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

## CRIMINAL APPLICATION (BA) NO. 545 OF 2024

Amandeep Singh Saran **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 |
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Mr. Yash Kullarwar, counsel for the applicant.
Mr. K.R.Lule, APP for non-applicant/State.

**CORAM : URMILA JOSHI-PHALKE, J.**
**DATED : 02/08/2024.**

1. The applicant came to be arrested on 04/07/2019, in connection with Crime No. 441/2015 registered with Police Station Ramnagar, District Chandrapur for the offence punishable under Section 420, read with Section 34 of the Indian Penal Code, 1860; and Section 3 of the Maharashtra Protection of the Interest of the Depositors Act, 1999 (for short 'MPID'); Section 4 of the Money Laundering Act, 2002.

2. As per the allegation in the complaint lodged by one agent of HBN Diaries and Allied Limited that he became the agent of the company, on assurance that on the recurring deposit (RD) and fixed deposit (FD) scheme if the customer would invest Rs. 100/- in RD for five years and six months, the investors would receive Rs. 8,500/-, and if he invested the amount in the FD for six years and eight months, he would receive twice the amount invested. It was further promised that on each RD, the

agent would receive 15 percent of the amount invested in the first year, and until maturity, he would receive 5 percent commission. With regard to FDR, the agent would get 5 percent commission on the invested amount. Accordingly, he started working as an agent, and the company has given him agent code No. 38001629 and also an I-Card. The said company had its registered office at Delhi, and the directors were the present applicant and other directors namely Harmandarsingh, Manjit Kaur, and Jasbit Kaur, all other residents of Delhi. The company had its branch at Chandrapur in Patrakar Nagar in a rented house. The agents and the company are running from the said office. Accordingly, the meetings were held, and the investors have invested the amount in the said company, but subsequently, the investors have not received their invested amount, and the investors were duped. On the basis of the said report, the police have registered the crime against the present applicant and other co-accused.

3. It is submitted by learned counsel of the present applicant that present applicant was the Managing Director in the said company. The said company was registered with the Securities and Exchange Board of India (hereinafter referred to as 'SEBI'). By passing order on 12/07/2013, the SEBI directed the HBN and its director not to solicit or collect any further money/investments from investors/customers into its schemes or launch or carry out any money collection schemes.

4. The said order was challenged before SEBI, wherein the said order was maintained. Subsequently, a dispute arose between the SEBI and the resolution of professionals as to who auctioned the property. The SEBI challenged the order before the National Company Law Tribunal, Principal Bench, New Delhi (for short, 'NCLT'), and the order of the NCLT was also challenged before the Hon’ble Apex Court.

5. By order dated 17/06/2019, the Hon’ble Apex Court directed that the resolution professional may continue to perform his functions. We, however, only grant stay of the direction of the NCLT in so far as it has directed SEBI to hand over the title deeds to the resolution professional. It is further made it clear that the SEBI shall not in any manner create any encumbrance on the properties held by them by virtue of the title deeds.

6. By subsequent order dated 14/05/2024, the Hon’ble Apex Court directed, and by observing that “we are informed that the Corporate Insolvency Resolution Process has been initiated against Tirupati Infra Projects Pvt. Ltd. The said proceedings will continue in accordance with law and without prejudice to the rights and contentions of SEBI and the liquidator of the company/respondent No.35 – HBN Diaries and Allied Limited”.

The learned counsel for the applicant submitted that, in view of the above order of the Hon’ble Apex Court, the property is now to be auctioned, and the auction is scheduled to be held on 13/08/2024. He submitted that to show bonafides, the applicant has already deposited the amount of Rs. 50 lakhs voluntarily before the SEBI, and due to the litigation and the orders passed by the various authorities, the applicant could not repay the amount of investors. He further submitted that the amount of the investors is secured as all the title deeds are with SEBI, and SEBI is permitted to auction the property in view of the order of the Hon'ble Apex Court.

He submitted that applicant is behind bar since the date of his arrest i.e from last five years, the Liquidator is already appointed and therefore, the amount of investors is already secured. In support of his contention, he placed reliance on the decision of ***P. Chidambaram v. Directorate of Enforcement, (2020) 13 SCC 791.*** He submitted that within five years, there is no commencement of the trial and the applicant cannot be put behind bar for indefinite period. In view of that, he be released on bail.

7. Learned APP strongly opposed the said application on the ground that the involvement of the present applicant is an economic offence. He further submitted that economic offence constitute a class apart and need to be visited with a different approach in the matter of bail. The economic offences having deep-rooted conspiracies and involving huge losses of public funds need to be viewed seriously and considered as grave offence affecting the economy of the country as a whole and thereby posing

a serious threat to the financial health of the country. He submitted that, considering the various investors invested the amount in the said company, they were duped. Hence, the application deserves to be rejected.

8. After hearing learned counsel for the applicant and learned APP for the State, perused the investigation papers, from which it was revealed that the applicant was the Managing Director of the said company, HBN Dairies and Allied Limited. The crime is registered on the basis of a report lodged by one of the agents of the company. From recitals of the FIR, it reveals that the investors were promised handsome returns on investing the amount, and therefore, various investors have invested the amount through the agent. In all, 3500 investors have invested the amount in RD and are expected to earn 12 to 13 crores of maturity of amount. The company has defrauded the said investors. Thus, as far as the allegations are concerned, there is no dispute that several investors have invested the amount and they have not received the amount back. From the documents filed on record, it further reveals that the company was registered with SEBI, and by passing the order dated 12/07/2023, SEBI directed the Directors of HBN Diaries and Allied Limited and its directors not to solicit or collect any further money/investments from investors / customers into its schemes or launch or carry out any money collection schemes.

9. Thus, in view of the orders passed by SEBI, the scheme was closed. Thereafter, the order was challenged before the SEBI, and the order of the SEBI was maintained. Thereafter, a dispute arose between the resolution of the provisional and SEBI, as all the titles of the company were deposited with SEBI, and therefore, the dispute was about who would be authorized to auction the property. The SEBI has challenged said order before the NCLT and subsequently before the Hon'ble Apex Court. The orders passed by the Hon'ble Apex Court show that the order of the NCLT was stayed to the extent of the direction of the NCLT to hand over the title deeds to the resolution professionals. The Hon'ble Apex Court further made it clear that SEBI shall not in any manner create an encumbrance on the properties held by them by virtue of the title deeds.

The recent order of the Hon'ble Apex Court passed on 14/05/2024 shows that the Corporate Insolvency Resolution process has been initiated against the Tirupati Infra Projects Pvt. Ltd., and the said proceedings will continue in accordance with law, and without prejudice to the rights and contentions of SEBI and the liquidator of the company/respondent No.35 – HBN Diaries and Allied Limited.

10. Learned counsel for the applicant orally submitted that now the SEBI is permitted to hold the auction of the title which is deposited by the company with the SEBI, and

the said auction is scheduled on 13/08/2024. Thus, from the record, it reveals that the applicant and the company have shown their bonafides by depositing the amount of Rs. 50 lakhs before the SEBI, but due to the litigation, further action was not taken by the present applicant and the company, which returned the amount from the investors. There is no dispute as to the fact that the hard-earned money of the depositors is deposited and they have not received the returns, but in peculiar facts and circumstances that the amount was not returned to the investors.

11. Moreover, at this stage, the observation of the Hon'ble Apex Court in the case of ***P. Chidambaram*** **(supra)** requires to be taken into consideration. In para-23 of the above said decision, the Hon'ble Apex Court has held 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 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 be fall 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.*

12. In the case of ***Satender Kumar Antil Versus Central Bureau Of Investigation & Anr. [2022 LiveLaw (SC) 577]***, wherein also, the Hon'ble Apex Court has considered the gravity of the economic offence and it is observed that 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 categorise all the offences into one group and deny bail on that basis.

The Hon'ble Apex Court 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. Therefore, the presence of the accused in the custody may not be necessary for further investigation.

13. By applying the similar principle in the present case also, the applicant is behind bar since the date of his arrest, i.e. from 04/07/2019 the trial is not yet commenced. The investigation is already completed and charge-sheet is already filed. The amount invested by the investors is already secured as all title deeds are already filed with SEBI and the auction is already directed, in view of the order of the Hon'ble Apex Court. The apprehension raised by the learned APP is also requires to be taken into consideration that the applicant is not a resident of Maharashtra.

14. Thus, considering all the aspects and the peculiar circumstances in the present case, the applicant has made out the case for grant of bail by imposing certain

conditions. Accordingly, I proceed to pass the following order;

a] The criminal application is allowed.

b] The applicant -Amandeep Singh Saran, shall be released on bail, in connection with Crime No. 441/2015 registered with Police Station Ramnagar, District Chandrapur for the offence punishable under Section 420, read with Section 34 of the Indian Penal Code, 1860; and Section 3 of the Maharashtra Protection of the Interest of the Depositors Act; Section 4 of the Money Laundering Act, 2002, on executing P.R. Bond of Rs. 1,00,000/- with one solvent surety in the like amount.

c] The applicant shall attend the concerned police station Ram Nagar, District Chandrapur twice a month on 1st and 15th of every month between 10.00 a.m. to 01.00 p.m. and the investigating officer shall record his presence.

d] The applicant shall also attend the proceedings before the Special Court without seeking any exemption unless there are exceptional circumstances.

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

The criminal application is disposed of.

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