2024:BHC-NAG:8112

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

CRIMINAL APPLICATION (BA) NO. 349 OF 2024

Pitambar s/o Maniram Dharkar
Vs.
State of Maharashtra, Through Police Station Officer, Police Station, Sadar, District Nagpur

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

Mr. P. S. Wathore, Advocate for applicant.
Mr. M. J. Khan, APP for respondent/State.

CORAM : URMILA JOSHI-PHALKE, J.
DATED : 23/07/2024

1. By this application, being moved under Section 439 of the Code of Criminal Procedure, the applicant seeks regular bail in connection with Crime No.669/2023 registered with the non-applicant/police station for offences punishable under Sections 120-B, 411, 413, 381, 409, 418, 420, 467, 468, 471, and 477-A of the Indian Penal Code.

2. The applicant came to be arrested on 09.01.2024 and since then he is in jail.

3. The crime is registered at the instance of the Registrar, Motor Accident Claims Tribunal, Nagpur and the First Information Report came to be lodged as per directions of learned Chairman of the said Tribunal. Co-accused Digambar Dere, was serving as Junior Clerk and was holding charge of Nazir. It is

alleged that when he was holding charge as Nazir, he misappropriated huge amount deposited by Insurance Companies towards compensation to be paid to claimants. Personal Ledger Account, bearing No.6184624005, was opened in the Reserve Bank of India and from March 2022 a new account was opened bearing No.40799142551 wherein Insurance Companies deposited compensation amount as per orders of the Court. It was a duty of the co-accused being incharge after directions from learned Members of the Tribunal and after getting approval from the treasury to transfer compensation amount in the account of concerned beneficiaries by way of NEFT Software made available by the Reserve Bank of India and the State Bank of India. However, the co-accused by misusing his post hatched a criminal conspiracy with other co-accused and prepared false documents and transferred huge amount, which was approximately Rs.20.00 Crores, to different accounts either his personal or his firm’s account. Perusal of the First Information Report shows that the amount was actually meant for claimants or their legal heirs and though the Tribunal awarded compensation to be paid to respective parties, they have not received the same and the co-accused misappropriated the same amount. During investigation, involvement of 13 accused persons was revealed, out of which, 7 are arrested and 3 are evading their arrest.

4. Learned Counsel Shri P. S. Wathore for the applicant, submitted that insofar as the applicant is concerned, he is neither a staff of the Tribunal nor of an Advocates. He is an agriculturist. The son of the present applicant got acquaintance with co-accused namely Digambar Dere, who entered into an agreement with him to purchase a house as well as an agricultural land. Accordingly, they entered into an agreement and towards consideration amount, co-accused Digambar Dere transferred the amount in the account of the applicant and his son. The present applicant has received amount of Rs.1,51,00,000/- in his account. The amount received by son and the present applicant, they have repaid an amount of Rs.1,51,00,000/- to the co-accused Digambar Dere and not to the Government. The applicant is an innocent person and not aware about the amount transferred to his account. He received the said amount as the consideration amount. The applicant is 81 years old. Whatever transaction is entered into by his son and he is not at all concerned with the same. Now, the investigation is already completed and charge-sheet is filed, his further incarceration in jail is not required and therefore, he be released on bail.

5. *Per contra*, learned APP Mr. M. J. Khan for the State strongly opposed the application on ground that during investigation, it revealed that the applicant is the owner of house and agricultural land

along with his son situated at Pilkapar Reti, Tahsil Kalmeshwar, District Nagpur and it was shown that they entered into an agreement with co-accused Digambar Dere for consideration of Rs.5.00 Crores to purchase the said property. In fact, no such agreement was executed as the agreement which is collected during the investigation shows that it does not bear signature of anybody. Towards the consideration amount, the co-accused transferred the amount from the PLA account. Does the applicant received the amount of Rs.1,19,88,188/-. Subsequently, the said amount was withdrawn by the present applicant and used for his own purpose by way of PhonePe as well as cheques and used the same for his personal benefits. The amounts belong to victims or beneficiaries of victims who are entitled for compensation is misappropriated by the co-accused and transferred to the account of the present applicant. The statement of account showing the NEFT Transaction shows that the amount was transferred from the PLA Account as well as the FD Account maintained by the Tribunal for amounts deposited for the beneficiaries of accident claims. He submitted that it is pertinent to note that the statement of accounts clearly shows that the amounts are transferred to the accounts of the applicant through the PLA Account by the FDR Accounts.

6. He further submitted that involvement of the applicant appears to be in an economic offence. The co-accused who is serving in the Motor Accident Claims Tribunal misappropriated huge amount and some of amounts were transferred to the accounts of the applicant. The amount received by the applicant is Rs.1,19,88,188/- out of which he and the co-accused who is his son namely Aadesh have returned Rs.1,51,00,000/- to the co-accused and still more than Rs.1,39,21,172/- is outstanding against the present applicant. He submitted that the investigation is still in progress. The statement of accounts clearly shows the amounts are either transferred from the PLA Account through the NEFT or from the FD Account maintained in the Tribunal for beneficiaries of accident claims. After receiving the said amount, the applicant has withdrawn it and used the same for his personal benefits. Though the applicant projected that there was a transaction between the co-accused and him as to purchase of the agricultural land and the house, reliance is placed on the agreement, however it does not bear signature of parties. Thus, it is apparent that only to show transaction, the said document was prepared. The huge amount was transferred by different modes to the account of the applicant from the PLA Account of the Motor Accident Claims Tribunal or the FD Account of the Tribunal. The applicant transferred the said amount, but still a huge amount is yet to be recovered from the applicant which is a public money

or victim's money or legal heirs of victims of road accidents.

7. It is true that the law in regard to grant or refusal of bail is very settled. The Court granting bail should exercise its discretion in a judicious manner and not as a matter of course. Though at the stage of granting bail a detailed examination of evidence and elaborate documentation of the merit of the case need not be undertaken, there is a need to indicate in such orders reasons for *prima facie* concluding why bail was being granted particularly where the accused is charged of having committed a serious offence. The factors like nature of accusations, severity of punishment in the event of conviction, reasonable apprehension of tampering witnesses, and *prima facie* satisfaction of the Court in support of the charge are required to be taken into consideration.

8. In the light of the above observation, the facts of the present case are taken into consideration it seems that the involvement of the applicant appears to be in an economic offence, the co-accused who is serving in the Tribunal misappropriated the huge amount and some of the amounts were transferred in the accounts of the applicant. The investigation papers further show that there was no such agreement executed between the present applicant and other co-accused Digamber Dare. But it was shown to be executed and the amounts were

transferred in the account of the present applicant as well as his son. The said amounts are either transferred from the PLA Account through the NEFT or from the FD Account maintained in the Tribunal for beneficiaries of accident claims. After receiving the said amount, the applicant has withdrawn it and used the same for his personal benefits.

9. Though learned Counsel Mr. Wathore invited my attention towards agreement as well as various statements and submitted that the amounts were returned to the co-accused which are received in the account, still the huge amount of more than Rs.1,39,00,000/- is yet to be recovered from the present applicant. It further appears that the applicant has projected that there was a transaction between the co-accused and him as to purchase of the agricultural land and the house, reliance is placed on the agreement, however it does not bear signature of parties. Thus, it is apparent that only to show transaction, the said document was prepared. The intention of the present applicant can be gathered from the circumstances that the huge amount was transferred to them by different modes to their account from the PLA Account of the MACT or the FD Account of the Tribunal. Instead of informing the same to the investigating agency, they have used said amount for their personal benefits. Moreover, they have transferred the said amount again to the co-accused Digambar Dare. Still, a huge amount is

yet to be recovered from the applicant which is a public money or victim's money or legal heirs of victims of road accidents.

10. The involvement of the applicant is an economic offence. Knowingly, the applicant accepted the amount and some of amounts were used for their personal benefits. Out of 13 accused, 7 are arrested. The investigation is still in progress. The Hon'ble Apex Court, while dealing with offence, involving conspiracy to commit economic offences of huge magnitude, in the case of **Y.S. Jagan Mohan Reddy vs. CBI**, reported in **(2013) 7 SCC 439** laid down following parameters:

> i) economic offences constitute a class apart and need to be visited with a different approach in the matter of bail. The economic offence having deep rooted conspiracies and involving huge loss of public funds needs to be viewed seriously and considered as grave offences affecting the economy of the country as a whole and thereby posing serious threat to the financial health of the country, and
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> ii) while granting bail, the court has to keep in mind the nature of accusations, the nature of evidence in support thereof, the severity of the punishment which conviction will entail, the character of the accused, circumstances which are peculiar to the accused, reasonable possibility of securing the presence of the accused at the trial, reasonable apprehension of the witnesses being tampered with, the larger interest of the public/State and other similar considerations.

11. Thus, in view of observations of the Hon'ble Apex Court, in the case cited *supra*, economic offences constitute a class apart and need to be visited with a different approach in the matter of bail. The economic offence having deep rooted conspiracies and involving huge loss of public funds need to be viewed seriously. Especially, in the present case, the amounts deposited as compensation for accident/victim or their legal heirs, are misappropriated and investigation regarding the same is still going on. Some of the accused are still to be arrested.

12. Considering in a very systematic manner, the applicant and other co-accused have committed the offence and, therefore, it is not a fit case wherein the discretion can be used in favour of the present applicant.

13. For all above said reasons, the application deserves to be rejected and the same is **rejected**.

The application stands **disposed of**.

(URMILA JOSHI-PHALKE, J.)

Sarkate