



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO. 3646 OF 2024
IN APEAL/503/2024

Anuradha Suresh Pawar,
Age : 42 years, Occu. : Household,
R/o. Plot No. 704, Vedmantra Apartment,
Near S.R. Petrol Pump,
Pundliknagar, Ch. Sambhajinagar.
Tq. & Dist. Ch. Sambhajinagar.

... Applicant.

Versus

The State of Maharashtra.

... Respondent.

...
Shri N. B. Khandare h/f. Shri Deelip J. Choudhary, Advocate for Applicant.
Shri K. K. Naik, APP for Respondent – State.
Shri Gaurav L. Deshpande, Asstt. to Public Prosecutor for orig. complainants.

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CORAM : ABHAY S. WAGHWASE, J.

RESERVED ON : 2nd SEPTEMBER, 2024

PRONOUNCED ON : 5th SEPTEMBER, 2024

ORDER :

1. By invoking section 528 of Bharatiya Nagarik Suraksha
Sanhita, 2023, present applicant has raised following prayers :-

“1. Criminal Application may pleased be allowed;

2. The applicant may be permitted to withdraw the amount of
Rs.20,00,000/-, with interest, if any, accrued, deposited in the
Hon’ble High Court by virtue of order dtd. 13.8.2019 and
transferred to the trial court i.e. Additional Sessions Judge-4,
Chhatrapati Sambhajinagar and for that pass appropriate
directions, in the interest of justice.”

2. Learned counsel Shri Khandare for applicant would point out that, present applicant was arraigned as accused no.2 in Special Case (MPID) No. 07 of 2019 for commission of offences under section 3 of the Maharashtra Protection of Interest of Depositors (in Financial Establishments) Act, 1999 (for short, "M.P.I.D. Act") as well as sections 406 and 420 r/w section 34 of Indian Penal Code (IPC). It is pointed out that, after trial, applicant was acquitted from charge of section 3 of M.P.I.D. Act i.e. by learned District Judge-4 and Additional Sessions Judge, Aurangabad. But, judgment was rendered holding applicant guilty for offence under sections 406 and 420 r/w section 34 of IPC and sentenced to suffer 3 years and 7 years rigorous imprisonment, respectively, as well to pay fine of Rs.10,10,000/- and in default to further suffer 1 year rigorous imprisonment. He further pointed out that, exception to the said judgment has been taken by the applicant by filing Criminal Appeal No. 503 of 2024 and the same is *sub judice* before this court.

3. He further pointed out that, initially after registration of crime, applicant had approached this court for relief of anticipatory bail and on merits this court was pleased to allow the said application, protecting her liberty, but at that time, had directed applicant to deposit amount of Rs.20,00,000/- and said condition was complied with by depositing the said amount of which receipt is annexed herewith.

4. It is next submitted that, now much water has flown over the bridge as after charge-sheeting applicant's sessions trial is also concluded. Therefore, the condition of depositing Rs.20,00,000/- at the time of bail, which was in fact pre-trial condition does not survive. That, after conviction this court was pleased to even suspend the sentence and direct fresh bail and said order of this court is also complied. Consequently, it is his submission that efficacy of anticipatory bail application virtually has come to an end.

5. It is emphasized that, in the above backdrop, applicant's son is desirous of going abroad for education purpose i.e. the University of Europe, Berlin Germany for acquiring higher education in business administration and he is in receipt of offer letter. However, there is a stipulation that he has to deposit one time amount. That, the amount which is deposited by applicant mother at the time of complying with anticipatory bail order is practically lying idle. Said amount can be of use to the son for education purpose. Considering the above purpose, above prayers are raised.

6. Learned APP strongly opposed by pointing out that, applicant is convicted by trial court and said court has directed compensation. That, it is sort of surety to all victims, who have invested

huge amount on being lured by applicant convict. She has no right over the said amount and consequently, he prays to dismiss the application.

7. Learned counsel for original complainant also strongly resisted the above prayers by submitting that, applicant has no right to claim refund when amount is directed to be deposited by way of compensation which is a part of fine amount. He also pointed out the observations of trial court in its judgment, more particularly, paragraph no.73 and 74. He also invited attention of this court to the order passed by this court while suspending the sentence and according to him the amount deposited as a sort of security and surety to depositors, who are duped by present applicant and other accused. He also invited attention of this court to the order of this court while suspending sentence and would further stress that moreover when appeal is still pending decision, applicant cannot seek withdrawal of the said amount. Learned counsel also submitted that, original complainant has already moved an application for withdrawal of deposited amount.

8. After hearing both sides and on going through the papers, it is emerging that present applicant faced trial vide Sessions Case (MPID) No.07 of 2019 and was ultimately held guilty for offence under sections 406 and 420 of IPC. Trial Court recorded guilt for these sections on

reaching to a finding that complainant and others were lured to invest their earning by assuring handsome income and they are thereby cheated. Apparently, operative part of the judgment shows that, two accused were directed to deposit fine amount of Rs.60,50,000/- and Rs.10,10,000/- respectively by way of compensation. No doubt, applicant was beneficiary of anticipatory bail order as well as beneficiary of order of suspension of sentence during pending appeal, but as pointed out, the amount deposited by applicant on directions, is under the head of compensation. Total amount involved in above offence is running to the tune of Rs.1,15,60,000/-. Therefore, amount being deposited under such head, though there is a dire need of the applicant for her son's education, relief as claimed cannot be granted as that would amount to withdrawing the security of complainant and others.

No case being made out for grant of relief, I proceed to pass following order :

ORDER

Criminal application stands rejected.

(ABHAY S. WAGHWASE, J.)