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

CRIMINAL APPLICATION (BA) NO. 414 OF 2024

Vivek Tejram Chawre **Vs** State of Maharashtra

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

Mr. S.G. Deshpande, counsel for the applicant.
Mr. K.R.Lule, APP for the non-applicant/State.

CORAM : URMILA JOSHI-PHALKE, J.
DATED : 12/07/2024.

1. By this application, the applicant is seeking bail, in connection with Crime No. 1049/2023 registered with Police Station Saoner, District Nagpur for the offence punishable under Sections 406,420, 467, 468, 471, 413, 120(b) of the Indian Penal Code, 1860 and under Section 66, 66(c) and 66(d) of the Information Technology Act, 2000. The applicant came to be arrested 23/11/2022 and since then he is behind bar.

2. The crime is registered on the basis of the report lodged by the informant, Niranjan Nariman Patil, alleging that the present applicant has obtained an Aadhar Card, Pan Card from him and informed him that he will receive the amount of Rs. 20,000/- in his account and he has to accept Rs. 2000/- out of it, and Rs. 18,000/- is to be paid to him. Immediately, the amount of Rs. 20,000/- was transferred to his account. On that information, he came to know that, on the basis of the said document, the applicant had opened the

bank account in his name, and therefore, he approached the police station and lodged the report. During the investigation, it revealed to the investigating officer that the present applicant and other co-accused, in pursuance of their common object, obtained the various documents from various persons on the pretext of opening the account or sanctioning the loan amount in their name, and by obtaining the documents, open the account in their name and made transactions in the said accounts.

3. It is further revealed to the investigating officer that the applicant has opened bogus accounts in the names of various persons by forging their signatures. A list of around bogus 80 accounts came forward, which shows that the transactions were done from the said bogus account, which goes to the tune of Rs. 25,21,03491/-. On the basis of said report, police have registered the crime against the present applicant and other co-accused. During the investigation, the investigating officer also seized the mobile phone of the present applicant, and his specimen signature and the house search of the applicant was also conducted. The bank accounts statement opened by the applicant are also obtained, and role of the present applicant revealed and therefore, he was arraigned as an accused.

4. Learned counsel for the applicant submitted that, as far as the present applicant is concerned, only the informant has made an application that, from him the documents are obtained by the present applicant. As far as the other

witnesses are concerned, they never named the present applicant to show that he obtained documents from them and opened the bogus account in their name. He submitted that some of the witnesses have named the present applicant, but it is only the name is mentioned and no specific role is attributed to them. Now the investigation is already completed and charge-sheet is already filed, further incarceration of the present applicant is not required. Since last two years, he is behind bars, and there has been no progress in the trial. The applicant cannot be detained in the custody for an indefinite period. Considering that, the entire investigation revolves around the document evidence, the further incarceration of the applicant is not required, and the apprehension that the applicant would tamper with the prosecution witnesses is also baseless. In the light of the above facts and circumstances, considering the investigation is completed, the applicant be released on bail.

5. Learned APP strongly opposed the said application and submitted that, considering the magnitude of the amount involved, and the nature and circumstances under which the offence is committed, it shows the involvement of the present applicant. The present applicant and other co-accused opened all 80 accounts, and transaction worth of Rs. 25, 21,3,491/- was carried out by the present applicant and the other co-accused. Thus, the name of the offence is the economic offence and considering the huge magnitude, the application deserves to be rejected.

6. After hearing learned counsel for the applicant and learned APP for the State, perused the investigation papers. From which, it reveals that the crime is registered on the basis of report lodged by the informant alleging that the present applicant was acquainted with him, and he has obtained the Aadhar Card and Pan Card from him and opened the account in his name without his consent, and the transaction of Rs. 20,000/- was carried out in his account. When he received the message that account was transferred to his account, he came to know about the opening of the account. On the basis of said report, police have registered the crime. During the investigation, the names of the other co-accused were also revealed. The investigating officer has recorded the various statements of the witnesses, and from which it reveals that the applicant has chosen the persons, either agriculturists or agricultural laborers, who are in need of financial assistance, and by taking disadvantage of this, they have obtained the documents from them on the pretext of opening their accounts, and bogus accounts are opened and transactions worth of Rs. 25, 21,3,491/- was carried out. Thus, the involvement of the present applicant was revealed in the economic offence. Admittedly, now investigation is already completely and charge-sheet is already filed. The applicant is behind bars since the date of his arrest, i.e. 23/11/2022. There is no dispute as to the fact that the involvement of the present applicant is an economic offence.

7. The aspect of the economic offence is to be considered by the Hon'ble Apex court in the case of ***Satender Kumar Anitl Vs Central Bureau of Investigation and another reported in 2022 LiveLaw (SC) 577***, wherein the Hon'ble Apex Court held that the questions for consideration is whether it should be treated as a class of its own or otherwise. This issue has already been dealt with by this Court in the case of ***P. Chidambaram v. Directorate of Enforcement [(2020) 13 SCC 791]***, after taking note of the earlier decisions governing the field. The gravity of the offence, the object of the Special Act, and the attending circumstances are a few of the factors to be taken note of, along with the period of sentence. After all, an economic offence cannot be classified as such, as it may involve various activities and may differ from one case to another. Therefore, it is not advisable on the part of the court to categorize all the offences into one group and deny bail on that basis.

8. Suffice it to state that law, has laid down in the following judgments and referred the judgment of ***P. Chidambaram v. Directorate of Enforcement, : (2020) 13 SCC 791***, wherein para-23 observed as thus:-

> *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.

9. In ***Sanjay Chandra v. CBI [(2012) 1 SCC 40]*** wherein also, the Hon'ble Apex Court held that -

(i) 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.

(ii) 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.

(iii) By referring the above observation of the Hon'ble Apex Court and it is further observed 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, CBI, New

Delhi. Therefore, the presence in the custody may not be necessary for further investigation.

10. Moreover, similar is the fact in the present case, admittedly the involvement of the present applicant appears to be in the economic offence, but now considering the investigation has already completed and charge-sheet is already filed, further incarceration of the present applicant is not required therefore, the bail application deserves to be allowed by imposing certain conditions. Accordingly, I proceed to pass the following order:

a) The application is allowed.

b) The applicant – **Vivek s/o Tejram Chawre**, shall be released on bail, in connection with Crime No. 1049/2023 registered with Police Station Saoner, District Nagpur for the offence punishable under Sections 406,420, 467, 468, 471, 413, 120(b) of the Indian Penal Code, 1860; and under Section 66, 66(c) and 66(d) of the Information Technology Act, 2000, on executing P.R. Bond of Rs. 50,000/- with the one solvent surety in the like amount.

c) The applicant shall attend the concerned police station twice in a month on 1st and 15th of every month and the Investigating Officer shall record his presence.

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

e) The applicant shall surrender his passport if he is having before the investigating agency.

f) The applicant shall attend the proceedings before the trial Court without seeking any exemption unless there are exceptional circumstances.

g) The applicant shall not induce, threat or promise any witnesses who are acquainted with the facts of the case.

The criminal application stands **disposed of.**

[**URMILA JOSHI-PHALKE, J.]**

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