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

CRIMINAL APPLICATION (BA) NO.510/2024

Mohammad Jawad Farook Bora @ Bharat Suleman
..vs..
State of Maharashtra, through PSO PS Dhantoli, District Nagpur

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

Shri Pratik Sharma, Advocate h/f Ms.A.Sheikh, Counsel for the Applicant.
Shri U.R.Phasate, Additional Public Prosecutor for the State.

CORAM : URMILA JOSHI-PHALKE, J.
CLOSED ON : 05/08/2024
PRONOUNCED ON : 09/08/2024

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.457/2023 registered with the non-applicant/police station for offences punishable under Sections 120-B, 406, 420, and 506 read with 34 of the Indian Penal Code.

2. The applicant is arrested on 1.1.2024 and since then he is in jail.

3. The crime is registered on the basis of report lodged by Swati Kishanchand Ramnani. As per her report, she was having her bank account with Axis Bank at Jaripatka Branch and she was

visiting regularly the said bank whereat she got acquaintance with Dipankar Sarkar who was employee of the said bank. In the month of June 2023, said Dipankar Sarkar called her in the bank and accordingly she visited the said bank when co-accused Amjad Khan and Chandrashekhar Ramteke were present who informed her about Trade Profit Scheme and also informed her that if she invests amount, she will get 50% profit. Initially, she was reluctant to invest amount, but, thereafter, she was told that within an hour of deposit of amount if invested, she would get the amount back and she was persuaded by said Dipankar Sarkar as to the investment of amount and, therefore, she decided to invest amount. On 27.7.2023, she along with said Dipankar Sarkar and Amjad Khan went in company's office of co-accused Mandar Kolte. She handed over cash Rs.1.00 crore to co-accused Mandar Kolte, who informed her that this amount would be sent to higher officers of the company namely Suraj De, Mangesh Patekar, Bharat Suleman, Aman Pande, and Raju Mandal. She was further informed that within an hour they would transfer amount Rupees One Crore and Fifty Lacs through RTGS. Thus, her confidence was gained and the amount was taken. After some time, she was told that due to a technical defect, they were unable to forward the amount through RTGS and left the place. Thus, she neither received any benefits on the invested amount nor her amount was repaid back. During investigation, involvement of fifteen accused was revealed.

4. Heard learned counsel Shri Pratik Sharma for the applicant and learned Additional Public Prosecutor Shri U.R.Phasate for the State.

5. Learned counsel for the applicant submitted that insofar as the applicant is concerned, there is absolutely no evidence to show his connection with the other co-accused. The amount was not handed over to him. As regards involvement of the applicant, he has not received any amount or chain of circumstances connecting him with the alleged offence is not revealed. Now, investigation is completed and chargesheet is filed. He submitted that incomplete chargesheet is filed by the prosecution to deprive the applicant from taking benefit under Section 167(2) of the Code of Criminal Procedure. He submitted that after filing of the chargesheet, further investigation was carried out which sufficiently shows that the incomplete chargesheet was filed.

6. In support of his contentions, learned counsel for the applicant placed reliance on following decisions:

1. Ritu Chhabaria vs. Union of India and ors, reported in Law Finder Doc ID # 2205781;

2. Satender Kumar Antil vs. Central Bureau of Investigation and anr, reported in (2022)10 SCC 51.

7. *Per contra*, learned Additional Public Prosecutor for the State strongly opposed the application on ground that during investigation, it revealed from statement of the complainant and statement of her friends that the complainant had paid amount Rs.1.00 crore to Mandar Kolte. The investigating officer seized Mobile Handset of said Mandar Kolte so also certain photographs, which show involvement of said Mandar Kolte in another scam. During verification of mobile calls, it revealed that co-accused Mandar Kolte, by using fake Sim Card, made 30 calls to other co-accused. It further revealed that fake Sim Cards, the applicant was using in names of some other persons on his own mobile phone, were also found at the same location. During house search of the applicant, two Mobile Handsets and bank receipts were recovered. On verification of the bank account of the applicant, it revealed that his bank account is with a Vadodara Branch and transactions

carried out were of Rs.56,72,00,000/-. The bank account of the wife of the applicant was also verified. Some other offences are registered against the applicant in different police stations namely Police Stations at Ambad, Dindoshi, and LT Road, Mumbai and the offences are similar in nature. Thus, considering *prima facie* case against the applicant and there is every apprehension that if he is released on bail, he would not be available for trial and the trial would be held up, the application be rejected.

8. Having heard learned counsel for the applicant and learned Additional Public Prosecutor for the State and perused material on record, it reveals that after registration of the crime, during investigation, search of the house of the applicant was carried out whereat some receipt books in the name of "Tirupati Enterprises" were found. At the same time, one machine used for counting currency notes was also found. The Mobile Phone of the applicant was seized and during investigation, it revealed that the applicant used various Sim Cards at various points of time. The involvement of the applicant is also revealed in the scam by other co-accused by flouting Schemes and accepting amounts. It reveals that amount Rupees One Crore was accepted on a pretext of investment and for getting handsome amount. The complainant

was informed that the amount would be forwarded to the company and she would get benefits within an hour. After obtaining the amount, the amount was not deposited through RTGS, but on false pretext, that there is a difficulty in transferring of the amount, the amount was kept and subsequently it was misappropriated.

9. It is submitted by learned Additional Public Prosecutor for the State that still some of accused are absconding. The applicant belongs to Gujarat and is residing in Gujarat. His statement of bank account i.e. of Axis Bank shows that various transactions are carried out. If the applicant is released on bail, he would tamper with prosecution evidence.

10. Thus, involvement of the applicant appears to be in an economic offence. The amount was obtained by the applicant on a pretext of giving handsome returns to the complainant. In fact, the complainant was duped.

11. It was submission of learned counsel for the applicant that incomplete chargesheet is filed against the applicant. On raising a query, he submitted that even after filing of the chargesheet, investigation was carried out.

.....7/-

12. The Full Bench of the Punjab and Haryana High Court, in the case of **State of Haryana vs. Mehal Singh and anr, reported in AIR 1978 Punjab & Haryana 341**, held that since a report to qualify itself to be a 'police report' is required to contain only such facts as are mentioned in sub-section (2) of Section 173 of the Code of Criminal Procedure, so if once it is found that the police report contained all those facts, then so far as the investigation is concerned the name has to be considered to have been completed.

13. Merely because the investigating agency has filed on record statements recorded after filing of chargesheet, that by itself is not sufficient to hold that incomplete chargesheet is filed as the State sought permission to furnish additional evidence to be collected in view of sub-section (8) of Section 173 of the Code of Criminal Procedure. The power of the investigating officer to make a prayer for making further investigation in terms of sub-section (8) of Section 173 of the Code is not taken away only because chargesheet under sub-section (2) thereof has been filed. A further investigation is permissible even if order of cognizance of offence has been taken by the Magistrate.

14. The decision of **Ritu Chhabaria vs. Union of India and ors** *supra***,** as relied upon by learned counsel for the applicant, shows that to deprive applicant therein from getting benefits, chargesheet was filed hurriedly and, therefore, the Honourable Apex Court held that chargesheet filed without completion investigation would not extinguish right to default bail.

15. Involvement of the applicant in the crime is in economic offence.

16. It is well settled position of law that jurisdiction to grant bail has to be exercised having regard to facts and circumstances of cases. Factors to be taken into consideration are; 1) the nature of accusations and severity of the punishment; 2) reasonable apprehension of tampering with witnesses; 3) reasonable possibility of securing presence of accused, and 4) character, behaviour and standard of accused.

17. In the case of **Satender Kumar Antil vs. Central Bureau of Investigation and anr** *supra*, as relied upon by learned counsel for the applicant, aspect of economic offence is considered and it is held that gravity of offence, object of the Special Act, and attending circumstances are a few of factors to be taken into

consideration along with period of sentence. The grant of bail depends upon facts of the concerned case.

18. The Honourable 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.

Also, the Honourable Apex Court, in the case of **State of Gujarat vs. Mohan Lal Jitamalji Porwal, reported in (1987)2 SCC 364**, held as under:

> “5. ....The entire community is aggrieved if the economic offenders who ruin the economy of the State are not brought to book. A murder may be committed in the heat of moment upon passions being aroused. An economic offence is committed with cool calculation and deliberate design with an eye on personal profit regardless of the consequence to the community. A disregard for the interest of the community can be manifested only at the cost of forfeiting the trust and faith of the community in the system to administer justice in an even-handed manner without fear of criticism from the quarters which view white collar crimes with a permissive eye unmindful of the damage done to the national economy and national interest.....”

19. In the present case, considering circumstances, under which the crime was committed, *modus operandi* of the applicant and other co-accused showing involvement in conspiracy to commit economic offence of huge magnitude, the application deserves to be rejected.

20. Considering the role of the applicant in the crime, manner in which the amount was obtained from the complainant, the conspiracy between the applicant and the co-accused, the investigation into the crime in question revealing the manner in which the complainant was duped, similar offences registered at different police stations wherein also other investors were duped

and amounts of the investors are at stake, the application deserves to be rejected and the same is **rejected**.

Application stands **disposed of**.

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

!! BrWankhede !!