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

CRIMINAL APPLICATION (BA) NO. 417 OF 2024

Amol s/o Arun Meherkure **V/s** 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. R.P. Joshi, counsel for the applicant.
Mrs. H.N.Prabhu, APP for the non-applicant/State.

CORAM : URMILA JOSHI-PHALKE, J.
DATED : 20/06/2024.

1. The applicant came to be arrested on 19/05/2023, in connection with crime No. 319/2022 registered with Chimur Police Station, District Chandrapur for the offence punishable under sections 406, 408, 409, 420, 468, 471, 477-A, 120-B read with Section 34 of the Indian Penal Code and Section 3 of the Maharashtra Protection of Interest of Depositors (In Financial Establishments) Act, 1999.

2. The present applicant was serving as a Clerk in the Society namely in the Rashtrasant Tukdoji Nagari Pat-Sanstha Limited, Chimur. The FIR is lodged against the present applicant and the other co-accused, on the basis of information by Rajesh Sudhakar Landage who is an Auditor, who observed the serious irregularities in the day to day business of the society and also ascertained that there is misappropriation of the huge amount of Rs.7,95,35,833/-.

3. As per the allegations, the Board of Directors and Office bearers of the society namely Rashtrasant Tukdoji Nagri Sahakari Credit Society Limited, Chimur hatch the conspiracy and by misusing their position while performing their duties committed the offence. It is further alleged the present applicant who was working as a clerk has obtained the FDRs from depositors and withdrawn the said amount and as per the Audit Report, he has misappropriated the amount of Rs.10,51,617/-.

4. Learned counsel Mr. R.P. Joshi for the applicant submitted as far as the allegation against the present applicant is concerned is on the basis of audit report. In fact, the allegation is not substantiated by any material as it is highly difficult for the clerk to withdraw the amount in absence of the depositors and in absence of their signatures. He submitted that, the allegations even if are taking into consideration as it is, no case is made out against him, as none of the withdrawal slip or any document which is maintained in the society, shows that it was the present applicant who has withdrawn the said amount of the depositors. He further submitted that even the allegations are taken as it is, now further incarceration of the present applicant is not required, as the investigation is already completed and charge-sheet is filed. The trial will take its own time for its final disposal. He submitted that, now the entire investigation is on the basis of Audit Report which ascertains the role of the present applicant. Nothing new is to be investigated by keeping the present applicant

behind bar. He further placed reliance on the decision of the Honourable Apex Court in the case of ***P. Chidambaram Vs. Central Bureau of Investigation [2019 SCC Online SC 1380]*** and ***P. Chidambaram v. Directorate of Enforcement, [(2020) 13 SCC 791].***

5. He further submitted that the Hon'ble Apex Court has considered the nature of the offence which is economic offence and held that the consideration for the bail are on the basis of tripod test i.e. the flight risk of the applicant and tampering with the witnesses and influencing of the witnesses in favour of the applicant. He further submitted that the co-accused Anil Bhaurao Nannaware and Atul Arun Meharkure are already released on bail by this Court. The similar role is attributed to the present applicant, considering the investigation is completed and charge-sheet is filed, further incarceration of the present applicant is not required, in view of that, the applicant be released on bail.

6. Learned APP strongly opposed the application on the ground that considering the gravity of the offence that huge amount is involved which was misappropriated by the present applicant as well as other co-accused. She submitted that the statement of the witnesses and auditor report shows that present applicant has obtained the FDR receipts from the depositors and misused his power and thereafter withdrawn the said amount. She also invited my attention towards the audit report alongwith the chart, which shows that applicant has misappropriated the said

amount of Rs. 10 Lakhs and above. Thus, considering the specific role attributed to the present applicant, and the amount involved, the prima-facie case is made out against the present applicant and therefore, application deserves to be rejected.

7. After hearing learned counsel for the applicant and learned APP for the State, perused the investigation papers. The entire investigation is based on the audit report. From the audit report, it reveals that present applicant was serving as a clerk in the said society, and while serving as a clerk, he has collected the FDR from the various depositors and in their absence withdrawn the said amount and said amount was not repaid by him. Thus, he has misappropriated the amount of Rs. 10,51,617/-.

8. Thus, the investigation papers shows that the applicant and his family members who were the office bearers of the said society have played the role in misappropriation, and as far as the present applicant is concerned, he has misappropriated the amount which is a public money. The investigation papers further shows that the applicant who was serving as a clerk and was handling the transactions from it, the FDRs from various depositors and the withdrawal slips are on record which shows that the amount were withdrawn from the said FDR. The audit report clearly discloses this facts and shows the involvement of the present applicant in the alleged offence. Though the prima-facie case is made out against the present applicant,

at the same time, the principals which is enumerated the various decision is to be looked into that bail is a Rule and Jail is the exception.

9. Learned Counsel for the applicant placed reliance on ***P. Chidambaram Vs. Central Bureau of Investigation*** (supra) wherein the Hon'ble Apex Court has considered the tripod taste and held that as applicant is not a flight risk and released him on bail. It is further observed by the Hon'ble Apex Court while considering the aspect of the economic offence that we are conscious of the fact that the accused are charged with economic offence 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 Court. Similar is the case in the present matter, the investigation is already completed and charge-sheet is filed and nothing is on record to show that if applicant/accused is released on bail he will be at a flight risk. The applicant is permanent resident of Chimur, District Chandrapur and having permanent abodes there. The Honourable Apex Court in the case of ***Satender Kumar Antil Vs. Central Bureau of Investigation, [(2022) 10 SCC 51]*** wherein also this aspect was considered and by referring the decision of ***P. Chidambaram v. Directorate of Enforcement (supra)*** and **Sanjay Chandra Vs. Central Bureau of Investigation [(2012) 1 SCC 40]** wherein it is held that we cannot lose sight of the

fact that the investigating agency has already completed investigation and the charge-sheet is already filed. The observation of the Honourable Apex Court is reproduced here for the reference :

> *"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."*

10. The observation of the Honourable Apex Court in ***Sanjay Chandra*** (supra) is also reproduced here for reference :

> *"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."*

11. 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 which depends upon the facts and circumstances of each particular case. At the same time, it is also well settled that the right to bail is not to be denied merely because of the sentiments of the community against the accused are there. The primary purposes of bail in a criminal case are to relieve the accused of imprisonment, the intention behind it not to deprive him from his liberty and it cannot be by way of punishment.

12. In view of that and considering that human liberty is a precious constitutional right, the application deserves to be allowed by imposing certain conditions. Accordingly I proceed to pass following order:

(i) The application is allowed.

(ii) The applicant – Amol s/o Arun Meherkure, in connection with crime No. 319/2022 registered with Chimur Police Station, District Chandrapur for the offence punishable under sections 406, 408, 409, 420, 468, 471, 477-A, 120-B read with Section 34 of the Indian Penal Code and Section 3 of the Maharashtra Protection of Interest of Depositors (In Financial Establishments) Act, 1999, shall be released on bail on furnishing P.R. bond in the sum of Rs.50,000/- with one solvent surety in the like amount.

(iii) The applicant shall attend the police station Economic Offence Wing, Chandrapur on first day of every month, till the culmination of the trial.

(iv) The applicant shall attend the trial Court regularly without seeking any exemption unless there are exceptional circumstances.

(v) The applicant shall furnish his Cell phone number and address with the address proof and the names of two relatives along with their address proof.

(vi) The applicant shall not directly or indirectly make any inducement and threat or promise to any person acquainted with the facts of the present case.

The criminal application is **disposed of.**

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