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

CRIMINAL APPLICATION (BA) NO.942 OF 2023
(Vijay Jamitmatmal Dayalani Vs. The State of Maharashtra)

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

---

Mr. S.P. Bhandarkar, Advocate a/b Mr. A. Khadse, Advocate for the applicant.
Ms Charlewar, APP for the State.
Ms K. Deshpande, Advocate for assist to prosecution.

CORAM:- URMILA JOSHI-PHALKE, J.
DATED :- DECEMBER 12, 2023.

Heard.

2. By this application, the applicant is seeking bail under Section 439 of the Code of Criminal Procedure in connection with Crime No.1678/2019, registered with Police Station Wardha for the offence punishable under Sections 420, 468 and 471 of the Indian Penal Code and under Section 3 of the Maharashtra Protection of Interest of Depositors (In Financial Establishments) Act, 1999.

3. The applicant is arrested on 05/02/2020. Since then he is behind bar.

4. During the Covid-19 pandemic as per the direction of the Hon’ble Apex Court, the applicant was released for temporary period and again he surrendered on 27/07/2023.

5. The accusation against the present applicant is on the basis of report lodged by Kamal Gopaldas Vishnani.

6. As per the allegation, the complainant and other investors have filed a written complaint at the police station Wardha alleging that the amount of Bhishi was submitted by the complainant and the others with the applicant. They have invested the amount in the Bachat Gat which was run by the applicant by depositing Rs.4800/- per week. The applicant promised them and assured them that they would get more interest on the said amount but neither he has paid the said amount nor any interest was paid. The huge amount is deposited with the present applicant which is outstanding against him. He has not paid the amount after several demands and therefore, they approached to the police station and lodged the report. On the basis of said report, police have registered the crime.

7. Learned Counsel for the applicant submitted that as per the allegations the complainant and other investors were Bhishi members and present applicant was running the bachat gat. In fact, to implicate the present applicant with malafide intention this false allegations are made. In fact, the said amount was collected toward Bhishi which was was cleared by the applicant by 31/12/2018. As the some members of the Bhishi were dissatisfied by the interest received by them as they were desiring to get interest @2% per month for the whole duration and therefore, the false report is lodged.

8. For sufficient period the applicant was behind bar, his further incarceration is not required. Now,

investigation is completed and the charge-sheet is filed. No purpose would be served by keeping him behind bar.

9. In support of his contention he placed reliance on the decision of the Hon'ble Apex Court in the case of ***Sanjay Chandra Vs. Central Bureau of Investigation [(2012) 1 SCC 40]*** and in the case of ***P. Chidambaram Vs. Central Bureau of Investigation [(2020) 13 SCC 337]*** and submitted that wherein the Hon'ble Apex Court has held 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. It is further held by the Hon'ble Apex Court that there is no hard and fast rule regarding grant or refusal to grant bail. Each case has to be considered on the facts and circumstances of each case and on its own merits. The discretion of the court has to be exercised judiciously and not in an arbitrary manner. He further placed reliance on ***Satender Kumar Antil Vs. Central Bureau of Investigation, [(2022) 10 SCC 51]*** wherein the Hon'ble Apex Court has considered the aspect of the economic offence and held that the question for consideration is whether it should be treated as a class of its own or otherwise. The issue has already been dealt with by this Court in the case of ***P. Chidambaram v. Directorate of Enforcement, (2020) 13 SCC 791***, after taking note of the earlier decisions governing the field. The gravity of the offence, the object of the Special Act, and the attending circumstances are a few of the factors to be taken note of, along with the

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. Therefore, it is not advisable on the part of the court to categorise all the offences into one group and deny bail on that basis. It is further held by the Hon'ble Apex Court by referring the judgment of ***P. Chidambaram*** (supra) 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 jeopardize 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, therefore, their presence in the custody may not be necessary for further investigation.

10. Learned Counsel for the applicant submitted that similar is the case in the present case. The investigation is completed. The applicant is not at a flight risk. His presence can be secured by imposing certain conditions. In view of that the applicant be released on bail.

11. Per contra, learned Additional Public Prosecutor strongly opposed the application on the ground that several investors are duped by the present applicant by issuing forged receipts. He further submitted that the statement of the witnesses and payment receipts shows that the applicant has collected the huge amount from the

various depositors. There is material on record which shows that several persons are duped along with the informant. He submitted that if the applicant is released on bail it would be difficult to secure his presence and the money of the investors. In view of that the application deserves to be rejected.

12. Having heard learned Counsel for the parties. Perused the investigation papers. As far as the allegations are concerned, it reveals that the present applicant has impressed upon all the investors that if they invest the money they would get the interest, and therefore, the investors have invested the amount with the present applicant. As per the allegations, the investors have neither received any interest nor received their principal amount, and therefore, they constrained to approach the investigating agency.

13. During investigation, the Investigating Officer has recorded the relevant statements of the witnesses from which it reveals that several person have invested the amount. From the statements it further reveals that the applicant has issued fake receipts to the investors. After completion of the investigation, the Investigating Officer has filed the charge-sheet against the accused. The specimen handwriting of the present applicant is also referred to the handwriting expert and the report of the same is yet to be received. It is apparent that after completion of due investigation, the charge-sheet is filed.

14. Admittedly, the principles of grant of bail are well settled. While considering the bail application, the Court has to consider the principles on which bail can be granted by considering the nature of the offence, gravity of the same. The availability of the applicant for the trial if he is released on bail and chances of tampering of the witnesses if the applicant is released on bail. The Hon'ble Apex Court has considered the issue of economic offences also and grant of bail is economic offence. In the recent judgment in *Satender Kumar Antil Vs. Central Bureau of Investigation* (supra) the Hon'ble Apex Court held that even economic offences would fall under the category of "grave offence" and in such circumstance while considering the application for bail in such matters, the Court will have to deal with the same, being sensitive to the nature of allegation made against the accused. One of the circumstances to consider the gravity of the offence is also the term of sentence that is prescribed for the offence the accused is alleged to have committed. Such consideration with regard to the gravity of offence is a factor which is in addition to the triple test or the tripod test that would be normally applied. In that regard what is also to be kept in perspective is that even if the allegation is one of grave economic offence, it is not a rule that bail should be denied in every case since there is no such bar created in the relevant enactment passed by the legislature nor does the bail jurisprudence provide so. By referring the decision of ***P. Chidambaram v. Directorate of***

Enforcement, (2020) 13 SCC 791 the Hon'ble Apex Court has observed that :

> *"23. Thus, from cumulative perusal of the judgments cited on either side including the one rendered by the Constitution Bench of this Court, it could be deduced that the basic jurisprudence relating to bail remains the same inasmuch as the grant of bail is the rule and refusal is the exception so as to ensure that the accused has the opportunity of securing fair trial. However, while considering the same the gravity of the offence is an aspect which is required to be kept in view by the Court. The gravity for the said purpose will have to be gathered from the facts and circumstances arising in each case. Keeping in view the consequences that would befall on the society in cases of financial irregularities, it has been held that even economic offences would fall under the category of "grave offence" and in such circumstance while considering the application for bail in such matters, the Court will have to deal with the same, being sensitive to the nature of allegation made against the accused. One of the circumstances to consider the gravity of the offence is also the term of sentence that is prescribed for the offence the accused is alleged to have committed. Such consideration with regard to the gravity of offence is a factor which is in addition to the triple test or the tripod test that would be normally applied. In that regard what is also to be kept in perspective is that even if the allegation is one of grave economic offence, it is not a rule that bail should be denied in every case since there is no such bar created in the relevant enactment passed by the legislature nor does the bail jurisprudence provide so. Therefore, the underlining conclusion is that irrespective of the nature and gravity of charge, the precedent of another case alone will not be the basis for either grant or refusal of bail though it may have a bearing on principle. But ultimately the consideration will have to be on case-to-case basis on the facts involved therein and securing the presence of the accused to stand trial."*

15. As well as the Hon'ble Apex Court has considered the previous decision in *Sanjay Chandra v. CBI*

(supra) wherein it is observed thus :

> *"39. Coming back to the facts of the present case, both the courts have refused the request for grant of bail on two grounds: the primary ground is that the offence alleged against the accused persons is very serious involving deep-rooted planning in which, huge financial loss is caused to the State exchequer; the secondary ground is that of the possibility of the accused persons tampering with the witnesses. In the present case, the charge is that of cheating and dishonestly inducing delivery of property and forgery for the purpose of cheating using as genuine a forged document. The punishment for the offence is imprisonment for a term which may extend to seven years. It is, no doubt, true that the nature of the charge may be relevant, but at the same time, the punishment to which the party may be liable, if convicted, also bears upon the issue. Therefore, in determining whether to grant bail, both the seriousness of the charge and the severity of the punishment should be taken into consideration.*
>
> *40. The grant or refusal to grant bail lies within the discretion of the court. The grant or denial is regulated, to a large extent, by the facts and circumstances of each particular case. 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."*

16. In *Sanjay Chandra* (supra) the Hon'ble Apex Court has observed 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 jeopardize the economy of the country. The investigating agency has already completed investigation and the charge sheet is already filed before the Special Judge, CBI, New Delhi and

therefore, their presence in the custody may not be necessary for further investigation. Similar is the fact in the present case the investigation is already completed and the charge-sheet is filed. Further incarceration of the present applicant would be purposeless. However, considering the gravity of the offence some conditions deserves to be imposed on the present applicant. In view of that the application deserves to be allowed by considering that the applicant is not a flight risk and there is no possibility of his abscondence during trial. The statements of the prosecution that the appellant would influence the witnesses can be taken care of by imposing some conditions on him. Accordingly, I proceed to pass the following order :

(i) The application is allowed.

(ii) The applicant – Vijay Jamitmatmal Dayalani in connection with Crime No.1678/2019, registered with Police Station Wardha for the offence punishable under Sections 420, 468 and 471 of the Indian Penal Code and under Section 3 of the Maharashtra Protection of Interest of Depositors (In Financial Establishments) Act, 1999, be released on bail on furnishing P.R. Bond in the sum of Rs.50,000/- with one surety in the like amount.

(iii) The applicant shall attend concerned police station once in a month i.e. on every first day of each month between 10.00 a.m. to 1.00 p.m. and shall cooperate with the Investigating Agency.

(iv) The applicant shall furnish his Cell phone number and address with address proof.

(v) The applicant shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case by contacting them in any manner and shall not tamper with the prosecution evidence. If found contacting with any witnesses, the bail granted to the present applicant deserves to be cancelled.

17. The application is disposed of.

(URMILA JOSHI-PHALKE, J.)

**Divya*