



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

19 BAIL APPLICATION NO. 267 OF 2024

JAYESH K GOPINATHAN
VERSUS
THE STATE OF MAHARASHTRA

...
Advocate for Applicant : Mr. Dhananjay Shrikant Patil.
APP for Respondent/State : Mr. Mukesh K. Goyanka.
...

CORAM : **SANJAY A. DESHMUKH, J.**
DATE : 06th May, 2024.

P.C.:

1 Heard.

2 This is an application, under Section 439 of the Code of Criminal Procedure, 1973 (for short "the Cr.P.C."), for grant of regular bail in connection with Crime No.2 of 2017, registered with Akole Police Station, District Ahmednagar, for the offences punishable under Sections 406, 420, 504 and 506 read with 34 of the Indian Penal Code.

3 It is averred in the report by the informant that the applicant duped him by purchasing 64 truck of onions and did not pay Rs.1,00,53,000/-. The applicant cheated him. He abused him. Therefore, the report was lodged.

4 The learned counsel for applicant submitted that the

applicant has roots in the society. It is a case of civil liability and criminal liability cannot arise. The provisions of Section 41-A of the Cr.P.C. are not followed while arresting the applicant. Already the applicant has paid Rs.50,00,000/- to the informant out of the amount of that onion. Earlier similar type of transactions took place between the applicant and the informant. There is no criminal intention on the part of applicant to cheat the informant. The punishment prescribed for the offences for which the applicant is charged, is not more than seven years. It is lastly prayed to allow the application.

5 The learned counsel for applicant is relying upon the following authorities:-

I) ***Satender Kumar Antil Vs. Central Bureau of Investigation***, reported in, ***(2021) 10 SCC 773***, in which the law is laid down that Section 41-A has to be mandatorily complied by the investigating officer. It was further observed that bail may be granted in offences falling under category 'A' liberally. The Honourable Apex has further reiterated recently that the guidelines set by the Honourable Apex Court shall be strictly followed by all the Courts in India.

II) ***Md. Asfak Alam Vs. State of Jharkhand and Anr.***, reported in, ***2023 (4) KLT 688***, in which the Honourable Supreme Court observed that Section 41-A notice should be mandatorily served to an accused

wherein offences are punishable for less than seven years or up to 7 years.

III) ***Sarabjit Kaur Vs. State of Punjab and another***, reported in, ***(2023) 5 Supreme Court Cases 360***, in which the law is laid down that unless fraudulent intention right at the beginning of the transaction is pointed out, the accused cannot be held liable.

6 The learned APP for the State strongly opposed the application and submitted that the applicant is involved in the serious crime. He has cheated so many farmers in the Maharashtra. He pointed out five crimes as under:-

- i) Crime No.87 of 2016, registered with Kotwali Police Station, Ahmednagar, for the offences punishable under Sections 420 and 406 read with 34 of the IPC.
- ii) Crime No.390 of 2017, registered with Jail Road Police Station, Solapur City, District Solapur, for the offences punishable under Sections 420, 406, 506(1) read with 34 of the IPC.
- iii) Crime No.115 of 2017, registered with Jail Road Police Station, Solapur City, District Solapur, for the offences punishable under Sections 420 and 409 read with 34 of the IPC.
- iv) Crime No.106 of 2015, registered with Nandgaon Police Station, District Nashik, for the offences punishable under

Sections 420 and 406 read with 34 of the IPC.

- v) Crime No.976 of 2017, registered with Vadanappally Police Station, Thrissur Rural, (Kerala State), for the offences punishable under Sections 420, 406, 120(B) and 506 of the IPC.

7 The learned APP for the State submitted that the applicant is thus involved in the serious crime and cheated so many people for crores of rupees. The *modus-operandi* of this applicant is, to first pay the amount, gain the confidence and then refrain from paying such amount, which shows his criminal intention to cheat. Considering all these aspects, it is lastly prayed to reject the application.

8 Perused the charge-sheet, particularly, the report and the statements of witnesses. Though the report is not in detail, it is well settled that the report is not encyclopedia. The applicant is involved in five cases of similar nature out of which, four are registered against him in Maharashtra, particularly, at Ahmednagar, Solapur and Nashik. The fifth case of similar nature is registered against him at Vadanappally Police Station, Thrissur Rural, in the State of Kerala. The applicant's *modus-operandi* is that, initially he is paying the amount in order to create an atmosphere of confidence and thereafter, he is not paying such amount.

9 The learned APP for the State has pointed out Section 41(1) of the Cr.P.C. which reads as under:-

“41. When police may arrest without warrant. -- (1) Any police officer may without an order from a Magistrate and without a warrant, arrest any person --

(a) who commits, in the presence of a police officer, a cognizable offence;

(b) against whom a reasonable complaint has been made, or credible information has been received, or a reasonable suspicion exists that he has committed a cognizable offence punishable with imprisonment for a term which may be less than seven years or which may extend to seven years whether with or without fine, if the following conditions are satisfied, namely:-

(i) the police officer has reason to believe on the basis of such complaint, information, or suspicion that such person has committed the said offence;

(ii) the police officer is satisfied that such arrest is necessary --

(a) to prevent such person from committing any further offence; or

(b) for proper investigation of the offence;or

(c) to prevent such person from causing the evidence of the offence to disappear or tampering with such evidence in any manner; or

(d) to prevent such person from making any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him

from disclosing such facts to the Court or to the police officer, or

(e) as unless such person is arrested, his presence in the Court whenever required cannot be ensured;

and the police officer shall record while making such arrest, his reasons in writing:

Provided that a police officer shall, in all cases where the arrest of a person is not required under the provisions of this sub-section, record the reasons in writing for not making the arrest;"

10 The learned APP for the State further pointed out that unless such person is arrested, his presence in the Court whenever required cannot be ensured.

11 The learned APP further submitted that the applicant has committed serious crime of cheating. He is resident of another State. To secure his presence, his arrest was necessary. Therefore, non-compliance of the provisions of of Section 41 or 41-A is justifiable.

12 In the facts and circumstances of the present case, it would be proper to rely upon the following two authorities:-

l) In ***Deepak Yadav Vs. State of Uttar Pradesh and another, (2022) 8 Supreme Court Cases 559***, the Honourable Supreme Court in

paragraph 22 held as under:

“22. As reiterated by the two-Judge Bench of this Court in *Prasanta Kumar Sarkar v. Ashis Chatterjee*, (2010) 14 SCC 496 : (2011) 3 SCC (Cri) 765, it is well-settled that the factors to be borne in mind while considering an application for bail are:-

- (i) whether there is any prima facie or reasonable ground to believe that the accused had committed the offence;
- (ii) nature and gravity of the accusation;
- (iii) severity of the punishment in the event of conviction;
- (iv) danger of the accused absconding or fleeing, if released on bail;
- (v) character, behaviour, means, position and standing of the accused;
- (vi) likelihood of the offence being repeated;
- (vii) reasonable apprehension of the witnesses being influenced; and
- (viii) danger, of course, of justice being thwarted by grant of bail.”

II) In *Shahzad Hasan Khan Vs. Ishtiaq Hasan Khan and another*, (1987) 2 Supreme Court Cases 684, the Honourable Supreme Court in paragraph 6 held as under:

“6. We are constrained to observe that Justice D. S. Bajpai refused to grant the prayer and proceeded to grant bail simply on the ground that the liberty of a citizen was involved which is the case in every criminal case more

particularly in a murder case where a citizen who let alone losing liberty has lost his very life. Another ground for granting bail was that trial was delayed, therefore the accused was entitled to bail. This also cannot be helped if a litigant is encouraged to make half a dozen applications on the same point without any new factor having arisen after the first was rejected. Had the learned Judge granted time to the complainant for filing counter-affidavit, correct facts would have been placed before the court and it could have been pointed out that apart from the inherent danger of tampering with or intimidating witnesses and aborting the case, there was also the danger to the life of the main witnesses or to the life of the accused being endangered as experience of life has shown to the members of the profession and the judiciary, and in that event, the learned Judge would have been in a better position to ascertain facts to act judiciously. No doubt liberty of a citizen must be zealously safeguarded by court, nonetheless when a person is accused of a serious offence like murder and his successive bail applications are rejected on merit there being prima facie material, the prosecution is entitled to place correct facts before the court. Liberty is to be secured through process of law, which is administered keeping in mind the interests of the accused, the near and dear of the victim who lost his life and who feel helpless and believe that there is no justice in the world as also the collective interest of the community so that parties do not lose faith in the institution and indulge in private retribution. Learned Judge was unduly influenced by the concept of liberty, disregarding the facts of the case.”

13 Merely because the reasons for not following the procedure of issuing notice to the applicant prior to his arrest, is no ground for granting bail to the applicant. Only because of mistakes of the investigating officer, accused cannot be benefited. It is because the applicant / accused was not tracing out for years together. Issuing

notice and consuming time in it is giving an opportunity to the applicant like accused to escape. Considering the conduct of the applicant and the serious nature of crime and that it is a civil as well as criminal mischief, the applicant is certainly not entitled for bail in view of the law laid down in ***Deepak Yadav*** (supra) ***Shahzad Hasan Khan*** (supra). The application, therefore, deserves to be rejected. It is rejected.

14 Considering the nature of crime and the peculiar set of the facts, the Trial Court is directed to conclude the trial as early as possible and in any case within six months from today, by keeping the dates for hearing at least twice or thrice in a week.

15 The Trial Court is further informed that speedy trial is the right of accused as contemplated under Article 21 of the Constitution of India. In view of the above, the Trial Court to note that if the trial is not concluded within six months from today, the applicant is entitled for bail as per the speedy trial right as contemplated under Article 21 of the Constitution of India.

16 If the trial is not concluded within six months from today, the applicant is at liberty to file application for bail before the Trial Court.

17 The Registrar (Judicial) of this Court to inform the Trial Court accordingly.

[SANJAY A. DESHMUKH, J.]

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