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

CRIMINAL APPLICATION (BA) NO.592/2023
Paresh Mulji Kariya
..vs..
State of Mah., thr.PSO PS City Kotwali, Amravati, Now with Economic Offences Wing, Amravati, Taluka and District Amravati

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

Shri Wesley Menezes, Counsel with Shri Digvijay Singh, Advocate for the Applicant.
Shri Shyam Dewani, Counsel for Interveners.
Shri M.R.Puranik, Counsel to assist the Prosecution.
Shri K.R.Lule, Additional Public Prosecutor for the Non-applicant/State.

CORAM : URMILA JOSHI-PHALKE, J.
CLOSED ON : 02/11/2023
PRONOUNCED ON : 07/11/2023

1. By this application under Section 439 of the Code of Criminal Procedure, the applicant is seeking his release on bail in connection with Crime No.I-375/2022 registered with the non-applicant/police station and subsequently transferred to the Economic Offences Wing (EOW), Amravati for offences punishable under Sections 120-B, 406, 409, 420, 465, 467, 468, and 471 read with Section 34 of the Indian Penal Code and under Sections 3 and 4 of the Maharashtra Protection of Interest of Depositors (In Financial Establishments) Act, 1999

(MPID Act).

2. The applicant is arrested in the present crime on 15.12.2022 and since then he is in jail.

3. In Special Leave to Appeal (Cri.) No.13385/2023, the Honourable Apex Court passed order and considered limited grievance of the petitioner and observed in following manner:

> "Taking into consideration the limited grievance of the petitioner that his bail application filed in Criminal Application No.592/2023 is being adjourned from time to time at the instance of the State, we request the High Court to make an endeavour to pass appropriate final order on the next date of hearing i.e. on 25.10.2023."

4. On 25.10.2023, regular bench (Coram: Shivkumar Dige, J.) to which bail applications were assigned was not functioning with the judicial work and, therefore, the present application came to be placed before the Honourable Justice Mrs.Vrushali V.Joshi as urgent mentioning of matters and order was passed as "Not before me". As such, the present application was assigned to me on 25.10.2023.

5. On 25.10.2023, this Court (Coram : Urmila Joshi-Phalke, J.), passed followed order:

> "1. This is an application for grant of bail under section 439 of the Code of Criminal Procedure in connection with Crime No. I-375/2022 registered with Police Station, City Kotwali, Amravati and Economic Offences Wing, Amravati.
>
> 2. The matter was placed before this Court in view of the order of the Hon'ble Apex Court in Special Leave to Appeal (Cri.) No(s).13385/2023 wherein the Hon'ble Apex Court observed that the High Court to make an endeavour to pass an appropriate final order on the next date of hearing i.e. on 25/10/2023.
>
> 3. The regular bench to which applications for grant of bail are assigned is not available today. As such, today the present application is assigned to the court.
>
> 4. Heard learned counsel for parties to some extent.
>
> 5. Having heard learned counsel for respective parties, I find that there is a bulky record as well as interveners and the original complainant are also represented by their respective counsel.

Learned counsel appearing for parties, i.e. the applicant, interveners, the original complainant, are required to be heard. Also, learned Additional Public Prosecutor for the State requires substantial time to argue the matter.

6. In this view of the matter, the matter be placed before the regular bench tomorrow i.e. **26/10/2023.**

7. Learned counsel for the applicant and learned Additional Public Prosecutor for the State shall bring to notice of the regular bench the order passed by the Hon'ble Apex Court."

6. On 26.10.2023, when the present matter was placed before the regular bench (Coram : Shivkumar Dige, J.), following order was passed:

"1. Heard learned counsel for applicant, learned APP for State and learned counsel for original complainant.

2.Learned advocate for applicant submits that two separate First Information Reports have been filed against applicant, one is at Mumbai and other is at Amravati. Tomorrow, Criminal Writ Petition No.4229/2022 is fixed on board before the Division Bench at Principal Seat (Coram : A.S.

> Gadkari & Sharmila U. Deshmukh, JJ.) for consolidation of these two First Information Reports.
>
> 3. In view of the above, stand over to 03.11.2023."

7. Though the matter was ordered to be listed on 3.11.2023, it was got circulated and kept on 30.10.2023 before the regular bench (Coram : Shivkumar Dige, J.) and the said Court passed following order:

> "Heard learned counsel for the applicant, learned APP for the State and learned counsel to assist the prosecution.
>
> 2. Learned counsel for the parties submit that as per directions of Hon'ble Apex Court, this matter was heard for some extent by the Bench of Justice Urmila A. Joshi-Phalke on 25.10.2023.
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> 3. On that day after hearing the matter for sometime, the said Court passed the order to put it before Regular Court. Learned counsel for the parties further submit that initially when the matter was filed the notices were issued by Justice Urmila A. Joshi-Phalke hence requested to place this matter before the same Bench.

> 4. Considering the submissions of learned counsels for the respective parties as the matter is heard by Justice Urmila A. Joshi-Phalke for some extent and notices were issued by the same Bench when matter was filed.
>
> 4. In view of above, the matter be placed before the Bench of Justice Urmila A. Joshi-Phalke"

8. After the exercise above, on 31.10.2023; 1.11.2023, and 2.11.2023, the matter was listed before this Court (Coram : Urmila Joshi-Phalke, J.) and learned counsel appearing for the respective parties were heard at length and they made their respective submissions and concluded submissions on 2.11.2023.

9. Facts are as under:

Informant Rishabh Rajesh Sikchi, approached City Kotwali Police Station, Amravati and lodged report alleging that he is permanent resident of Amravati. In the year 2017, he got acquaintance with co-accused Anil Gandhi. Said Anil Gandhi introduced himself as owner of Tejimandi.com and legal representative of "Anugrah Stock Broking Private Limited" (the ASBPL), which is brokerage firm affiliated with

National Stock Exchange (NSE) and various other bodies which regulated trading of stocks. The applicant is Director of the ASBPL. Co-accused Anil Gandhi, had arranged a seminar in the year 2017 at Amravati wherein 78 investors were present. In the said Seminar, co-accused Anil Gandhi assured the informant and other investors that on investing in share market, they would get good returns. It was further informed that the informant and the investors have to open DEMAT and Trading Accounts with the ASBPL. He further assured that the investors' margin money would be secured by the ASBPL. The informant has visited the office of Tejmandi.com and co-accused Anil Gandhi shown him cheque performance report of the investors. He also told the informant that the ASBPL is declared as regulatory authority by SEBI and NSE. The signature and documents of the informant are obtained to open his account. Accordingly, the informant has started share trading business in November 2018. He had issued a Cheque of Rs.4.00 lacs in the name of the ASBPL for margin money. The informant had also transferred shares worth of Rs.7.00 lacs from his old DEMAT Account to new DEMAT Account opened with the ASBPL.

10. Initially, till February 2020, the informant received profit amount (commission) in his bank account. In March 2020, as the informant had not received commission amount from trading, he made enquiries and was informed by co-accused Anil Gandhi that due to "Mandi" in trading business, he had not received the commission. In August 2020, the informant learnt that NSE cancelled Trading Licence of the ASBPL and, therefore, he visited offices of Tejiamndi.com as well as the ASBPL. However, co-accused Anil Gandhi and the applicant were absconding.

11. The informant, subsequently, received a mail from Tejimandi.com from which he learnt that the ASBPL had appointed Edelweiss Custodial Services Limited (the ECSL) as custodian. The said ECSL to recover its losses caused due to the ASBPL sold the share of the investors worth of Rs.460.32 Crores without the consent of the investors. On 26.11.2020, NSE declared the ASBPL as defaulter.

12. From viral WhatsApp message, the informant came to know that the applicant and co-accused Anil Gandhi, with the help of NSE officers Vikram Limaye and Priya Subramanayam, committed illegal transactions.

13. Initially, an offence was registered against the applicant and co-accused Anil Gandhi with Juhu Police Station, Mumbai vide Crime No.284/2020 which was subsequently transferred to the Economic Offences Wing at Mumbai and renumbered as Crime No.25/2020. Regarding the illegal activities of the ASBPL; co-accused Anil Gandhi, and officials of NSE, an offence was also registered in Telangana State. Multiple FIRs were also registered in Maharashtra State.

14. During investigation of Crime No.284/2020, by officers of the Economic Offences Wing, statements of the informant and the other investors were recorded. The Economic Offence Wing marked a lien on the bank account of ECSL bearing account No.582706115 of Citi Bank on 25.9.2020. During the investigation, it further revealed that the ECSL challenged the order of lien by filing a petition bearing Writ Petition No. No.2505/2020 which was subsequently withdrawn with liberty to approach the Magistrate. Accordingly, an application was filed before learned Metropolitan Magistrate to set aside the lien. Learned Magistrate allowed the application and set aside the lien on condition that ECSL shall submit a bank guarantee worth of

Rs.460 Crores.

15. The grandfather of the informant has also filed a petition bearing Writ Petition No.286/2020 seeking directions to register FIR against Directors of ASBPL. On 28.7.2022, the informant lodged FIR at Amravati City Police Station and the applicant is arrested on 15.12.2022. After completion of the investigation, the Economic Offences Wing at Amravati also filed a chargesheet before the Special Court.

16. The present bail application is filed by the applicant on the ground that since 15.12.2022, he is under-trial prisoner. The Honourable Apex Court has already released him on bail in Crime No.284/2020 registered with Juhu Police Station, Mumbai. Multiple FIRs are registered against him in the Maharashtra and Telangana States arising from the same cause of action which deserve to be quashed. He raised a ground that during the investigation in Crime No.284/2020, his various movable and immovable assets are seized. The interest of the investors is already secured. Now, the investigation is completed. His further detention is not required. He also claimed to be innocent and not responsible for the act committed by co-accused Anil Gandhi, the Sub

Broker. Thus, as per contentions of the applicant, as the investigation is already completed and chargesheet is filed, no purpose will be served by keeping him behind the bars and, therefore, he be released on bail by imposing appropriate conditions.

17. The application is strongly opposed by the State as well as the informant and the investors by filing their replies and written submissions.

18. Heard learned counsel appearing for the respective parties at length.

19. Learned counsel Shri Wesley Menezes for the applicant submitted that the applicant is a Broker. Several Sub Brokers are working under him. As the Sub Brokers are not registered, clients of the Sub Brokers to sign agreement with the Brokers. He submitted that as far as the present crime is concerned, on the similar cause of action, the crime is already registered with Juhu Police Station, Mumbai vide Crime No.284/2020 wherein entire investigation is completed and chargesheet is filed. Regarding the same cause of action, this another crime is registered. In fact, Capital Market is

trading Eco-System governed and regulated by various bodies and entities and some of them are *quasi* judicial forums. Three main bodies and entities namely SEBI, Exchange, and Clearing Corporations govern and regulate financial markets. The clearing member utilizes consolidated collateral of all the clients of a particular broker to settle their obligations to the exchange. The clearing member allocates the maximum margin which can be utilized for derivative trades by the clients against the collateral received from them. The clearing member along with the exchange is intimated through regulatory reporting about the collaterals and obligations of each individual client in detail. The derivative market is segregated into futures and options. The futures' contract is an agreement between two parties through the exchange for the purchase or delivery of an underlying asset at an agreed price at future date which is known as expiry. The present applicant was director of the ASBPL located at Mumbai which was brokerage firm affiliated with the NSE and various other bodies regulated trading of stocks. Under the relevant rules and bye-laws of NSE, ASBPL enters into a Clearing Member Trading Member agreement (CMTM) dated 26.4.2010 with ECSL. The arrangement between ASBPL and the ECSL was that ECSL would allocate margin limit to ASBPL which would further allocate the same to its clients. The clients would provide collateral to obtain the said margin and subsequently ASBPL would provide consolidated collateral to ECSL. The clients' securities were pledged to ECSL on the instructions of the clients, clients to avail the benefit of the margin. As per the CMTM Agreement, ECSL fulfill the margin obligations to the exchange and levy 18% per annum on the excess margin utilized. From the month of March 2020, due to volatility in the markets induced by the Covid Pandemic, there were multiple outstanding positions belonging to multiple clients majorly under Tejimandi Analytics Private Limited (TAPL). Most of the said positions were loss making and considering speculative nature of the derivative trades undertaking, in many cases the losses superseded the collateral they had provided. The ASBPL had reached out to TAPL to bring additional collateral or square off the transactions held by their clients. In the pandemic scenario, the ASBPL cannot confirm whether needful was done by TAPL. In such circumstances, ECSL went ahead and liquidated collateral at their end to clear losses as well as the interest and penalty levied. By the month of June 2020, the ECSL has liquidated

Rs.460 Crores worth of securities to clear the dues. At the relevant time, there was an additional sum amounting to more than Rs.200 Crores worth of cash balance, fixed deposits and bank guarantees available with the ECSL. The ECSL proceeded rampantly and liquidated the securities which is contrary to market practice and not as per the bye-laws prescribed by NSE. ECSL failed to consider the outstanding position of the clients whose collateral they had liquidated despite having all the relevant information pertaining to their trades, collateral and clients code. It is a clear contravention of the relevant bye-laws.

20. Learned counsel for the applicant submitted that the TAPL was appointed as Sub Broker in 2009. It was agreed between them that the later would solicit its own clients' trade and assist the clients in all their trades. The ASBPL provided a trading terminal to the TAPL which enabled them to transact on the exchange. Each trading terminal bears a unique code which is registered with the NSE. The clients of TAPL deposited funds and securities as margin moneys which is mandated as a prerequisite by the exchange in order to buy or speculate in the market. The statements recorded by the

investigating agencies show that employees of the TAPL never received any instructions or communication from their clients. The employees, co-accused Anil Gandhi, and Kalapi Shah instructed them to divide clients into batches and would transact with batch file. Thus, the applicant is no way concerned with the alleged transaction. The multiple proceedings were filed and movable and immovable assets of the applicant were seized. The statement of the informant also shows that he received the profits by the investment. Now, the investigation is completed and chargesheet is filed. The interest of the investors is already secured. Further detention of the application is not at all required.

21. Lastly, learned counsel for the applicant submitted that considering all the above circumstances, which show that there is no direct material to connect the applicant with the alleged offence, the interest of the investors is already secured, co-accused Anil Gandhi and ECSL had transacted without the consent of the clients, and the applicant is not involved in it, the applicant be released on bail.

22. *Per contra*, learned Additional Public Prosecutor Shri K.R.Lule for the State submitted that the applicant is

Director of the ASBPL. The co-accused Anil Gandhi is Director of TAPL. Accused No.3 is the ECSL and accused No.4, 5 & 7 are office bearers of NSE. During the investigation, it revealed that fabricated margin statement of the informant as well as the investors, who have invested their securities through the company owned by the applicant were forwarded. The Central Depository Services Limited (CDSL), through their officials in response to the Notice issued by the Investigating Officer, stated that the margin statements are fabricated one. The investigating officer has also obtained Forensic Audit Report dated 5.10.2020, conducted by the NSE, which shows various illegalities and irregularities committed by the ASBPL governed by the applicant in collusion with the other accused. The manner in which the crime is committed is that the respective depositors opened their DEMAT Accounts to purchase and sell the shares. The investors open their DEMAT Accounts on the platform ASBPL owned by the applicant. Almost 79 depositors, including the informant, opened their accounts and paid their respective margin securities/money for the purchase of shares. From all these investors, the applicant has received Rs.18.00 Crores (Rs.6.00 Crores by way of Cheques and Rs.12.00 Crores by way of share securities). There shall be contract note between the brokers and the investors on day to day basis for each and every transaction to be undertaken by the brokers on behalf of the investors. The brokers have to take prior consent of the investors prior to purchasing shares in the name of investors. Unless and until such consent is not extended for sell or purchase of share through brokers, the brokers are not entitled to do any transactions. The present applicant has sold several securities, stocks and shares of the respective investors without their consent. The various statements of the investors show that fabricated margin statements were forwarded to them which were not reflecting correct status of their DEMAT Accounts with regard to their securities and other stocks. The present applicant entered into an agreement with accused ECSL and in view of the agreement given, blanket consent to sell the stock/collateral securities in the nature of shares and mutual funds of the respective investors resulted into huge loss. It further revealed during the investigation, during the Forensic Audit conducted by NSE, the applicant has given loan of Rs.304.80 Crores to entities viz. 1. Vigil Credits and Mercantile Private Limited; 2. Next Credits and Mercantile Private Limited, and 3. Lakshya Trading & Agencies Private

Limited. These all companies are of the applicant and not doing any substantial business except money trail and used to receive the amount from the account of ASBPL owned by the applicant. The NSE issued notice to the applicant on 17.7.2020 to explain illegalities and irregularities. The applicant's involvement is reflected in the huge money trail, misappropriation of public funds and around 16000 investors have suffered losses of their securities, shares and monies. SEBI has also initiated enquiry against the applicant. The office of Enforcement Directorate (ED) also conducted an investigation. Considering all these aspects and *prima facie* material against the applicant, the application deserves to be rejected.

23. Learned counsel Shri M.R.Puranik assisting the prosecution, supported the above said contentions and submitted that the crimes registered at Mumbai and Amravati are for different cause of actions. The time when these offences are committed is also different, and, therefore, it cannot be said that both the crimes are registered from the same cause of action. He invited my attention to inspection report of NSE and joint inspection report conducted by SEBI,

NSE, CDSL and BSE into the activities of ASBPL which show that various violations are committed by the ASBPL. The assets of the ASBPL are seized and various authorities imposed penalty on the applicant. He further submitted that during the investigation, the investigating officer has collected electronic evidence in the nature of one viral message exchanged between officials of the NSE and the applicant and co-accused Anil Gandhi, which shows involvement of the applicant in the alleged offence. Thus, he submitted that the nature of the offence is serious economic offence. Considering the gravity of the offence, the application deserves to be rejected.

24. Learned counsel Shri Shyam Dewani appearing for 25 investors who are permitted as interveners. He also endorsed the said contentions and submitted that merely because the chargesheet is filed and the interest of the investors is secured is not sufficient to release the applicant on bail. The basic parameters while considering the prayer of bail deserve to be considered which include the nature of accusations, reasonable apprehension of tampering, larger interest of public and, similar other considerations. The

investigation papers show that multiple FIRs are registered against the applicant and other co-accused. Due to the activities of the applicant and the other co-accused, 16000 investors are affected and Crores of rupees are siphoned illegally. The nature of the offence is economic offence and considering the gravity of the offence, the application deserves to be rejected.

25. After hearing learned counsel for the respective parties and gone through the investigation material, it shows that the applicant is Director of the ASBPL which is brokerage firm affiliated with NSE and various other bodies which regulated trading of stocks. The co-accused Anil Gandhi, who is absconding, is Sub Broker who allegedly induced the investors to invest moneys in share market on assurance that they would get handsome returns. The record further shows that the informant and the other investors opened DEMAT and Trading Accounts with the ASBPL. The informant and investors allegedly assured that their margin money would be secured by the ASBPL. Accordingly, the investors invested the amounts by cheques/shares. The informant and the investors invested the amounts with the ASBPL, is not denied

by the applicant. The only contention of the applicant is that informant and investors are client of co-accused Anil Gandhi who is director of TAPL. It further reveals that in August 2020, the NSE cancelled the Trading Licence of ASBPL and on 26.11.2020 the NSE declared ASBPL as defaulter. It further reveals that the ASBPL entered into an agreement with ECSL by which ASBPL has been admitted as trading member of futures and options segment of NSE. It also shows that the ECSL has been admitted as clearing member of the National Securities Clearing Corporation Limited (NSCCL) and is authorized to carry on the activities of clearing and settlement of deals and trades on behalf of the trading members. As per the supplementary Agreement, viz. Clause 7.3, the clearing member will not be responsible for any losses or damages suffered by the trading member as a result of any act or failure to act by the clearing member unless the loss or damage results from the clearing member’s breach of this Agreement by willful misconduct or fraud or gross negligence, in which event the liability of the clearing member in connection with the loss or damage will not exceed and lesser of replacement of any property of the market value of the property to which such loss or damage relates at the time the trading member reasonably should have been aware of such breach. If the NSCCL closes any open position(s) of the trading member other than in accordance with confirmation from the clearing member, and the same is attributable solely to a default by the clearing member not originating from a force majeure even or a default by the trading member, the clearing member shall reimburse any costs incurred by the trading member there against. Under no circumstances will be clearing member be liable to the trading member for indirect, incidental or consequential loss or damage, even if advised of the possibility of such damages.

26. Prior to registration of the present crime, crime No.284/2020 was registered with Juhu Police Station, Mumbai which was subsequently transferred to the Economic Offences Wing at Mumbai vide Crime No.25/2020. During the pendency of the investigation of Crime No.284/2020 registered with Juhu Police Station at Mumbai, Member and Core Settlement Guarantee Fund Committee passed order in the matter of professional clearing member of ECSL on 20.10.2020. The order passed by the said committee reflects that NSE conducted a limited purpose inspection of ECSL who

was the Noticee by inspecting its books, registers, records and other relevant documents with respect to ASBPL from the period January 2020 to 19.7.2020. During the inspection by NSE, it revealed that ECSL entered into an agreement with ASBPL and ECSL was appointed as custodian for providing clearing services. During the period of January 2020 to July 2020, the ledger balance of ASBPL in the books of ECSL reflected large debit balances on multiple debts on account of losses made by ASBPL as a trading member. In order to recover the outstanding balances, the ECSL sold securities of ASBPL of Rs.460.32 Crores during January 2020 to June 2020. The NSE has by its E-mail dated 2.4.2020 specifically instructed the ECSL in terms of circulars i.e. NCL/COMP/41068 dated 20.5.2019, NCL/COMP/41500 dated 3.7.2019, NCL/COMP/43201 dated 10.1.2020 and in terms and conditions of TM/CM Agreement that ""it is understood that you (ECSL) are in possession of the client wise details of the securities deposited by ASBPL with you. In view of the above and with an objective of safeguarding the clients' assets, you are in accordance with the rules and regulations of SEBI/Exchange/CC and TM/CM Agreement advised to perform adequate due diligence while handling clients' assets and ensured that clients securities/collateral are utilized only for meeting the respective clients' obligations."

27. Despite the communication to the ECSL by the NSE, the ECSL had disposed of clients' securities worth of Rs.96.34 Crores during 3.4.2020 to 2.6.2020. It is further observed by the committee that the ECSL failed to perform adequate due diligence while handling clients' securities and ensured that clients' securities were utilized only for meeting the respective clients' obligations. The securities have been disposed of in complete disregard before and after the directions of NSE/NCL as well as in contravention of SEBI Circulars and Regulations. The order further discloses that Rs.37.90 Crores worth of clients' securities were sold off upon instructions from ASBPL to ECSL indicating that the securities belong to debit balance clients. The ECSL ought to have sought client wise details and client wise debit balances but failed to do so and merely relied upon unsubstantiated statement of ASBPL who is trading member and sold off the securities of the clients. Considering the misconduct by ECSL, penalty was imposed.

28. To understand the nature of the offence, it is

necessary to understand following concepts:

1. Trading member – the broker or trading member is registered entity which transacts on the exchange platforms on behalf of their clients and is also task with ensuring the collection and settlement of funds and securities with its registered clients. It is registered and governed by the NSE, BSE, CDSL/NSDL and SEBI;

2. Clearing member – a member of clearing corporation who clears and settles deals through the clearing corporation, the clearing member utilizes the consolidated collateral of all the clients of a particular broker to settle their obligations to the exchange. The clearing member allocates the maximum margin which can be utilized for derivative trades by the clients against the collateral received from them;

3. collateral - it is the money in the form of bank transfers and securities (shares) that are given by the clients to the broker in order to fulfill their

obligations while creating the position in the derivative market.

29. In the light of the above procedure, if the investigation papers are considered, it reveals that as per the allegations, the forged margin statements were forwarded to the investors and their securities were sold by the ECSL and ASBPL without their consent. The Investigating Officer has recorded statements of the informant and various investors which show that on the representation of co-accused Anil Gandhi, the informant and investors opened their DEMAT Accounts with the ASBPL and transferred the shares. In August 2020, NSE withdrew trading rights of the ASBPL. The shares and securities belonging to the investors were sold without their consent. The Investigating Officer has also collected the Forensic Audit conducted by the NSE. The Forensic Audit shows various violations on the part of the ASBPL. As per the said Report, the Securities Contracts (Regulation) Rules 1957 under sub rule (f) of Rule 8, no broker is eligible to be elected as a member if is engaged in any business other than that of securities except as a broker or agent not involving any personal financial liability. The

ASBPL is potentially providing DAS Service which is other than in the nature of broking business. The report further reveals that from the summary of balance of debtors and creditors submitted by the ASBPL, actual positions of debtors and creditors potentially misrepresent as on 30.4.2020 and potential losses in the clients' accounts for the period of February 2020 to August 2020 were noted. As per the said report, the data available shows losses for the period 1.2.2020 to 27.8.2020 amounting to INR 566.31 Crores to the clients.

30. The NSE filed affidavit before the Principal Bench and submitted that in 2013-14 an inspection was conducted and fine Rs.1,59,000/- levied on the ASBPL for violations pertaining to the settlement of clients' accounts, funding of client's transactions. A fine of Rs.82,500/- was levied for violations pertaining to non-settlement of clients' transaction; a fine of Rs.75,000 was levied in the financial year 2015-2016, and fine of Rs.1,93,72,000/- was levied for misuse of clients' funds and securities in 2017-2018. It shows that the ASBPL is continuously involved in violations in respect of the clients' transactions. SEBI, NSE, CDSL and the BSE have

conducted joint inspection into affairs of the ASBPL for the period between 1.4.2017 and 17.12.2018. During the said inspection, various violations were found and short fall of funds to the tune of Rs.118.00 cores was found. It is further revealed during the investigation that despite the knowledge of such short fall in the year 2018, the NSE has not taken any action against the ASBPL, till 2020. The Forensic Audit Report for the period of 1.4.2019 to 27.8.2020 reveals that more than Rs.300 Crores were siphoned of by the ASBPL.

31. Thus, the investigation papers and the audit conducted by the NSE and CDSL, show that since 2013 various violations are committed by the ASBPL. The investigation further shows that the ASBPL and TAPL were sending different margin statements by mail to the investors showing their investments and securities are secured. On the contrary, the transactions and stocks/shares were already sold and the amounts were not credited to their respective accounts.

32. It is a part of record that crime No.284/2020 was registered with Juhu Police Station, Mumbai and during the pendency of the investigation of the said crime, various writ

petitions were filed at Principal Bench for consolidation of all FIRS at one place and for quashing of FIRS which are still pending. One Criminal Writ Petition No.1980/2020, filed before the Telangana High Court for quashing of FIR by Managing Director and other officials of NSE, was dismissed on *prima facie* material showing involvement of the said officials in the offence. The observations of the Telangana High Court show that though various violations are noticed by the NSE, which committed by the ASBPL, no action was taken. It is further observed that there is involvement of the ASBPL to siphon more than Rs.300 Crores as per the Forensic Audit Report.

33. The basic contention of the applicant is that multiple FIRs are registered in Maharashtra and Telangana State arising out of the same cause of action. Learned counsel for the applicant submitted that the statement of the informant, recorded under Crime No.284/2020, registered with Juhu Police Station, Mumbai, no separate FIR can be filed at Amravati.

34. In support of his contentions, learned counsel for the applicant placed reliance on the decision of the

Honourable Apex Court in the case of **T.T.Anthony vs. State of Kerala, reported in (2001)6 SCC 181** wherein it has been held that information given under sub section (1) of Section 154 of the Code is commonly known as the first information report. The Court concluded that second FIR for the same offence or occurrence giving rise to one or more cognizable offences was not permissible.

35. Learned counsel for the informant submitted that perusal of the both the FIRs shows that period of inducement in the FIR registered at Mumbai is shown as December 2019. Whereas, in the present case period of alleged crime is shown as March 2020 and thereafter.

36. Learned counsel Shri Shyam Dewani for the interveners, placed reliance on the decision of the Honourable Apex Court in the case of **Anju Chaudhary vs. State of Uttar Pradesh and anr, reported in (2013)6 SCC 384** wherein it has been held that The First Information Report is a very important document, besides that it sets the machinery of criminal law in motion. It is a very material document on which the entire case of the prosecution is built. Upon registration of FIR, beginning of investigation in a case,

collection of evidence during investigation and formation of the final opinion is the sequence which results in filing of a report under Section 173 of the Code. The possibility that more than one piece of information is given to the police officer in charge of a police station, in respect of the same incident involving one or more than one cognizable offences, cannot be ruled out. The Honourable Apex Court illustrates such a situation by giving an example of the same group of people committing theft in a similar manner in different localities falling under different jurisdictions. Even if the incidents were committed in close proximity of time, there could be separate FIRs and institution of even one stating that a number of thefts had been committed, would not debar the registration of another FIR.

37. The second contention of learned counsel for the applicant are that the applicant is innocent and falsely implicated. It was co-accused Anil Gandhi, Sub Broker, who is responsible for the said transaction. He further submitted that the applicant's assets are already attached, interest of investors is already secured, investigation into the crime is completed and, therefore, his further incarceration is not

required. He placed reliance on following decisions:

1. Satish s/o Popatrao Kale vs. State of Mah., reported in 2023 DGLS (Bom) 666;

2. Suresh G.Motwani (Dr.) & anr vs. State of Mah. and anr, reported in 2004(Supp.)BCR 521;

3. Rajesh Malleshyam Bogul vs. State of Mah., reported in 2020 DGLS (Bom.) 792;

4. Azam Khan vs. State of Mah., reported in 2023 DGLS (Bom.) 422.

In the decisions above, it is considered that interest of investors is protected and released the applicant on bail.

38. Whereas, as per learned Additional Public Prosecutor for the State and learned counsel appearing for the interveners, multiple FIRS are registered against the applicant who is involved in Economic Offences. While considering bail applications, relevant considerations including whether the case is fit to grant bail is to be looked into.

39. Learned counsel Shri Shyam Dewani for the interveners, placed reliance on the decision of the Honourable Apex Court in the case of **Mahipal vs. Rajesh Kumar alias Polia**

and anr, reported in (2020)2 SCC 118 wherein it is held that the determination of whether a case is fit for the grant of bail involves the balancing of numerous factors, among which the nature of the offence, the severity of the punishment and a prima facie view of the involvement of the accused are important. No straight jacket formula exists for courts to assess an application for the grant or rejection of bail. At the stage of assessing whether a case is fit for the grant of bail, the court is not required to enter into a detailed analysis of the evidence on record to establish beyond reasonable doubt the commission of the crime by the accused. The Honourable Apex Court further referred the judgment in the case of **Kalyan Chandra Sarkar vs Rajesh Ranjan, reported in (2004)7 SCC 528** and observed that the law in regard to grant or refusal of bail is very well settled. The court granting bail should exercise its discretion in a judicious manner and not as a matter of course. Though at the stage of granting bail a detailed examination of evidence and elaborate documentation of the merit of the case need not be undertaken, there is a need to indicate in such orders reasons for prima facie concluding why bail was being granted particularly where the accused is charged of having committed a serious offence. Any order devoid of such reasons would suffer from non-application of mind.

40. Learned counsel for the applicant further placed reliance on following decisions :

1. Sanjay Chandra vs. Central Bureau of Investigation, reported in (2012)1 SCC 40;

2. Malvinder Mohan Singh vs. State of Delhi, Malvinder Mohan Singh vs. State NCT Delhi (Bail Application No.2810/2021 decided on 2.6.2023), and

3. Awanish Kumar Mishra vs. State, reported in 2021 SCC OnLine Del 4786.

41. Whereas, learned counsel Shri Shyam Dewani for the interveners placed reliance on following decisions:

1. Ramchand Karunakaran, Managing Director, IL&FS Transportation Networks Ltd. v. Directorate of Enforcement, through the Assistant Director, Zonal Office, Ballard Estate, reported in 2020 SCC OnLine Bom 7949;

2. Centrum Financial Services Limited vs. State of NCT of Delhi and anr, reported in 2022 SCC OnLine SC 100;

3. P.Chidambaram vs. Directorate of Enforcement, reported in (2019)9 SCC 24;

4. Deepak Shrikant Agrawal vs. State of Mah., 2019 SCC Online Bom 7108;

5. Bali Application No.1525/2021 along with connected matters decided at Aurangabad Bench;

6. Manish Sisodiya vs. Central Bureau of Investigation (Special Leave Petition (Criminal) No.8167/2023);

42. In the case of **Manish Sisodiya** cited *supra,* the Honourable Apex Court considered the decision in the case of **Sanjay Chandra vs. Central Bureau of Investigation** cited supra and other various judgments including the decision in the case of **P.Chidambaram vs. Directorate of Enforcement** cited *surpa* and observed that in **P.Chidambaram vs. Directorate of Enforcement** the appellant therein was granted bail after being kept in custody for around 49 days, relying on the Constitution Bench in **Shri Gurbaksh Singh and ors vs. State of Punjab**, **reported in 1980 AIR 1632** and **Sanjay Chandra vs. Central Bureau of Investigation** cited *supra*, that even if the allegation is one of grave economic offence, it is not a rule that bail should be denied in every case. Ultimately, the consideration has to be made on a case to case basis, on the facts. The primary object is to secure the presence of the accused to stand trial. The Honourable Apex Court further referred the decisions in the cases of **Satender**

Kumar Antil vs. Central Bureau of Investigation and anr, reported in (2022)10 SCC 51 and **Vijay Madanlal Choudhary vs. Union of India and ors, reported in (2022)SCC OnLine 929** and observed that this Court while highlighting the evil of economic offences like money laundering, and its adverse impact on the society and citizens, observed that arrest infringes the fundamental right to life. Detention or jail before being pronounced guilty of an offence should not become punishment without trial. While the prosecution may pertain to an economic offence, yet it may not be proper to equate these cases with those punishable with death, imprisonment for life, ten years or more like offences under the Narcotic Drugs and Psychotropic Substances Act, 1985 and rejected the bail.

43. Admittedly, at the stage of granting bail, an elaborate examination of the evidence and detailed reasons touching the merits of the case, which may prejudice accused, should be avoided, but there is a need to indicate the reasons why the bail is not granted.

44. *Prima facie,* on the basis of allegations levelled against the applicant, it shows that the applicant was the

Director of the ASBPL. On the inducement of the co-accused, who was Sub Broker of the ASBPL, the informant and other investors invested money and securities. During the investigation it revealed that fabricated margin statements were forwarded to the investors. The most crucial aspect of share trading business is that there shall be contract note between the brokers and investors on day to day basis. The brokers have to obtain the consent of the investors prior to purchasing or selling of shares.

45. In the present case, though margin statements are forwarded to the investors, their securities were already sold without consent of the investors. Approximately, 16000 investors in the States of Maharashtra and Telangana have suffered losses. Multiple FIRs are registered. The investigation papers show various authorities conducted the inspection and it revealed that the applicant has violated various rules and regulations for which time to time penalty is imposed on the ASBPL. In joint inspection conducted by NSE/ CDSL and the BSE, various violations on the part of the applicant were ascertained. The Forensic Audit Report reveals that more than Rs.300 Crores was siphoned by the ASBPL

owned by the applicant. The Telangana High Court also refused to quash the FIR observing *prima facie* involvement of the officials of the NSE in the crime. The Honourable Apex Court granted bail in Crime No.284/2020 registered with Juhu Police Station at Mumbai. The order reflects in which circumstances the bail was granted. The State filed review application which is still pending.

46. In the backdrop of the aforesaid material collected during the investigation, the prayer of the applicant for grant of bail requires consideration in the light of the principles laid down by the Honourable Apex Court in relation to the economic offences.

47. It is well settled position of law that jurisdiction to grant bail has to be exercised having regard to the facts and circumstances of cases. The factors to be taken into consideration are; 1) the nature of accusations and severity of the punishment; 2) reasonable apprehension of tampering with witnesses; 3) reasonable possibility of securing presence of accused, and 4) character, behaviour and standard of accused.

Each case has to be considered on its own merits.

48. In the present case, considering the nature of the crime, huge amount is involved. The Honourable Apex Court, while dealing with offence, involving conspiracy to commit economic offences of huge magnitude, in the case of **Y.S.Jagan Mohan Reddy vs. CBI, reported in (2013)7 SCC 439** laid down following parameters:

> i) economic offences constitute a class apart and need to be visited with a different approach in the matter of bail. The economic offence having deep rooted conspiracies and involving huge loss of public funds needs to be viewed seriously and considered as grave offences affecting the economy of the country as a whole and thereby posing serious threat to the financial health of the country, and
>
> ii) while granting bail, the court has to keep in mind the nature of accusations, the nature of evidence in support thereof, the severity of the punishment which conviction will entail, the

character of the accused, circumstances which are peculiar to the accused, reasonable possibility of securing the presence of the accused at the trial, reasonable apprehension of the witnesses being tampered with, the larger interest of the public/State and other similar considerations.

49. The Honourable Apex Court, in the case of **State of Gujarat vs. Mohan Lal Jitamalji Porwal, reported in (1987)2 SCC 364** held as follows:

> "5. ….The entire community is aggrieved if the economic offenders who ruin the economy of the State are not brought to book. 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….."

50. Considering the role of the applicant in the crime, having involved enormous and huge amount, the conspiracy between the accused involving officials of the NSE, who failed to discharge their obligations, and the investigation revealing the manner in which thousands of investors are duped and public money is at stake, the role of the applicant is clearly exposed.

51. In the background of the accusations and its gravity, the applicant is not entitled for being released on bail and, therefore, the application deserves to be rejected and the same is **rejected**.

52. The observations made above are *prima facie* in nature, on the basis of material collected during the course of the investigation, and shall not be taken as findings recorded relating to the alleged offence.

The application stands **disposed of**.

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

!! BrWankhede !!