



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

**CRIMINAL WRIT PETITION NO.765/2023**

Tushar Vilas Mahalle .Vs. State of Maharashtra

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

Court's or Judge's orders

Mr. K. S. Narwade, Advocate for petitioner.  
Mrs. M. H. Deshmukh, A.P.P. for respondent-State.

**CORAM :** ANIL L. PANSARE, J.

**DATE :** 11.12.2023

The petitioner has challenged the order dated 30.06.2023 passed by learned Additional Sessions Judge, Yavatmal in Criminal (Bail) M.A. No.239/2023.

2. The Sessions Court, while granting relief to the petitioner in the application filed under Section 438 of the Criminal Procedure Code, 1973 (For short the, "Code"), imposed, *initer alia*, the following condition.

*"(vi) He shall return the amount, which is subject matter as dell as mentioned in the FIR, duly deposited in his account to the Government of Maharashtra, within one month from the date of this order and it shall be verified by the concerned I.O. Director of Industries, Yavatmal shall verify and acknowledge the receipt of said amount to the I.O."*

3. The petitioner is a businessman and runs a business under the name and style as "Thakare Industries". The informant, who is General Manager of District Industrial Centre, Yavatmal, was having additional charge of Akola District as well. He could not

attend the office at Yavatmal regularly and, therefore, allotted additional work to the clerk to look after, prepare and forward reports regarding industrial subsidies and incentive packages under different schemes. The informant's office used to sanction incentives to Small Scale Industries.

4. The allegation is that the said clerk along with the applicant and other industrialists, in connivance with each other, have forged documents and have received huge amount of incentives in their business accounts. It was found that the petitioner and co-accused have grabbed huge amount for personal gain. The report was lodged and an offence punishable under Sections 407, 420, 464, 468, 471 read with Section 34 of the Indian Penal Code, 1860, came to be registered against the petitioner, the clerk attached with the District Industrial Centre, Yavatmal and other persons.

5. During the course of hearing of the application before the Sessions Court, the petitioner showed willingness to return the amount of incentive/subsidy received in his business account to the Government and, accordingly, the aforesaid condition was imposed.

6. It appears that on 21.07.2023, that is, after passing of the impugned order, the petitioner filed yet another application seeking relaxation in the aforesaid condition. The prayer made by the petitioner indicates

that he sought relaxation of condition by seeking three months' time to fulfill the said condition. The learned Sessions Court, vide order dated 03.08.2023, found merit in the prayer and extended time to comply the condition imposed under the impugned order and extended time by two months.

7. The petitioner has not challenge the order dated 03.08.2023 but has challenged the original order dated 30.06.2023, imposing condition to deposit the amount. Learned counsel for the petitioner has relied upon judgment of the Supreme Court in the case of **Ramesh Kumar Vs. State of NCT of Delhi**, reported in **(2023) 7 SCC 461**, to contend that while considering the anticipatory bail, there is no justification to impose the condition to deposit/payment of amount(s), allegedly cheated by the accused, even if proposed by the applicant. The Supreme Court noted that the process of criminal law, particularly in matters of granting bail, is not akin to money recovery proceedings and such process cannot be utilized for arm twisting and money recovery, particularly, while opposing the prayer for bail. The Court, however, noted in paragraph 26 as under :-

*“26. We may, however, not be understood to have laid down the law that in no case should willingness to make payment/deposit by the accused be considered before grant of an order for bail. In exceptional cases such as where an allegation of misappropriation of public money by the accused is levelled and the accused while seeking indulgence*

*of the court to have his liberty secured/restored volunteers to account for the whole or any part of the public money allegedly misappropriated by him, it would be open to the concerned court to consider whether in the larger public interest the money misappropriated should be allowed to be deposited before the application for anticipatory bail/bail is taken up for final consideration. After all, no court should be averse to putting public money back in the system if the situation is conducive therefor. We are minded to think that this approach would be in the larger interest of the community. However, such an approach would not be warranted in cases of private disputes where private parties complain of their money being involved in the offence of cheating.”*

8. Learned A.P.P., by relying upon the finding of the Supreme Court in the aforesaid paragraph, submits that the present case is an exceptional case where allegation is of misappropriation is of public money and accordingly prayed for rejection of the application.

9. I do find substance in the submission made by learned A.P.P. The allegation against the petitioner is that he along with other accused have misappropriated the amount meant for incentives and subsidy to the Small Scale Industries. Thus, allegation is of misappropriation of public money. The petitioner himself had shown willingness to deposit the amount.

10. That apart, by filing subsequent application, he sought relaxation by requesting for three

months' time to deposit the amount, which prayer was acceded to by the Sessions Court. This order having been not challenged and considering the law laid down by the Hon'ble Apex Court in the case of **Ramesh Kumar** supra, I do not find any reason to interfere with the impugned order in writ jurisdiction. The writ petition is dismissed.

**(Anil L. Pansare, J.)**

Kahale