2024:BHC-NAG:14222

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

CRIMINAL APPLICATION (BA) NO. 648 OF 2024

Rakesh s/o Ramkishor Khurana
Vs.
State of Maharashtra, Through Police Station Officer, Police Station, Kelwad (Nagpur Rural) and Economic Offences Wing, Nagpur (Rural)

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

Mr. J. M. Gandhi, Counsel for the applicant.
Ms. H. N. Prabhu, APP for non-applicant /State.

CORAM : URMILA JOSHI-PHALKE, J.
DATED : 19/12/2024

1. By this application, the applicant is seeking bail under Section 439 of the Code of Criminal Procedure in connection with Crime No.09/2022, registered with Police Station Kelwad, District Nagpur for the offences punishable under Sections 406, 411, 413, 420, 467, 468, 471, 120-B and 201 of the Indian Penal Code (for short "the IPC').

2. The applicant is arrested on 10.01.2023 and since then he is behind bar.

3. The accusation against the present applicant is on the basis of report lodged by Satish Prakash Adhe on an allegation that his wife has completed her education B.E., M.Tech and unemployed and was in search of Government service. One Ramesh Kamone introduced him to one

Shilpa Rajeev Palparthi resident of Manewada, Nagpur and disclosed that they can secure employment for his wife either in Western Coalfields Ltd. (WCL) Nagpur or in State Bank of India and demanded Rs.10,00,000/-. He paid sum of Rs.2,38,000/- by NEFT by crediting the same to the account of Ramesh Kamone. On 29.05.2020, co-accused Shilpa had again contacted him and expressed about the availability of the job to the post of Clerk with Western Coalfields Ltd. and one Amit Kove who was along with her had demanded Rs.2,00,000/- for the same. He had also paid Rs.3,73,000/- in cash and Rs.2,12,000/- by NEFT in the account of said Shilpa. Thus, he has paid Rs.5,85,000/- to the said Shilpa. On 12.06.2020, his wife had received an interview letter on her e-mail from Western Coalfields Ltd. (WCL) and was called for verification of documents. Accordingly, the complainant has visited the office of Western Coalfields Ltd. (WCL) where said Shilpa was present but the interview was not taken. Subsequently, said Shilpa again informed him that some posts are vacant in the State Bank of India and asked him to visit Delhi. Accordingly, he visited Delhi along with his wife. Said Shilpa has taken the wife of the complainant to the main office of State Bank of India and informed that she has to collect the appointment letter from the branch at Jeevantara building, Delhi. Accordingly, they visited there and one Clerk handed over the appointment letter. Thereafter, the complainant along with his wife returned to Nagpur and went at Aurangabad CIDCO branch to join. It was informed to them that the appointment letter issued to them is a fake and fraudulent document. Therefore, he approached to the police and lodged the report.

4. After registration of the crime, during investigation, it revealed that present applicant is the main accused who has run the job racket along with the co-accused. During investigation, 52 persons came forward and gave statement that they are also duped by the present applicant and other accused persons on the pretext of providing a job at Western Coalfields Ltd. (WCL), State Bank of India and Railway by obtaining the amount. The amount involved is Rs.3,93,72,990/-. The applicant who was an employee of Western Coalfields Ltd. (WCL) and it revealed to the Western Coalfields Ltd. (WCL) that by misusing the position he has obtained the money by promising to give the job in the Western Coalfields Ltd. (WCL), therefore, he was dismissed from the service.

5. Learned Counsel Mr. Gandhi for the applicant submitted that as far as the present applicant is concerned, he is not connected with this crime. There is no direct material against him. He submitted that his earlier bail application was rejected but now this application is filed on the

ground that there is inordinate delay in trial. The speedy trial is the fundamental right of the present applicant under Article 21 of the Constitution of India and the said right enshrined under Article 21 of the Consitutition of India is to be protected. Even the charges are not framed. The punishment provided for the offence is imprisonment less than seven years. He submitted that now the investigation is completed and charge-sheet is filed. Considering there is inordinate delay and in the catena of decisions the Hon'ble Apex Court has considered the right of the accused as to the speedy trial is concerned. He further submitted that even the involvement of the present applicant is in the economic offence, in view of the observation of the Hon'ble Apex Court in the case of **Sanjay Chandra v. CBI** reported in **(2012) 1 SCC 40** wherein it is observed that "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."

6. He also referred the observation of the Hon'ble Apex Court in the case of **P. Chidambaram v. Directorate of Enforcement,** reported in **(2020) 13 SCC 791**, wherein it is observed 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 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."

7. He also placed reliance on the decision of **Manish Sisodia Vs. Directorate of Enforcement in Criminal Appeal No. _____ of 2024 [Arising out of SLP (Criminal) No.8781 of 2024]**, wherein the Hon'ble Apex Court by referring its earlier decision including **Javed Gulam Nabi Shaikh vs. State of Maharashtra and another** reported in

(2024) SCC OnLine SC 1693, **Gudikanti Narasimhulu and Others v. Public Prosecutor, High Court of Andhra Pradesh** reported in **(1978) 1 SCC 240**, **Shri Gurbaksh Singh Sibbia and Others v. State of Punjab** reported in **(1980) 2 SCC 565**, **Hussainara Khatoon and Others v. Home Secretary, State of Bihar** reported in **(1980) 1 SCC 81**, **Union of India v. K.A. Najeeb** reported in **(2021) 3 SCC 713** and **Satender Kumar Antil v. Central Bureau of Investigation and Another** reported in **(2022) 10 SCC 51** wherein the Apex Court has observed "If the State or any prosecuting agency including the court concerned has no wherewithal to provide or protect the fundamental right of an accused to have a speedy trial as enshrined under Article 21 of the Constitution then the State or any other prosecuting agency should not oppose the plea for bail on the ground that the crime committed is serious. Article 21 of the Constitution applies irrespective of the nature of the crime." For all above these reasons, he prays to release the accused on bail.

8. Per contra, learned APP strongly opposed the said application on the ground that in all 98 persons are duped by the present applicant by taking the disadvantage of his position in Western Coalfields Ltd. (WCL). During investigation, the Investigating Officer has collected the list of 96 candidates signed by IAS officer. The test identification parade was

conducted and the present applicant was identified. The inquiry report of the Western Coalfields Ltd. (WCL) shows that applicant was dismissed on the ground that he had obtained the money from various persons on the assurance of providing job. There are criminal antecedents against the present applicant. In view of that, the application deserves to be rejected. She submitted that admittedly, the granting or refusing of bail is a discretion of the Court and said discretion is to be exercised in a judicious manner by taking into consideration the factors that the nature of accusation, reasonable apprehension of tampering with the witnesses, and *prima facie* satisfaction of the Court in support of the charge.

9. After hearing the learned Counsel for the applicant and learned APP for the State and on perusal of the entire charge-sheet, it reveals that as per the allegation, it was the present applicant who induced the other co-accused as well as the various persons and obtained the amount. In all 98 persons came forward from whom the present applicant and the other co-accused have obtained the money on the promise of providing a job and prepared the forged documents showing them the job was provided to them and they were duped. As far as the involvement of the present applicant in the alleged offence is concerned, it reveals from the investigation papers. The earlier application was rejected by this Court by considering the *prima facie* material against

the present applicant. However, now the application is filed on the ground that there is a delay in trial and the applicant is facing the charge under Sections 406, 411, 413, 420, 467, 468, 471, 120-B and 201 of the IPC. Except the Section 413, all the offences are punishable with the punishment less than seven years. As far as the application of Section 413 of IPC is concerned, it is doubtful as it deals with the habitual dealing in stolen property. There is no allegation as to the dealing with the stolen property, therefore, the application of Section 413 of IPC in the present matter appears to be doubtful one.

10. Considering the reason mentioned in the application that the applicant is behind bar since 10.01.2023 approximately two years and still charges are not framed. There is no progress in the trial. In the light of the observation of the Hon'ble Apex Court in the catena of decisions that "If the State or any prosecuting agency including the court concerned has no wherewithal to provide or protect the fundamental right of an accused to have a speedy trial as enshrined under Article 21 of the Constitution then the State or any other prosecuting agency should not oppose the plea for bail on the ground that the crime committed is serious. Article 21 of the Constitution applies irrespective of the nature of the crime." Admittedly, the involvement of the present applicant revealed in the present offence, but considering that his right of speedy trial would be affected if the trial

is not commenced and concluded within a short span of time. Considering the same, the application of the present applicant deserves to be allowed by imposing certain conditions. Accordingly, I proceed to pass following order.

ORDER

(i) The application is allowed.

(ii) The applicant **Rakesh s/o Ramkishor Khurana** shall be released on bail in connection with Crime No.09/2022 registered with Police Station Kelwad, District Nagpur for the offences punishable under Sections 406, 411, 413, 420, 467, 468, 471, 120-B and 201 of the Indian Penal Code, on executing PR Bond in the sum of Rs.1,00,000/- with one solvent surety in the like amount.

(iii) The applicant shall not induce, threat or promises any witnesses who are acquainted with the facts of the case either physically or through electronic media.

(iv) The applicant shall restrain himself from communicating with any witnesses or any person who is acquainted with the facts of the case.

(v) The applicant shall attend the proceeding before the Sessions Court without seeking any exemption unless there are exceptional circumstances.

(vi) The applicant shall not leave the jurisdiction of the Nagpur District without prior permission of the District Court, Nagpur.

(vii) The applicant shall surrender his passport if he is having before the Investigating Officer.

(viii) The single incident of tampering of the witnesses, if reported would lead to the cancellation of bail.

(ix) The applicant shall attend the concerned Police Station twice in a month on 1st and 15th of every month and the Investigating Officer or the Officer in-charge of the said Police Station shall record his presence.

The application is disposed of.

(URMILA JOSHI-PHALKE, J.)

Sarkate