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

CRIMINAL APPLICATION (BA) NO. 617 OF 2024

Amit Jagdish Khattar **Vs** 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

Mr. S.P. Bhandarkar, counsel with Mr. A.C. Khadse, counsel for the applicant.
Mrs. Kavita Bhongde, APP for non-applicant/State.
Mr. P.S. Jaiswal, counsel for complainant.

CORAM : URMILA JOSHI-PHALKE, J.
DATED : 09/10/2024.

1. The applicant came to be arrested on 18/01/2024 in connection with Crime No. 1345/2023 registered with Police Station Ram Nagar, District Chandrapur for the offence punishable under Sections 420, 406, 506, 170, 201, 120(B) and read with Section 34 of the Indian Penal Code, 1860.

2. The crime is registered on the basis of a report lodged by Ravindra Shivlal Jaiswal, on an allegation that he was in a search of the person who is intending to sell their licenses of liquor shops. He came into contact with the present applicant and other co-accused, and they agreed that they and their relatives would sell their liquor licenses of Deepak Wine Shop, Nashik, and Pancham Wine Shop, Ahmadnagar, for consideration of Rs. 9,00,00,000/- (Rs. 9 crore). In accordance with the said agreement, the informant has paid the said amount to the applicant and his relatives by RTGS and cash. In order to facilitate the transfer

of the licenses, the applicant has obtained the signatures of the informant and his wife on various stamp papers. However, despite the receipt of payment, the applicant has not arranged for transfer. Thus he has been duped by the present applicant. On the basis of said report, police have registered the crime against the present applicant.

3. After completion of the investigation, the charge sheet is also submitted against the present applicant and the other co-accused.

4. Heard learned counsel Mr. S.P. Bhandarkar for the applicant, who submitted that as far as the offence punishable under Sections 420 and 406 are concerned, the punishment of imprisonment up to seven years is provided. The applicant has been behind bars since 18/01/2024. He further submitted that, from recitals of the FIR, it reveals that entire allegations are made against the co-accused, i.e. Jagdish Dipchand Khattar. As far as the present applicant is concerned, no specific role is attributed to him in the First Information Report. During the investigation also, no witnesses came forward to show that the present applicant has played a vital role. Moreover, the accused no. 1, the father of the present applicant, i.e. Jagdish Dipchand Khattar, is already released on bail by the Hon'ble Apex Court in the event of his arrest, and other co-accused are also released on bail.

He submitted that as far as the role of the present applicant is concerned and the quantum of the punishment for the alleged offences, are imprisonment upto 7 years. Thus, he submitted that in view of the decision of the Hon'ble Apex court in the case of ***Satender Kumar Antil Versus Central Bureau Of Investigation & Anr [2022 Livelaw (SC) 577]***, there is no compliance by issuing the notice under section 41 or section 41A before the arrest of the accused. Thus, considering all these aspects and considering the fact that, investigation is completed and further incarceration of the present applicant is not required, he be released on bail.

5. Learned APP strongly opposed the said application on the ground that, during the investigation, it reveals that the applicant with the similar modus operandi has committed a series of the offences and there are criminal antecedents against him. It has been revealed that the applicant has thrown away the stamp papers bearing the signatures of the informant and his wife from a running train in order to destroy the evidence. The applicant was also absconding for some days after registration of the crime. So, there is every possibility of tampering with the witnesses as well as abscondance of the accused, and he would not be available for trial. She further submitted that considering that applicant, in connivance of the other co-accused, has hatched the conspiracy to lead the informant with a huge amount. A perusal of the FIR shows that the informant was duped for the amount of Rs. 9 crore, which is a huge stack. Thus, considering the involvement of the

present applicant in an economic offense, the application deserves to be rejected.

6. The learned counsel for the original complainant has also raised the strong objection and submitted that, with a similar modus operandi, the other crimes, i.e. Crime No. 184/2023 Police Station Wanawadi, District Pune, Crime No. 546/2023 Jalana Police Station, and Crime No. 71/2023 Osmanpura Police Station, District Aurangabad, were registered.

He further submitted that, as far as the total amount transferred from the account of the informant to the account of the present applicant is concerned, it is Rs. 10,14,90,003/-. Thus, considering the huge stake which is involved in the above offence and the involvement of the present applicant reveals with similar modus operandi in various crimes, the application deserves to be rejected.

He also invited my attention towards the statement of the paramour of the applicant, which shows that applicant had concealed himself at the house of the said witness to avoid the arrest. Thus, he submitted that his statement is sufficient to show that, if the applicant is released on bail, he would not be available for trial, and trial would be held up.

7. In support of his contention, he placed reliance the order passed by this Court in ***Criminal Application (BA) No. 520/2023 decided on 13/03/2024, and the order of Delhi High Court in bail application No. 665/2023 (Keshav***

Prakash Gupta Vs State NCT of Delhi) decided on 20/11/2023, wherein it is observed by the Delhi High Court that before adverting to the merits involved herein, this Court would like to specify that though filing of the charge-sheet is a material consideration while granting bail, however, the same is not the sole criterion to be taken into consideration as it has to be coupled with the facts and circumstances involved. Here is a case wherein, though the charge-sheet has already been filed, however, the complainant in both her statements recorded under Sections(s) 161 and 164 of the CrPC has specifically deposed not only naming the applicant but also attributing a specific role to him. The applicant has been assigned the role of bringing other persons to have physical relations with the complainant after charging them money. On the basis of this submissions, he prays for rejection of the application.

8. Moreover, on perusal of the recitals of the FIR and the investigation papers, it reveals that crime is registered on the basis of the report lodged by the complainant / Ravindra Jaiswal, which shows that on the pretest of transferring the liquor licenses, the amount of Rs. 9 Crores was obtained from the informant, and after receipt of amount the applicant has obtained the signatures of the informant and his wife of various stamp papers but has not transferred the liquor licenses, and the amount was also not returned back. As far as the criminal antecedents are concerned, there is no dispute that three offences are registered against the present applicant, which are of similar

nature. As far as the recitals of the FIR are concerned, admittedly, the entire allegations are made against the co-accused, i.e., accused no. 1. As far as the present applicant is concerned, there is an allegation that the amount was transferred in the name of the account of the present applicant, but the recitals of the FIR show that the said amount was transferred on the say of the co-accused in the account of the present applicant. From the investigation papers, it further reveals that similar types of the offences are registered against the present applicant, and similar types of complaints are filed against the present applicant. The account statements also show that the present applicant has received the amount. Thus, as far as the involvement of the present applicant is concerned, which is revealed from the investigation papers, however, now investigation is completed and charge-sheet is filed. As far as the nature of the offence is concerned, the major offences allegedly committed by the present applicant under Section 406 and 420 of the Indian Penal Code, 1860, for which the punishment of imprisonment upto seven years is provided.

9. This aspect is considered by the Hon'ble Apex Court in the case of ***Satender Kumar Antil*** (supra), wherein it is held that under section 41 under chapter V of the code deals with the arrest of persons. Even for a cognizable offense, an arrest is not mandatory as can be seen from the mandate of this provision. If the officer is satisfied that a person has committed a cognizable offense, punishable with imprisonment for a term which may be less than seven

years, or which punishable with imprisonment for term which may less than 7 years or which may extend to the said period, with or without fine, an arrest could only follow when he is satisfied that there is a reason to believe or suspect, that the said person has committed an offense, and there is a necessity for an arrest. Such necessity is drawn to prevent the committing of any further offense.

10. It further observed that, this provision mandates the police officer to record his reasons in writing while making the arrest. Thus, a police officer is duty-bound to record the reasons for arrest in writing. The consequence of non-compliance with Section 41 shall certainly inure to the benefit of the person suspected of the offense.

11. As far as this compliance is concerned from the investigation papers, nowhere it reveals that before arresting the present applicant, the investigating officer has satisfied himself and recorded the reasons for his arrest, and there is compliance of Section 41.

12. The aspect regarding the economic offence is also considered by the Hon'ble apex court in the ***Satender Kumar Antil*** (supra), wherein the Hon'ble Apex Court observed that, 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.

13. The Hon'ble Apex Court referred the decision of ***P. Chindarama*** (supra) and held that gravity of the offence is one of the considerations for grant of bail. While observing in para-23 it held that "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.

14. 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.

15. Thus, considering all these aspects in the light of the decision of the Hon'ble Apex Court and the facts of the present case, as investigation is completed and charge-sheet is filed, further incarceration of the present applicant is not required, his presence in the custody is not necessary for further investigation. In view of that, the application deserves to be allowed by imposing certain conditions. Accordingly, I proceed to pass the following order.;

a] The criminal application is allowed.

b] The applicant-***Amit Jagdish Khattar*** shall be released on bail, in connection with Crime No. 1345/2023 registered with Police Station Ram Nagar, District Chandrapur for the offence punishable under Sections 420, 406, 506, 170, 201, 120(B) and read with Section 34 of the Indian Penal Code, 1860, on executing P.R. bond of Rs., 1,00,000/- with one solvent surety in the like amount.

c] The applicant shall not leave India without prior permission of the Court. He shall surrender his pass-port, if he is having before the investigating agency.

d] The applicant shall attend the Ram Nagar Police Station, District Chandrapur twice in a month between 1st and 15th day of each month and the investigating officer shall record his presence.

e] The applicant shall not operate his account in Induslnd Bank bearing No. 150504198555 till further orders.

f] The applicant shall not deal with his movable or immovable assets without prior permission of the court.

g] The applicant shall attend the trial Court without seeking any exemption unless there are exceptional circumstances.

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

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

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