therefore, he inquired with co-accused Hitesh, Jayant Wankhede, Avinish Bhorekar, however, they have not responded, therefore, he contacted one Kailash Narvade and Vivek Agrawal who were the agents of the present applicant. Though Hitesh Revatkar, Jayant Wankhede assured the informant that they would communicate with the present applicant and will look into the matter, however, the informant has not received any returns. It is further alleged that after transferring the amount by RTGS, present applicant acknowledged the receipt of Rs. 2 Crores. After due efforts by the informant, he could not receive the amount, therefore, he approached to the Police Station and lodged the report. Subsequently, the investigation was assigned to the Economic Offence Wing, Nagpur.

3. After registration of the Crime, considering the accusation against the present applicant, he is apprehending arrest and approached to the Court for grant of anticipatory bail.

4. As per the contention of the present applicant,

Section 406 of the Indian Penal Code is not at all attracted as there is no entrustment of any property. The applicant denies the allegation in toto and submitted that present informant has deliberately alleged that he had given the amount of Rs. 2 Crores in cash, so as to eliminate the need to give any evidence or proof in respect thereof. In fact, applicant never met the informant. Only bare allegations are made against him. His custodial interrogation is not required. Hence, he be released on anticipatory bail.

5. The said application is strongly opposed by the State on the ground that the applicant through the accused Hitesh Revatkar informed the complainant regarding the scheme 'Trade Profit Fund' and assured that all investments of Rs. 2 Crores, he can get Rs.3.2 Crores thereafter, co-accused Hitesh Revatkar and others time to time met the informant and insisted to invest the amount. It is further contended by the State that during the investigation, it revealed that the present applicant has induced various persons to invest the amount. He has appointed the unemployed youth as his agents and duped various peoples. The various statement recorded during the investigation shows that P. Bhagat and Company is run by the present applicant and from time to time by changing his identity, he changed his name and the SIM Cards of his mobile phone. Thus, the physical custody of the present applicant is utmost important for the investigation purpose, to reveal how many peoples are involved in the said scam and therefore, the application deserves to be rejected.

6. The said application is strongly opposed by the informant also on the same ground and submitted that there is a *prima facie* material against the present applicant and hence, the application deserves to be rejected.

7. Heard learned Senior Counsel Mr. Mardikar for the applicant. He submitted that the offence under Section 406 of the Indian Penal Code is not made out. The informant has not disclosed sources about the huge amount he is having. In fact, the present applicant is not at all concerned with the co-accused. There is no CDR as to the communication between the informant and the present applicant. The statement of the co-accused is not admissible against the present applicant. The amount is not received by the present applicant. The physical custody of the present applicant is not at all required. The present applicant is ready to cooperate with the investigating agency. Though house search of the accused was carried out, nothing incriminating was found during the house search. Thus, there is no *prima facie* material against the present applicant to connect him with the alleged offence. In view of that, he be released on anticipatory bail in the event of his arrest.

8. The learned APP Mr. Damle for the respondent/State and learned Counsel Mr. R. K. Thakkar, for original informant have submitted that the *prima facie* material collected during the investigation shows that the present applicant used various SIM Cards. He also obtained the SIM Cards in the name of his employees and used the same SIM Cards. The statements of the

various persons further disclose that he has engaged the unemployed youth to act as his agents and directed them to collect the money from various persons and induced various persons to invest the amount. As far as cooperation of the present applicant is concerned, though notice under Section 41-A is given to the present applicant, he has not cooperated with the investigation agency and made false allegations against the Investigating Officer. Considering the same, the application deserves to be rejected.

9. The learned Senior Counsel Mr. Mardikar for the applicant in support of his contention placed reliance on **Vijay Kumar Ghai and others Vs. State of West Bengal and others** reported in **(2022) 7 SCC 124**, wherein the scope of Section 405 of the Indian Penal Code which defines "criminal breach of trust" is discussed.

> "27. Section 405 IPC defines "criminal breach of trust" which reads as under:
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> *"**405. Criminal breach of trust** – Whoever, being in any manner entrusted with property, or with any dominion over property, dishonestly misappropriates or converts to his own use that property, or dishonestly uses or disposes of that property in violation of any direction of law prescribing the mode in which such trust is to be discharged, or of any legal contract, express or implied, which he has made touching the discharge of such trust, or wilfully suffers any other person so to do, commits "criminal breach of trust."*
> *The essential ingredients of the offence of criminal breach of trust are:*
>
> *(1) the accused must be entrusted with the*

property or with dominion over it,

(2) The person so entrusted must use that property, or;

(3) The accused must dishonestly use or dispose of that property or wilfully suffer any other person to do so in violation,

(a) of any direction of law prescribing the mode in which such trust is to be discharged, or;

(b) of any legal contract made touching the discharge of such trust.

28. "Entrustment" of property under Section 405 of the Penal Code, 1860 is pivotal to constitute an offence under this. The words used are, "in any manner entrusted with property". So, it extends to entrustments of all kinds whether to clerks, servants, business partners or other persons, provided they are holding a position of "trust". A person who dishonestly misappropriates property entrust to them contrary to the terms of an obligation imposed is liable for a criminal breach of trust and is punished under Section 406 of the Penal Code."

10. He further placed reliance on **Maulana Mohammed Amir Rashadi Vs. State of Uttar Pradesh and another** reported in **(2012) 2 SCC 382**, wherein the Hon'ble Apex Court held that considerations for grant of bail and role of accused, there is no possibility of fleeing away and no criminal antecedents and released the accused on bail.

11. He further placed reliance on **Prabhakar Tewari Vs. State of Uttar Pradesh and another** reported in **(2020) 11 SCC**

648 wherein by referring the judgment of **Mahipal Vs. Rajesh Kumar** reported in **(2020) 2 SCC 118,** the Hon'ble Apex Court discussed scope of jurisdiction of appellate court in setting aside order of granting bail and held that two key factors for interfering with such order are, non-application of mind on part of court granting bail or opinion of court in granting bail is not borne out from a prima facie view of evidence on record.

12. On the basis of the above catena of decision learned Senior Counsel Mr. Mardikar for the applicant submitted that there is no direct or circumstantial evidence in the nature of the statement of witnesses to show that the present applicant has received the said amount, and therefore, offences not made out against the present applicant and hence, he be released on bail in the event of his arrest.

13. Having heard both the sides and on perusal of the investigation papers, it reveals that the allegation against the present applicant is that the present applicant and other co-accused in connivance with each other induced the informant to invest Rs.2 Crores on the assurance that on investing Rs.2 Crores, he will receive Rs.3.2 Crores and duped him for the said amount. During investigation, the Investigating Officer has recorded the statements of various witnesses. From the statement of Sushil Yeshwant Kore, it reveals that informant has visited the office of P. Bhagat and Company and deposited an amount of Rs.2 Crores by RTGS. This fact is also substantiated through the statement of Nilesh Krushnakumar Kariya. The statement of one

Shobha Mahendra Chaurishiya resident of Vikroli, Mumbai discloses that present applicant insisted her also to invest the amount. Accordingly, she has invested the amount and he has duped various persons by promising that they will receive the amount in double. The statement of Akash Radheshyam Bharti which was recorded during the investigation shows that he was engaged by the present applicant in his office and present applicant has obtained SIM Card in his name. His statement further discloses that present applicant has engaged one Prakash Singh Purohit and Lalit Singh Purohit in his office to induce the various peoples to invest the amount. The statement of Vilas Ganpat Narvade also discloses the involvement of the present applicant in the alleged offence. The statement of Ganpatsingh Bhimsingh Rajput who was working with the present applicant disclosed that present applicant was running the company by name P. Bhagat and Company and he was engaged to run the said office. His statement further discloses that applicant used to obtain various SIM Cards in the name of various persons. He further substantiated the allegation that the amount which was invested by the informant was received by them on behalf of the present applicant. Thus, the *prima facie* material collected during the investigation discloses the involvement of the present applicant in the alleged offence.

14. As far as the contention of the learned Senior Counsel regarding the applicability of Section 406 of the Indian Penal Code is concerned, the Section requires (i) entrusting a person with property or with any dominion over property. (ii) that person

entrusted (a) dishonestly misappropriating or converting to his own use that property or (b) dishonestly using or disposing of that property or wilfully suffering any of the person so to do in violation (i) of any direction of law prescribing the mode in which such trust is to be discharged and (ii) of any legal contract made, touching the discharge of such trust. This offence consists of one of four positive acts namely, misappropriation, conversion, user, or disposal of the property. Admittedly, failure to account is not a breach of contract however, dishonest intention by itself is the offence of criminal breach of trust. The word ‘property’ is used in the Code in a much wider sense than the expression ‘movable property’. There is no good reason to restrict the meaning of the word ‘property’ to movable property. The offence of criminal breach of trust is committed not only by dishonest conversion but also by dishonest use or disposition and there is nothing in the wording of this section to exempt from the definition of criminal breach of trust dishonest use of immovable property by the person entrusted with dominion over it. The property in respect of which an offence of criminal breach of trust may be committed must be a property which belongs to the complainant. Provided that there is entrustment of property, it matters letting whether the complainant on whose behalf the property is entrusted is the owner thereof or not. The property regarding which the offence is alleged to have been committed must have been entrusted to the accused or he must have dominion over it.

15. The Hon’ble Apex Court in the Case of **R. K. Dalmia Vs. Delhi Administration reported in AIR 1962 SC 1821** held that

word ‘property’ is used in the Code in much wider sense than the expression movable property. There is no good reason to restrict the meaning of the word 'property' to movable property only when it is used without any qualification in Section 405. In **Sudhir Shantilal Mehta Vs. C.B.I. reported in (2009) 8 SCC 1** wherein it is observed that the act of criminal breach of trust would, inter alia mean using or disposing of the property by a person who is entrusted with or has otherwise dominion thereover. Such an act must not only be done dishonestly but also in violation of any direction of law or any contract express or implied relating to carrying out the trust. There is no dispute that mere breach of contract is not in itself a criminal breach of trust and gives rise to the civil liability of damages however, there is a distinction between mere breach of contract and cheating which is a criminal offence. While breach of contract cannot give rise to criminal prosecution for cheating, fraudulent or dishonest intention is the basis of the offence of cheating.

16. In the case in hand, in a given set of facts it discloses that the present applicant has not only with the help of co-accused induced the informant and other investors to invest the amount but his dishonest intention can be gathered from the various statement of the witnesses which shows that the present applicant has engaged several persons to induce the investors to invest the amount and said amount is not returned back. The statement further discloses that he not only used to change his name but he used to obtain the SIM Cards in the name of his employees and after use of the said SIM Cards used to discard the said SIM Cards

and duped various persons. As per the allegation, the present applicant in connivance with the other co-accused hatched the criminal conspiracy and induced various persons to invest the amount. Thus, *prima facie* involvement of the present applicant reveals from the investigation papers.

17. In view of the directions given in **Satender Kumar Antil Vs. Central Bureau of Investigation and others** reported in **(2022) 10 SCC 51** and **Arnesh Kumar Vs State of Bihar reported in (2014) 8 SCC 273** wherein it is held that the directions and provisions be complied with by the concerned officers in letter and spirit. It is further held that personal liberty of an individual is an important aspect of our constitutional mandate. Merely because an arrest can be made because it is lawful, does not mandate that arrest must be made. As emphasized by the Hon'ble Apex Court a distinction must be made between the existence of the power to arrest and the justification for exercise of it. It is further observed that if arrest are made in a routine manner, it could cause incalculable harm to the reputation and self-esteem of a person and that presumption of innocence, is a facet of Article 21, which would inure to the benefit of the accused.

18. In the present case, the Investigating Officer has complied by issuing the notice to the present applicant to remain present for the investigation purpose but the present applicant has not cooperated with the investigating agency.

19. Here allegations against the present applicant is

regarding involvement in the economic offence. The investigation papers show that present applicant has induced various persons to invest the amount with false assurance that they will get return of the amount in double. The dishonest intention of the present applicant revealed from his activities like obtaining the SIM Cards in the name of various person, changing his own name in various transactions etc. The power exercisable under Section 438 of the Code is somewhat extra ordinary in character and it is only in exceptional cases where it appears that a person may be falsely implicated or where there are reasonable grounds for holding that a person accused of an offence is not likely otherwise, misused his liberty, then power is to be exercised under Section 438 of the Code. The object which is sought to be achieved by Section 438 of the Code is that the moment the person is arrested if he has already obtained an order from the Court of Sessions or High Court, he shall be released immediately on bail without being sent to the jail.

20. Recently, the Hon'ble Apex Court in the case of **P. Chidambaram Vs. Directorate of Enforcement**, reported in **(2019) 9 SCC 24** held that though object of Section 438 of the Code of Criminal Procedure is to safeguard personal liberty of an individual, delicate balance is required to be established between the two rights i.e. safeguarding personal liberty of an individual and societal interest and that grant of anticipatory bail particularly in economic offences hampers effective investigation. It is further held that power to grant anticipatory bail being an extra ordinary power has to be exercised sparingly, more so, in cases of economic

offences. Such bail must be granted only in exceptional cases after application of mind in relation to nature and gravity of accusation, possibility of applicant fleeing justice and other factors. The powers are to be invoked where the cases alleged to be frivolous or groundless.

21. In the case of State of Gujarat Vs. **Mohanlal Jitamalji Porwal and another** reported in **AIR 1987 1321** wherein it is held that the entire Community is aggrieved if the economic offenders who ruin the economy of the State are not brought to books. A murder may be committed in the heat of moment upon passions being aroused. An economic offence is committed with cool calculation and deliberate design with an eye on personal profit regardless of the consequence to the Community. A disregard for the interest of the Community can be manifested only at the cost of forfeiting the trust and faith of the Community in the system to administer justice in an even handed manner without fear of criticism from the quarters which view white collar crimes with a permissive eye unmindful of the damage done to the National Economy and National Interest.

22. Thus, in view of the observations of the Hon'ble Apex Court, economic offences constitute a class apart and need to be visited with a different approach in the matter of bail. The economic offences having deep-rooted conspiracies and involving huge loss of public funds need to be viewed seriously and considered as grave offences affecting the economy of the Country. While considering the application for anticipatory bail,

one has to keep in mind the nature of accusation, the nature of evidence in support thereof, the severity of punishment which conviction will entail, the character of accused, circumstances in which the offences committed, and the larger interest of the public etc.

23. In the present case, in a very systemic manner, the present applicant and the co-accused with the aid of various employees engaged by the present applicant obtained the money from various investors by assuring additional returns to them and instead of giving returns misappropriated the said amount. This indicates the systemic plan of the applicant along with the co-accused with intention to defraud the informant and various other persons who are the members of the society which resulted into the heavy loss to the said persons and therefore, this is not a fit case in which discretion can be used in favour of the applicant and therefore, protection under Section 438 of the Code Criminal Procedure cannot be granted.

24. For all the above said reasons, the application deserves to be rejected, and the same is rejected.

(URMILA JOSHI-PHALKE, J.)