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

CRIMINAL APPLICATION (APPLN) NO. 13 OF 2023

Berar Finance Ltd., Yavatmal through Branch Manager Pramod Manohar Burade,
..VS..
State of Maharashtra through P.S.O. Awadhutwadi, Dist. Yavatmal and another

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

Mr. Chetan Dhore, Advocate for applicant.
Mr. A.G. Mate, APP for non-applicant No.1/State.
Mr. Virendra Darne, Advocate for non-applicant No.2.

CORAM : URMILA JOSHI-PHALKE, J.
DATED : FEBRUARY 27, 2024

By this application, the applicant is seeking cancellation of bail which is granted to the present non-applicant No.2 by the learned Sessions Judge, Yavatmal in Criminal Bail Application No.09/2023 vide order dated 17.01.2023.

2. After registration of the crime, the non-applicant No.2 approached to the Sessions Court for grant of bail under Section 439 of the Code of Criminal Procedure in connection with Crime No.1285/2022, registered with Police Station Awadutwadi, district Yavatmal of the offences punishable under Sections 409, 420, 468 and 471 of the Indian Penal Code and the Sessions Court has allowed the bail application and released the non-applicant No.2 on bail on executing P.R. bond of Rs.30,000/- with one solvent surety in the like amount.

3. Being aggrieved and dissatisfied with the same, the present application is preferred by the original complainant for cancellation of bail on the ground that while releasing the non-applicant No.2 on bail, the learned trial Court has not considered that non-applicant No.2 has not only committed the offence of cheating, but he has prepared the fake stamps, receipts and slips and this aspect is not considered by the trial Court by releasing him on bail. The non-applicant No.2 is involved in an economic offence and while considering his bail application, the stake of the amount is also not considered by the trial Court.

It is submitted by the learned Counsel for the applicant that not only the huge amount is involved in the said crime but the non-applicant No.2 has prepared the bogus stamps of Pusad Urban Bank and also prepared the false deposit slips. Thus, considering the gravity of the offence, the learned trial Court ought to have rejected the bail application of non-applicant No.2, but only by observing that the fake stamps are already recovered, the non-applicant No.2 is released on bail and, therefore, the order passed by the learned trial Court calls for interference by cancelling the bail granted to the non-applicant No.2. Learned Counsel for the applicant further submitted that the trial Court has also not considered the investigation papers from which it reveals the involvement of the non-applicant No.2 to facilitate in the investigation, the incarceration of the non-applicant

No.2 is required. In view of that, the application deserves to be allowed.

4. Learned Additional Public Prosecutor supported the contention of the applicant, whereas the learned Counsel for the non-applicant No.2 strongly opposed the application on the ground that learned trial Court has considered all the aspects, the offence is not punishable with imprisonment for life, the investigation was completed and the trial is also commenced. The Investigation Officer has already seized the incriminating articles and, therefore, no grounds are made out for cancellation of bail. He further submitted that overwhelming and super-whelming circumstances are required for cancellation of bail. In view of that, the application deserves to be rejected.

5. Having heard the learned Counsel for the applicant, learned Counsel for the non-applicant No.2 and the learned Additional Public Prosecutor for the State and perused the impugned order passed by the learned trial Court as well as recitals of the First Information Report.

6. As per the allegations, the non-applicant No.2 was working as a ‘Credit Executive’ and he has prepared the forged stamps and receipts and misappropriated the amount of Rs.16,68,086/-. On the basis of said report, police have registered the crime against the non-

applicant No.2. From the order passed by the learned trial Court, it reveals that the Investigating Officer has already seized the fake stamps, receipts, slips and no further articles remain to be seized from the non-applicant No.2. The trial Court has also observed that the amount of Rs.1,72,110/- is already recovered from the non-applicant No.2 and purpose of the bail is not to recover the amount and for recovery of balance amount, the accused cannot be denied bail and released him on bail.

7. Learned Counsel for the applicant pointed out that considering the huge magnitude and the involvement of the present non-applicant No.2 in the economic offence, the learned trial Court ought to have rejected the bail application. He submitted that the gravity of the offence is not considered by the trial Court while releasing the non-applicant No.2 on bail and, therefore, the order passed by the learned trial Court is without considering the material. Whereas the learned Counsel for the non-applicant No.2 submitted that each and every fact is considered by the Sessions Court and therefore, no interference is called for.

8. Admittedly, the involvement of the non-applicant No.2 is in the economic offence. The facts on record shows that the investigation is already completed, charge-sheet is already filed and trial is already commenced. As far as the parameter for cancellation of

bail is concerned, admittedly, bail can be cancelled when the bail is granted by ignoring the material investigation carried out by the Investigating Officer or if there is an attempt by the accused to tamper with the evidence or for any overwhelming or super-whelming circumstances. From the application, admittedly, no overwhelming or super-whelming circumstances have brought on record to cancel the bail granted to non-applicant No.2.

9. It is well settled that the bail granted to the accused cannot be cancelled easily by adopting the casual approach, even it is considered that the involvement of the non-applicant No.2 is an economic offence. Admittedly, the observations of the Sessions Court shows that the incriminating articles are already recovered and further incarceration of the non-applicant No.2 only for the purpose of recovery of amount is not required. Admittedly, 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 he has involved in the economic offence. The primary purpose of bail in criminal cases are to relieve the accused of incarceration. The Hon'ble Apex Court had considered the aspect regarding involvement of the accused persons in an economic offence. In the case of ***P. Chidambaram Vs. Directorate of Enforcement,*** reported in ***(2020) 13 SCC 791***, wherein it is held 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 jeopardise 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.

In the case of ***Sanjay Chandra Vs. Central Bureau of Investigation***, reported in ***(2012)1 SCC 40***, wherein also the Hon'ble Apex Court held that "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 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 the possibility of the accused persons tempering with the witnesses. In the present case, the charge is that of cheating and dishonestly inducing delivery of property, forgery for the purpose of cheating using as genuine a forged document. The punishment of the offence is punishment 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".

10. In the light of the above observations of the Hon'ble Apex Court, the facts of the present case are considered. Admittedly, the alleged offences are not punishable with imprisonment for life or death penalty. The trial Court has considered the material which is collected by the Investigating Officer during the investigation and by observing that the further incarceration of the non-applicant No.2 is not required as incriminating articles are already seized, the application is allowed. Admittedly, there is no allegation that the non-applicant No.2 has either attempted to tamper with the prosecution witnesses or any other overwhelming circumstances are brought to the notice to cancel the bail. Considering the same, the application is without merit and deserves to be rejected.

11. In view of that I proceed to pass following order :

The Criminal Application is **rejected**.

(URMILA JOSHI-PHALKE, J.)

Kirtak