



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

CRIMINAL APPLICATION (BA) NO.893/2023
Shahul s/o Anand Simon @ Shimon and ors

..VS..

State of Mah., thr.PS Ramnagar, Tahsil and District Chandrapur

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

Court's or Judge's Order

Shri A.J.Salway, Counsel for Applicants.
Shri V.A.Thakare, Additional Public Prosecutor for the State.

CORAM : URMILA JOSHI-PHALKE, J.
CLOSED ON : 07/12/2023
PRONOUNCED ON : 15/12/2023

1. By this application, applicants seek bail under Section 439 of the Code of Criminal Procedure in connection with Crime No.409/2023 registered with the non-applicant/police station for offences punishable under Sections 420, 406, and 409 read with Section 34 of the Indian Penal Code.

2. The applicants are arrested on 19.4.2023 and since then they are behind bars.

3. Learned counsel Shri A.J.Salway for applicants, submitted that applicants are directors of Eden's Bachat Nidhi Company Limited bearing registration No.305569. The company was involved in collecting funds from public against interests and

lending it to needy persons. He further submitted that the crime is registered against applicants on an allegation that they have collected money from investors to the tune of Rs.62,13,143/- and investors have not received either interests or principle amounts and, therefore, investors approached the police station and lodged the report. The crime is also registered under Section 3 of the Maharashtra Protection of Interest of Depositors (In Financial Establishments) Act. He submitted that due to Covid-2019 pandemic situation, applicants could not pay the amounts. They are having intention to pay the amounts. The amounts are not misappropriated. At the most, the act attributed is to the extent of non-refund of money which is of a civil nature and prays for grant of bail.

4. Learned Additional Public Prosecutor Shri V.A.Thakare for the State, strongly opposed the application on the ground that total 67 investors invested amounts on inducement by applicants. It reveals from investigation papers that maximum investors are retired government employees who have invested their retiral amounts in the said company with a hope that they would get good returns. In fact, they have not received interest as well as the principle amount. As far as intention of applicants is concerned, the same can be

ascertained from circumstance that applicants have withdrawn amounts from all accounts only to deprive investors from receiving money. Thus, the act committed by applicants is of a grievous in nature. The hard earned money is lost by investors. The offence is in the nature of economic offence and, therefore, the application deserves to be rejected.

5. Having heard learned counsel Shri A.J.Salway for applicants and learned Additional Public Prosecutor Shri V.A.Thakare for the State and perused investigation papers, it reveals that the informant and his father deposited Rs.61.00 lacs as they were assured that they would get interest @ 2% on their deposited amounts per month. Despite collecting deposits, neither the principle amount nor the interest was paid. The applicants are directors. In all 67 victims are duped to the tune of Rs.62,13,143/-. To deprive investors, applicants have withdrawn amounts from respective accounts.

6. Learned counsel Shri A.J.Salway for applicants, placed reliance on the decision of this court at Principal Bench in the case of **Dr.Suresh G.Motwani vs. State of Mah., and anr,** reported in 2003 ALL MR (Cri) 2212 wherein it is held that in case of economic offences, object of criminal prosecution is to

protect investors and help them in recovery of money.

7. Admittedly, applicants are involved in economic offence.

8. 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.

9. The Honourable Apex Court in the case of **Satender Kumar Antil vs. Central Bureau of Investigation and anr**, reported in (2022)10 SCC 51 held that question for consideration is whether economic offence should be treated as a class of its own or otherwise. The gravity of the offence, object of the Special Act, and the attending circumstances are a few of factors to be taken note of, along with period of sentence. After all, an economic offence cannot be classified as such, as it may involve various activities and may differ from one case to another. By referring the decisions in the cases of

P.Chidambaram vs. Directorate of Enforcement, reported in (2020)13 SCC 791 and Sanjay Chandra vs. Central Bureau of Investigation, reported in (2012)1 SCC 40 wherein it is held that grant or refusal to grant bail lies within the discretion of the court. However, at the same time, right to bail is not to be denied merely because of sentiments of community against accused. Primary purposes of bail in criminal cases are to relieve accused of imprisonment, to relieve the State of the burden of keeping him, pending the trial, and at the at the same time, to keep accused constructively in the custody of the court.

10. 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.

11. 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....”

12. Considering the role of applicants in the crime, having involved the amount which is collected towards investment and investors, retired government employees, are duped and the role of applicants is clearly exposed. The intention of applicants to dupe investors is clear from the fact that they have withdrawn the amount from all accounts only to deprive the investors from getting money.

13. In the light of the above said background, applicants are not entitled for being released on bail and as such their application deserves to be rejected and the same is **rejected**.

The application stands **disposed**.

(URMILA JOSHI-PHALKE, J.)

1. Learned counsel for applicants prays that liberty be granted to move application after eight months if trial is not

.....7/-

concluded.

2. Learned counsel for applicants is granted the liberty to move after eight months if trial is not concluded within the said period.

(URMILA JOSHI-PHALKE, J.)

!! BrWankhede !!