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

## CRIMINAL APPLICATION (BA) NO.634 OF 2024

Abhishek Singh Chauhan s/o Anandsingh Chauhan

..vs..

State of Maharashtra, through Officer Incharge, Police Station, Ram Nagar, Chandrapur, Tahsil and District Chandrapur

| Office Notes, Office Memoranda of Coram, appearances, Court orders or directions and Registrar's orders | Court's or Judge's Order |
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**Shri N.R.Bhisikar, Counsel for the Applicant.**
**Shri D.V.Chauhan, Public Prosecutor assisted by Shri N.B.Jawade, Additional Public Prosecutor for the State.**

**CORAM : URMILA JOSHI-PHALKE, J.**
**CLOSED ON : 30/08/2024**
**PRONOUNCED ON : 04/09/2024**

1. By this application, the applicant seeks regular bail in connection with Crime No.334/2009 registered with the non-applicant/police station for offences punishable under Sections 420 and 409 of the Indian Penal Code and under Section 3 of the Maharashtra Protection of Interest of Depositors (Financial Establishment) Act, 1999.

2. The applicant is arrested on 22.8.2019 and since then he is in jail.

3. The applicant is Managing Director of company namely "Nirmal Infrahome Corporation Limited". The said company opened

its offices in various cities across India. One such branch was also opened at Chandrapur whereat co-accused Surendra Tiwary was serving as Manager. The company flouted various Schemes relating to investment such as Recurring Deposits, Fixed Deposits, and Pension Plans by making advertisement and by appointing various agents for the said purpose. Informant Gulab Narayan Mandade, had invested amount Rs.21,860/- in various Schemes of the company. Like the informant, various members also invested amounts in the said company. As many as 15 offences are registered against the applicant in Rajasthan, Madhya Pradesh, Chhattisgarh, and West Bengal. As the informant has not received benefits of the investment, he lodged a complaint. During investigation, it reveals that after passing order by the The Securities and Exchange Board of India (SEBI) on 14.1.2015, investments were accepted by the company and various properties were purchased by Directors in their own names. On attaining majority of investments, maturity value was not paid to investors. On the basis of the said report, the police registered the crime against the applicant and other co-accused.

4. Heard learned counsel Shri N.R.Bhisikar for the applicant and learned Public Prosecutor Shri D.V.Chauhan for the State.

.....3/-

5. Learned counsel for the applicant submitted that since the date of arrest, the applicant is behind the bars. It was the Manager who accepted investments after the order was passed by the SEBI. Now, investigation is already completed and chargesheet is already filed. As far as further incarceration of the applicant is concerned, the same is not required. The amount deposited is also secured. As such, the applicant be released on bail.

6. Learned Public Prosecutor for the State strongly opposed the application and submitted that in all 15 offences are registered against the applicant, who is Managing Director, who duped 1000 of investors accepting deposits and not repaying maturity value by luring them of higher returns. Statement of witnesses show that after the order was passed by the SEBI, amounts were accepted. The applicant preferred a petition before the Honourable Apex Court for consolidating or clubbing all First Information Reports registered in different States of India. As regards three cases registered in the State of Maharashtra, the same are being tried by the Special Court at Chandrapur. Subsequent First Information Report registered at Solapur is to be transferred at Chandrapur. The said order was passed on 13.7.2022, but still records are not received from the concerned court and, therefore,

the trial court could not proceed further. He submitted that several investors are duped and considering stake of investment by investors from all over the India, the application deserves to be rejected.

7. In support of his contentions, learned Public Prosecutor for the State placed reliance on the decision of the Honourable Apex Court in the case of **Manik Madhukar Sarve and ors vs. Vitthal Damuji Meher and ors, reported in 2024 SCC OnLine SC 2271** wherein it has been held that in cases where the allegations coupled with the materials brought on record by the investigation and in the nature of economic offence affecting a large number of people reveal the active role of the accused seeking anticipatory or regular bail, it would be fit for the Court granting such bail to impose appropriately strict and additional conditions. It has been further observed that considerations that weigh with the appellate court while granting bail are nature of gravity of accusations, severity of punishment, danger of the accused absconding or fleeing if released on bail, character, behaviour, position and standing of the accused to be looked into.

8. After hearing both sides and perusing investigating papers, it reveals that the applicant was Managing Director of the NICL which flouted the Scheme for the investment and called

investments from various persons. During the investigation, it transpired that the NICL obtained deposits worth of Rs.7,72,84,140/- from 2042 investors. Such types of offences are registered across the country in various cities which are fifteen in numbers. From statements of witnesses, it reveals that despite the order passed by the SEBI in the year 2015, investments are collected from investors. Perusal of the order passed by the SEBI clearly shows that in exercise of powers conferred under Section 11(4) and 11B of the SEBI Act, 1992 M/s.NICL India Limited and its Directors Shri Phool Singh Choudhary, Shri Harish Sharma, and Shri Abhishek S.Chaunan (the applicant) were directed (a) not to collect any fresh moneys from investors from its existing scheme; (b) not to launch any new scheme / plan or float any new companies / firm to raise fresh moneys; (c) not to dispose of any of the properties or alienate the assets of the existing scheme; (d) not to divert any funds raised from public at large, kept in bank account(s) and/or in the custody of the company; (e) to immediately submit the full inventory of the assets owned by NICL out of the amounts collected from the "customers" / investors under its existing schemes, and (f) to furnish all the information sought by SEBI.

9. During investigation, various statements of witnesses

were recorded which reveal that after passing of the order by the SEBI, the investments were accepted by the company of which the applicant was the Managing Director.

10. Thus, considering stake of amounts collected against investments and various properties purchased by its Directors and huge magnitude of amounts is involved, a *prima facie* case is made out against the applicant.

11. In the backdrop of the aforesaid material collected during the investigation, the prayer of the applicant for grant of bail requires consideration in the light of principles laid down by the Honourable Apex Court in relation to economic offence.

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

13. In the present case, considering the nature of the crime, huge amount is involved. 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.

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

> "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....."

15. Recently, the Honourable Apex Court also cancelled bail in the case of **Manik Madhukar Sarve** *supra*, as relied upon by learned Public Prosecutor.

16. Considering the crime having involved enormous and huge amount, the conspiracy between the applicant and other co-accused, and the investigation revealing the manner in which thousands of investors are duped and public money is at stake, the

role of the applicant is clearly exposed.

17. In the background of accusations and its gravity, the applicant is not entitled for being released on bail and, therefore, the application deserves to be rejected and the same is **rejected**.

Application stands **disposed of**.

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

!! BrWankhede !!