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

CRIMINAL APPLICATION (BA) NO. 567 OF 2024

Jatin s/o Rajkumar Hawasing
Vs.
State of Maharashtra, Through Police Station Officer, Durgapur Police Station, District Chandrapur

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

Mr. A. S. Tiwari, Advocate for applicant.
Mr. N. B. Jawade, APP for respondent/State.

CORAM : URMILA JOSHI-PHALKE, J.
DATED : 25/07/2024

1. The applicant came to be arrested on 06.05.2023 in connection with Crime No.107/2023, registered with Police Station, Durgapur, District Chandrapur for the offence punishable under Section 420 of the Indian Penal Code and under Section 66(d) of the Information Technology Act.

2. The accusation against the present applicant is on the basis of report lodged by Atul Wasudevrao Mavle alleging that he is the hotel owner. He had taken a Life Insurance Policy from Max Life Insurance Company. On 18.08.2017 its yearly premium was Rs.52,619/-. He used to pay the premium regularly. The policy was to be matured on 11.08.2039. He could not pay the further premiums due to his financial problems, so he closed his policy. He had paid the premium of policy till the year 2022.

He received a call on 04.03.2023 on his mobile from the mobile No.9319242448 that he had to pay the premium of his policy. The Caller informed him that he had to pay some charges to close the Insurance Policy and he would get an amount of Rs.21,46,422/- after payment of the some charges. So, he paid an amount of Rs.60,000/- on 04.03.2023 on account No.10111512975 given by the Caller. He had also paid an amount of Rs.98,000/- on 09.03.2023 and Rs.70,000/- on another account number given by the Caller. Subsequently, he came to know that he is duped.

3. During the investigation, the involvement of the present applicant revealed as well as the involvement of the other co-accused is also revealed. But only the present applicant was arrested and after completion of investigation, the charge-sheet is filed against him.

4. Learned Counsel for the applicant submitted that as far as the role of the present applicant is concerned, it does not reveal from the entire charge-sheet to show that it was the present applicant who has given a call to the complainant. He further submitted that CDR reports of the various mobile numbers are annexed and none of the numbers belongs to the present applicant. Neither any evidence has been brought on record to show that the applicant at any point of time has

telephonically communicated with the present complainant and extracted the amount. Thus, it is a case of no evidence. Now, the investigation is completed and charge-sheet is filed. In view of that, he be released on bail.

5. Learned APP strongly opposed the said application and submitted that during the investigation, the Investigating Officer has obtained the CDR and SDR of the mobile number of the Caller. The investigating agency also collected the bank statement of the accounts in which the informant has deposited the amount as per the direction of the Caller opened in different bank branches in Delhi and on investigation, it revealed that all accounts are fake and fraudulent.

6. The Investigating Officer has also recorded the statements and after completion of the investigation the charge-sheet is filed. There are criminal antecedents against the present applicant and the applicant is not resident of Maharashtra and there is a likelihood of absconding, if he is released on bail. In view of that, the application deserves to be rejected.

7. After hearing the learned Counsel for the applicant and learned APP for the State, perused the investigation papers. During the investigation, it reveals that the several SIM cards are obtained and

from the said SIM cards, the phone calls are made. The CDR and SDR records reveal the connection of the present applicant with the alleged offence. During the investigation, it revealed that the applicant has received Rs.98,000/- in his account from the complainant. Thus, *prima facie* case is made out against the present applicant. However, considering the investigation is already completed and charge-sheet is filed, further incarceration of the present applicant is not required.

8. Admittedly, the involvement of the present applicant is in the economic offence. The aspect of the economic offence is 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.

9. Suffice it to state that law, has laid down in the judgment of **P. Chidambaram v. Directorate of Enforcement, : (2020) 13 SCC 791**, and the relevant para-23 is reproduced as under:

> "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. 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.

11. 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. However, considering the apprehension raised by the learned APP, which can be taken care of by imposing certain conditions, the application deserves to be allowed. Accordingly, I proceed to pass following order:

ORDER

(i) The application is allowed.

(ii) The applicant – **Jatin s/o Rajkumar Hawasing**, shall be released on bail, in connection with Crime No.107/2023, registered with Police Station Durgapur, District Chandrapur for the offence punishable under Section 420 of the Indian Penal Code and under Section 66(d) of the Information Technology Act, on executing P.R. Bond of Rs.50,000/- with one solvent surety in the like amount.

(iii) 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.

(iv) The applicant shall not leave India without prior permission of the District Court, Chandrapur.

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

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

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

(viii) On contravention of any of the condition, the bail granted to the applicant deserves to be cancelled.

12. The criminal application stands **disposed of**.

(URMILA JOSHI-PHALKE, J.)

Sarkate