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

CRIMINAL APPLICATION (BA) NO.88/2024
Balkrushna Babanrao Gavhankar
..vs..
State of Mah., thr.EOW having its office at Civil Lines, Nagpur, thr.PSO PS Dhantoli, Nagpur

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

Shri S.V.Manohar, Senior Counsel assisted by
Shri Y.Sambre, Advocate for the Applicant.
Shri S.C.Meshram, Counsel to assist the prosecution.
Shri N.R.Rode, Additional Public Prosecutor for the State.

CORAM : URMILA JOSHI-PHALKE, J.
CLOSED ON : 13/03/2024
PRONOUNCED ON : 19/03/2024

1. Heard learned Senior Counsel Shri S.V.Manohar for the applicant, learned counsel Shri S.C.Meshram assisting the prosecution, and learned Additional Public Prosecutor Shri N.R.Rode for the State.

2. By this application, the applicant seeks regular bail in connection with Crime No.139/2023 registered with the non-applicant/police station for offences punishable under Sections 406, 420, 120-B, and 506 of the Indian Penal.

3. The applicant came to be arrested on

22.5.2023.

4. Accusations against the applicant are on the basis of report lodged by Amol Haridas Komalkar. As per his report, his father got acquaintance with the applicant. The father of the informant had retired as the Deputy Director of Town Planning and after the retirement, was dealing business of lands. The applicant introduced himself as property broker and informed the father of the informant that he would manage all income returns of his father and he sought information about bank details. It is further alleged that his parents were possessing many immovable properties including plots and agricultural lands. The applicant in connivance with co-accused threatened parents of the informant that the Income Tax Department may take an action against them and thereby got huge amount transferred to his bank account and forced them to sale their properties. The informant narrated 5-6 transactions and alleged that his mother was owner of land at mouze Waroda. The applicant has brought one “Jai Gurudeo Builders and Developers” and an agreement of sale was executed between them. In the said agreement, it is mentioned that the mother of the informant was unable to come to accept the amount

and the amount is to be handed over to the applicant. Accordingly, he obtained some amount in his account. Thus, the applicant cheated with them and misappropriated amount Rs.4,47,43,000/- and thereby committed the offence.

5. Learned Senior Counsel for the applicant submitted that *prima facie* no offence is made out against the applicant as ingredients of Sections 420 409 of the Indian Penal Code are not made out. He submitted that in fact all properties, either sold or purchased, are transferred by absolute and legal owners of properties and not by anybody else. The consideration was also received by the then owners of respective lands. He submitted that parents of the informant, who were owners of lands regarding which transaction was entered into, have not made any complainants against the applicant. After thought, only to extract the money from the applicant, this false report is lodged.

6. Learned Additional Public Prosecutor for the State strongly opposed the application on ground that the investigation officer has collected bank account details of Devyani Komalkar, Haridas Komalkar, and

others from which it reveals that the applicant has received amounts from these accounts which is more than Rs.4,52,70,000/-. Thus, *prima facie* case is made out against the applicant.

7. Learned counsel assisting the prosecution also strongly opposed the application on the ground that the entire bank account details of family members of the informant show that amounts were transferred from their accounts to the applicant. The investigation papers show that the applicant has also received commission from the informant. Similar type of offences are also registered against the applicant. In all, amount Rs.4,29,41,000/- has been credited with the bank account of the applicant. Considering the *prima facie* case, the application deserves to be rejected.

8. Perusal of investigation papers shows that the father of the informant and the applicant were partners and partnership deed was executed between them on 26.2.2015. The firm of the partnership was “M/s.Master Developers”. One partition deed is also executed between the father, applicant, and Vishwas Raut. In the light of the said partnership deed,

properties were partitioned between partners. As per allegations in the First Information Report, it is alleged that the applicant introduced himself as property broker and along with his father entered into some transactions of selling of lands. It is alleged that the mother of the informant was owner of a land situated at Waroda which was sold on the say of the applicant and the applicant received cash amount Rs.99,42,000/- towards the said transaction. In fact, on the pretext of accepting the amount on behalf of the mother of the complainant, it is mentioned in the agreement that the applicant would receive the said amount. During investigation, the investigating officer collected sale deeds. Perusal of sale deeds shows that the mother of the informant put her signature by endorsing that she received cheques towards the transaction. Various transactions took place between them. As far as investigation papers are concerned, the chart shows that several amounts are transferred from the account of Devyani to the applicant. Some amounts are transferred from the account of the father of the informant to Gurudev properties owned by the applicant

9. Learned counsel for the applicant submitted

that no offences are made out against the applicant and there is no complaint lodged by parents of the applicant. He placed reliance in the case of **Mohammed Ibrahim and ors vs. State of Bihar and anr, reported in (2009)8 SCC 751** wherein the Honourable Apex Court dealt with offences like forgery and under Section 420 of the Indian Penal Code and it is held that if a person sells a property knowing that it does not belong to him, and thereby defrauds the person who purchased the property, the person defrauded, that is the purchaser, may complain that the vendor committed the fraudulent act of cheating. But a third party who is not the purchaser under the deed may not be able to make such complaint.

10. The said observation is on the basis of evidence and after a full-fledged trial. At this stage, whether *prima facie* case is made out against the applicant is required to be seen.

11. Admittedly, involvement of the applicant is in economic offences. The amount alleged of misappropriation is huge amount. Another crime of similar nature is also registered against the applicant. However, at this stage, now investigation

is completed and chargesheet is filed. Question is, whether further incarceration of the applicant is required.

12. The Honourable Apex Court in the case of **Satender Kumar Antil vs. Central Bureau of Investigation and ors, reported in 2022 LiveLaw (SC) 577** referred paragraph No.23 of the judgment in the case of **P. Chidambaram v. Directorate of Enforcement, (2020) 13 SCC 791**, which is reproduced as under:

> **"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."

The Honourable Apex Court also referred the decision in the case of **Sanjay Chandra vs. CBI, reported in (2012) 1 SCC 40** wherein in paragraph Nos.39 and 40 it is held as under:

> "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.
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> 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."

By referring two decisions *supra*, the Honourable Apex Court held that 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 and, therefore, their presence in the custody may not be necessary for further investigation.

13. Similar is the fact in the present case. Though the huge magnitude in the nature of economic offence for which the applicant is charged, investigation is completed and chargesheet is already filed and, therefore, presence in the custody of the applicant is not required.

14. In this view of the matter, the application deserves to be allowed. Accordingly, I proceed to pass following order:

ORDER

(1) The criminal application is **allowed.**

(2) The applicant be released on bail on his executing a P.R.Bond in the sum of Rs.50,000/- with one solvent surety of the like amount in connection with Crime No.139/2023 registered with the non-applicant/police station for offences punishable under Sections 406, 420, 120-B, and 506 of the Indian Penal.

(3) The applicant shall attend Dhantoli Police Station, Nagpur once in a month on first of every month and police station officer shall record his presence.

(4) The applicant shall not leave jurisdiction of Nagpur city without prior permission of the District Court.

(5) The applicant shall not induce or threat or promise to any of witnesses connected with the crime in question and shall not tamper the prosecution evidence.

With this, the criminal application stands **disposed** of.

(**URMILA JOSHI-PHALKE, J.**)

!! BrWankhede !!