2024:BHC-NAG:6774

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

CRIMINAL APPLICATION (APPLN) NO.44/2020
Ravindra s/o Shrinivasrao Shinde
..vs..
The State of Maharashtra, through its Police Station Officer, P.S.Ramnagar, Chandrapur, Taluka and District Chandrapur and anr

WITH

CRIMINAL APPLICATION (APPLN) NO.45/2020
Ravindra s/o Shrinivasrao Shinde
..vs..
The State of Maharashtra, through its Police Station Officer, P.S.Ramnagar, Chandrapur, Taluka and District Chandrapur and anr

WITH

CRIMINAL APPLICATION (APPLN) NO.46/2020
Ravindra s/o Shrinivasrao Shinde
..vs..
The State of Maharashtra, through its Police Station Officer, P.S.Ramnagar, Chandrapur, Taluka and District Chandrapur and anr

WITH

CRIMINAL APPLICATION (APPLN) NO.58/2021
State of Maharashtra, through Police Station Officer, Police Station Ramnagar, Chandrapur
..vs..
Sachin s/o Manohar Salve

WITH

CRIMINAL APPLICATION (APPLN) NO.59/2021
State of Maharashtra, through Police Station Officer, Police Station Ramnagar, Chandrapur
..vs..
Manohar s/o Laxman Paunkar

WITH

CRIMINAL APPLICATION (APPLN) NO.60/2021
State of Maharashtra, through Police Station Officer, Police Station Ramnagar, Chandrapur
..vs..
Vinod s/o Ratan Giri

....

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

....

Cr. Application No.44/2020
Shri Anil S.Mardikar, Senior Counsel assisted by Shri Ved Deshpande, Advocate for the Applicant.
Shri S.P.Dharmadhikari, Senior Counsel assisted by Shri R.M.Daga, Advocate for NA No.2.
Ms.H.N.Prabhu, Additional Public Prosecutor for NA No.1/State.

Cr. Application No.45/2020
Shri Anil S.Mardikar, Senior Counsel assisted by Shri Ved Deshpande, Advocate for the Applicant.
Shri Tejas Deshpande, Counsel for NA No.2.
Ms.H.N.Prabhu, Additional Public Prosecutor for NA No.1/State.

Cr. Application No.46/2020
Shri Anil S.Mardikar, Senior Counsel assisted by Shri Ved Deshpande, Advocate for the Applicant.
Shri S.P.Dharmadhikari, Senior Counsel assisted by Shri R.M.Daga, Advocate for NA No.2.
Ms.H.N.Prabhu, Additional Public Prosecutor for NA No.1/State.

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Cr. Application No.58/2021
Ms.H.N.Prabhu, Additional Public Prosecutor for the Applicant/State.
Shri S.P.Dharmadhikari, Senior Counsel assisted by Shri R.M.Daga, Advocate for the NA.

Cr. Application No.59/2021
Ms.H.N.Prabhu, Additional Public Prosecutor for the Applicant/State.
Shri Tejas Deshpande, Counsel for the NA.

Cr. Application No.60/2021
Ms.H.N.Prabhu, Additional Public Prosecutor for the Applicant/State.
Shri S.P.Dharmadhikari, Senior Counsel assisted by Shri R.M.Daga, Advocate for the NA.

CORAM : URMILA JOSHI-PHALKE, J.
CLOSED ON : 24/06/2024
PRONOUNCED ON : 01/07/2024

1. By these applications (Criminal Application Nos.44, 45, and 46/2020), Ravindra s/o Shrinivasrao Shinde (the complainant) seeks cancellation of bail granted to Vinod s/o Ratan Giri, Manohar s/o Laxman Paunkar, and Sachin s/o Manohar Salve (the accused persons).

So also, by applications (Criminal Application Nos.58, 59, and 60/2021), the State of Maharashtra seeks cancellation of bail granted to the accused persons.

2. Learned Additional Sessions Judge, Chandrapur vide orders dated 29.9.2020; 21.10.2020, and 29.9.2020 passed in Misc. Criminal Application Nos.833/2020; 887/2020, and 832/2020 has granted bail to the accused persons.

3. Accused Manohar s/o Laxman Paunkar, was Chairman of the Chandrapur District Cooperative Bank Limited and accused Vinod s/o Ratan Giri and Sachin s/o Manohar Salve are partners of "M/s.Mai Enterprises". Crime bearing No.767/2020 was registered on the basis of report lodged by the complainant alleging that accused Manohar Paunkar, in connivance with other two accused, by misutilizing funds of the said bank, paid excess amount for purchase

of various commodities since the year 2015. It is further alleged that while purchasing various commodities for the bank, he has not followed tender process and he allotted most of tenders to “M/s.Mai Enterprises,” which is an unregistered partnership firm. As per allegations, the accused persons have misappropriated amount Rs.7,30,77,750/-. On the basis of the said allegations, the crime was registered against the accused persons under Sections 420 and 409 read with 34 of the Indian Penal Code. After registration of the crime, the accused persons filed applications (as the aforesaid) for grant of bail wherein they were released on bail.

4. These present applications are filed by the complainant as well as the State of Maharashtra for cancellation of bail on ground that while releasing the accused persons on bail, learned Judge below has not considered their involvement in economic offences. Further ground raised was that, from inspection report, it revealed that accused Manohar Paunkar, without comparing prices in open market, accepted quotation of “Mai Enterprises’ and paid excess amount to it. During investigation, tendered documents were seized from the accused persons. Thus, the accused persons caused loss to the tune of Rs.7,30,77,750/- to the said bank. Learned Judge below, by ignoring these facts, granted bail to the accused persons. The

orders passed by learned Judge below, are by ignoring material evidence collected during investigation and, therefore, the bail granted to the accused persons deserves to be cancelled.

5. Heard learned Senior Counsel Shri Anil S.Mardikar for the complainant; learned Senior Counsel Shri S.P.Dharmadhikari along with Shri R.M.Daga for accused Vinod s/o Ratan Giri and and accused Sachin s/o Manohar Salve; learned counsel Shri Tejas Deshpande for accused Manohar s/o Laxman Paunkar, and learned Additional Public Prosecutor Ms.H.N.Prabhu for the State.

6. Learned Senior Counsel Shri Anil S.Mardikar, submitted that the complainant is one of Directors of the said bank and he lodged the report against the accused persons. A huge fraud is committed by the accused persons and learned Judge below has granted bail by ignoring relevant materials. A public fund is misutilized by the accused persons. The inspection report shows the manner in which quotations were called and tender was allotted. The observations of the court below were not in consonance with the prosecution case. Thus, orders are passed by learned Judge below ignoring the entire material collected during the investigation. Further custodial interrogation of the accused persons are required. As such, these applications deserve to be allowed.

7. In support of his contentions, learned Senior Counsel Shri Anil S.Mardikar, placed reliance on the decision of the Honourable Apex Court in the case of **Puran vs. Rambilas and another, reported in (2001)6 SCC 338.**

8. Learned Additional Public Prosecutor Ms.H.N.Prabhu for the State, endorsed the same contentions made by learned Senior Counsel Shri Anil S.Mardikar and submitted that learned Judge below, ignoring the material evidence collected during investigation, passed orders granting bail to the accused persons and, therefore, these applications filed for cancellation of bail deserve to be allowed.

9. Learned Senior Counsel Shri S.P.Dharmadhikari, submitted that consideration for grant of and cancellation of bail are completely different. It is settled law that cancellation of bail can be done in cases where orders granting bail suffer from serious infirmities resulting in miscarriage of justice. It is submitted that learned Judge below, while granting bail, assigned reasons in orders and invited my attention to paragraph Nos.25 and 29 of the said orders wherein learned Judge below considered the entire aspect and allowed the bail applications of the accused persons. Now, the accused persons are on bail since 29.9.2020; 21.10.2020, and 29.9.2020 respectively. Approximately, four years have already

passed. No purpose would be served by sending the accused persons behind the bars. The investigation is also completed. Though the accused persons are involved in economic offences, the law is settled by the decision of the Honourable Apex Court in the case of **Satender Kumar Antil vs. Central Bureau of Investigation and anr, reported in 2022 LiveLaw (SC) 577** wherein it is held that economic offences cannot be classified as such, as it may involve various activities and may differ from one case to another and, therefore, it is not advisable on the part of the court to categorize all offences into one group and deny bail on that basis. Thus, he submitted that merely because the accused persons are involved in economic offences, that by itself is not sufficient to cancel the bail granted in their favour.

10. Learned counsel Shri R.M.Daga, also supported the said contentions made by learned Senior Counsel Shri S.P.Dharmadhikari and placed reliance on the decisions of the Honourable Apex Court in the cases of **Dataram Singh vs. State of Uttar Pradesh and another, reported in (2018)3 SCC 22** and **X vs. State of Telangana and another, reported in (2018)16 SCC 511**.

11. Before adverting to merits of the matter, it is necessary to see the law laid down by the Honourable Apex Court as far as cancellation of bail is concerned.

12. In **Myakala Dharmarajam and ors vs. State of Telangana and anr, reported in 30(2020)2 SCC 743,** it is held that it is trite law that cancellation of bail can be done in cases where the order granting bail suffers from serious infirmities resulting in miscarriage of justice. If the court granting bail ignores relevant material indicating prima facie involvement of the accused or takes into account irrelevant material, which has no relevance to the question of grant of bail to the accused, the High Court or the Sessions Court would be justified in cancelling the bail.

13. In **Deepak Yadav vs. State of U.P., reported in 2023(2) Mh.L.J. (Cri.) (SC) 196,** wherein it is held that there is certainly no straight jacket formula which exists for courts to assess an application for grant or rejection of bail but the determination of whether a case is fit for the grant of bail involves balancing of numerous factors, among which the nature of the offence, the severity of the punishment and a prima facie view of the involvement of the accused are important. The Honourable Apex Court laid down illustrative circumstances where the bail can be cancelled, a) where the court granting bail takes into account irrelevant material of substantial nature and not trivial nature while ignoring relevant material on record; b) where the court granting bail overlooks the

influential position of the accused in comparison to the victim of abuse or the witnesses especially when there is prima facie misuse of position and power over the victim; c) where the past criminal record and conduct of the accused is completely ignored while granting bail; d) where bail has been granted on untenable grounds; e) where serious discrepancies are found in the order granting bail thereby causing prejudice to justice; f) where the grant of bail was not appropriate in the first place given the very serious nature of the charges against the accused which disentitles him for bail and thus cannot be justified, and g) when the order granting bail is apparently whimsical, capricious and perverse in the facts of the given case.

14. In the light of the well settled legal position, if the evidence collected by the investigating agency is perused, it would reveal that the complainant was Director of the said bank since 2012. The transactions in question are from 2016 to 2019. The Audit Report is collected and perusal of which shows that for purchasing various commodities, the tenders were called time to time. By Resolution dated 26.6.2018, it was decided that 45 UPS batteries are to be purchased. Whereas, advertisement was published for purchase of 99 batteries. The bills were paid before installation of the said batteries and total 61 batteries were installed. Thus,

approval was not obtained for purchase of the said batteries. Again, by Resolution dated 29.9.2018, it was decided to purchase 60 UPS batteries. However, procedure of calling quotation was not followed. The sum and substance of the Audit Report shows that without receiving goods, bills were paid and excess commodities are purchased without approval. Thus, the Audit Report points out that various illegalities are committed during the tenure of accused Manohar Paunkar and, therefore, the crime is registered.

15. While releasing the accused persons on bail, learned Judge below has considered tender documents collected during the investigation and the procedure was followed by the officers of the bank. The trial court observed that there are allegations that the firm has earned profit of 45% in the said charges, but there is no evidence as to the profit earned by the firm of the accused persons excluding the expenses like charges for transportation, labour, overhead, and storage of hue quantity etc.. The trial court has considered the nature of evidence, however observed that now most of investigation is completed since the accused persons are arrested and released them on bail and, therefore, in the contention made by learned Senior Counsel Shri Anil S.Mardikar that the trial court has ignored the materials has no substance.

16. Even accepting that the accused persons are involved in a serious offence, which is in the nature of economic offences, the Honourable Apex Court in the case of **P.Chidambaram vs. Directorate of Enforcement, reported in (2020)13 SCC 791** that observed that 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.

17. In **Sanjay Chandra vs. CBI, reported in (2012)1 SCC 40,** the Honourable Apex Court observed, 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."

18. Thus, the Honourable Apex Court 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, CBI, New Delhi. Therefore, their presence in the custody may not be necessary for further investigation.

19. Similar is the situation in the present case also as the investigation is already completed and chargesheet is already filed. The discretion is exercised by learned Judge below by observing that further incarceration of the accused persons is not required. As observed by the Honourable Apex Court, grant or refusal of bail is entirely upon discretion of a judge and it must be exercised in judicious manner. The grant of bail is the rule and refusal is the exception.

20. The accused persons are released on bail long back. Moreover, it is not contention of learned Additional Public Prosecutor for the State that the accused persons have misused the liberty granted in their favour. The investigation into the crime is already completed and chargesheet is already filed. As far as the allegation, that the material evidence is ignored, is not substantiated. Considering all these facts, these applications seeking cancellation of

bail deserve to be rejected and the same are **rejected**.

The applications stand **disposed of**.

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

!! BrWankhede !!