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

CRIMINAL APPLICATION (APPA) NO. 1375 OF 2024
IN
CRIMINAL APPLICATION (BA) NO. 687 OF 2024

Mahendra s/o Hadmana Ram Mali **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. A.M. Jaltare, counsel for the applicant.
Mr. C.A. Lokhande, APP for non-applicant/State.
Mr. M.A. Sable, counsel for Assist to Prosecution.

CORAM : URMILA JOSHI-PHALKE, J.
DATED : 26/08/2024.

1. Heard.

2. By this application, the original complainant is seeking permission to assist the prosecution by engaging the counsel.

3. In view of the contention raised in the application and the application is filed by the original complainant, permission is granted to engage the counsel to assist the prosecution.

4. The application is allowed and disposed of accordingly.

CRIMINAL APPLICATION (BA) NO. 687 OF 2024

1. The applicant came to be arrested on 28/05/2024, in connection with Crime No. 373/2023 registered with Police Station Narkhed for the offence punishable under Section 409, 413 and 120-B read with Section 34 of the Indian Penal Code, 1860.

2. The crime is registered on the basis of a report lodged by the Haste Kha Idris Kha Pathan, alleging that he is doing wholesale business of sale and purchase of food grains like Chana and Tur in Khairgaon. He used to purchase the said articles from the farmers of nearby villages in Narkhed. In March 2023, he received the call from Mr. Girish, who is the proprietor of Ekvira Enterprises, and it was disclosed to him that he is interested in starting the business with the complainant. The complainant informed Accused No. 1 that he will first inquire about the complainant and then start the business. After some days, the co-accused Girish, along with other co-accused Deepak Soni @ Bhavesh Bhanushali, Mr. Govindbhai Kahra, Vipul Bhanushali, Ranjeet Jha, Rajesh Puri, and Mahendra Mali, approached him at his office and godown. Depak Soni is the proprietor of Ashapura Oil Trading Company; Govindbhai Kahara is the proprietor of Mahadev Trading Company; Vipul Bhanushali is the proprietor of Gurudev Trading Company; Ranjeet Jha is the proprietor of Mittal Agro; Rajesh Puri is the proprietor of Bharat Trading Company; and Mahendra Mali is the proprietor of Maa Trading Company. The co-accused asked the complainant to deliver the

material at Vasai and said material was purchased on credit. In view of that, the complainant delivered the first consignment on 05/04/2023 to Ashapura Oil Trading Company via Lala Transport, and subsequently he sent material to the various traders, including the present applicant.

3. It is alleged that the present applicant has paid Rs. 84,29,999/- and still an amount of Rs. 2,73,81,748/- is due from the present applicant. It was alleged that the complainant collected the goods from the nearby villages and sold them to the present applicant and other co-accused, but instead of getting the payment from the present applicant, he as well as the other agriculturists were duped by the present applicant, and therefore, he approached the police station and lodged the report.

4. Learned counsel, Mr. A.M. Jaltare for the applicant, submitted that the applicant is in a trading business and, as far as the applicant is concerned, has not directly contacted the complainant, but he received the goods from Bharat Trading Company owned by Rajesh Puri. Then also, the applicant has deposited the amount in the account of the complainant to the tune of Rs. 83,29,999/-, and as per the prosecution, the amount of Rs. 2,73,81,748/- is outstanding against him. He submitted that, in fact, the contention of the informant is that he has sold material total worth of Rs. 3,58,11,747/- therefore, the share of the present applicant is not segregated by the prosecution or the investigating agency, and the responsibility of the present applicant is not fixed.

5. He submitted that, now investigation is already complete and the charge sheet is already filed, other co-accused, namely Ranjeet Pramanand Jha and Rajesh Puri, from whom the applicant has purchased the goods, are already released on bail. He submitted that as far as the further incarceration of the present applicant is concerned, being it is not a recovery proceeding, merely because some amount is due, is not sufficient to keep the present applicant behind bar. The investigation is now completed, and charge-sheet has been filed. Even considering the involvement of the present applicant is an economic offence. Considering the decision of the Hon'ble Apex Court in the case of ***P. Chidambaram v. Directorate of Enforcement, (2020) 13 SCC 791*** being investigation is completed and charge-sheet is filed, the applicant shall be released on bail.

6. Learned APP strongly opposed the said application on the ground that, considering the fact that various agriculturists from whom the informant has purchased the said food-grains and sold them out to the present applicant and other co-accused. A huge amount of the food grains that are sold out by the farmers are involved. He submitted that, as far as the present applicant is concerned, still Rs. 2, 73,81,748/- is yet to be recovered from the present applicant. In view of that, the application deserves to be rejected. He further submitted that considering the involvement of the present applicant is an economic offence, the investigation though completed, but the applicant is arrested from Uttar Pradesh, therefore the

applicant is at flight risk, and therefore, the application deserves to be rejected.

7. Learned counsel for the complainant endorsed the same contention and submitted that, considering the involvement of the present applicant in an economic offence and, moreover, the applicant is at flight risk, the application deserves to be rejected.

8. After hearing learned counsel for the applicant and learned APP for the State as well as learned counsel for the complainant, perused the entire investigation papers, from which it reveals that the complainant is a wholesaler who used to purchase the food grains from the various agriculturists and thereafter used to sell them to the various States. The present applicant is one of the traders who has purchased the said food grains from Rajesh Puri. The bills which are placed on record show that from 21/04/2023 till 03/06/2023, from time to time, the applicant has purchased Chana from this Bharat Trading Company. The bank transactions show that, out of the consideration amount, the applicant has directly transferred the amount of Rs. 83,29,999/-.

9. Thus, there is no dispute as to the fact that the applicant is a trader who has purchased the said food grains from the co-accused. The statement of the account of the complainant also shows that he received the amount from the present applicant. The statement of the witnesses recorded during the investigation also shows that various agriculturists

have sold their food grains, Chana, to the complainant, and the complainant has transported the same to the various traders. As far as the allegations, he has not received the amount from the various traders, including the present applicant. As far as the allegation of the prosecution is concerned, out of the entire Rs. 3,55,56,970/-, the applicant has only paid Rs. 83,29,999/- and still Rs. 2,73,81,748/-. From the investigation papers, nowhere it reveals that, exactly what was the transaction between the Rajesh Puri and the present applicant and what is the share of the present applicant in the said misappropriation.

10. Learned counsel for the applicant placed reliance on the decision of the Andhra Pradesh High Court in the case of ***M/s HICEL Pharma Ltd., and others Vs State of Andhra Pradesh and others [2000 Cri. L.J.2566]*** wherein it is held by the Andhra Pradesh High Court, that misappropriation of goods, sale transaction between the complainant and the accused, goods in question sold by complainant to accused on credit. The cheques issued by accused towards payment of amount due, bounced, after sale of goods title in property passed to the accused, as it was not dependent on payment of sale consideration. Therefore, accused cannot said to have misappropriated the goods supplied to him by the complainant.

11. On perusal of the order of the Andhra Pradesh High Court, it reveals that, in view of the definition of Section 415 I.P.C., which says that whoever, by deceiving any person,

fraudulently or dishonestly induces the person so deceived to deliver any property to any person, or to consent that any person shall retain any property, or intentionally induces the person so deceived to do or omit to do anything which he would not do or omit if he were not so deceived, and which act or omission causes or is likely to cause damage or harm to that person in body, mind, reputation, or property, is said to 'cheat'.

12. Under the first part of Section 415 of the Indian Penal Code, 1860, what is contemplated to constitute the offence of cheating is that the accused should have deceived the complainant and fraudulently or dishonestly induced him to deliver any property to any person.

13. It is observed by the Andhra Pradesh High Court that inasmuch as the delivery of goods sold by the complainant in favour of the accused is a normal sale transaction and in absence of any specific allegation that at the time of the sale, the accused made any specific representation which was found to be false and deceptive and that the accused on the basis of such false representation fraudulently induced the complainant to deliver the goods, the requirement of the first part of Section 415 of the IPC cannot be said to have been satisfied. Admittedly, as seen from the allegations made in the complainant itself, it is a normal sale transaction in which the complainant supplied the goods to the accused on credit.

14. As far as the definition of criminal breach trust is concerned, which also states that, whoever, being in any manner entrusted with property, or with any dominion over property, dishonestly misappropriates or converts to his own use that property, or dishonestly uses or disposes of that property in violation of any direction of law prescribing the mode in which such trust is to be discharge, or of any legal contract, express or implied, which he has made touching the discharge of such trust, or willfully suffers any other person so to do, commits "criminal breach of trust"

15. The ingredients in order to constitute criminal breach trust Act (1) entrusting a person with a property or with any dominion over property; (2) That person entrusted dishonestly misappropriating or converting that property to his own use, or; (3) dishonestly using or disposing of that property or willfully suffering any other person so to do in violation of any direction of law prescribing the mode in which such trust is to be discharged, of any legal contract made touching the discharge of such trust. Mere breach of contract does not constitute an offence under Section 405 I.P.C. without there being care of entrustment.

16. In the light of the ingredients of the offence, if the facts of the present case are taken into consideration, admittedly, there was a sale transaction between the complainant and the various traders. In pursuance of the sale transactions, the complainant has transported the said goods on credit to the various traders, and the complainant has not

received the amount against the said goods. Thus, it is not the case that the present applicant and other traders represented themselves, and thereafter, said representation was found to be false or deceptive. On the contrary, it appears that it was a business transaction; whether there was an intention since inception to cheat the complainant or other farmers is a matter of evidence. At this stage, it reveals that there was a business transaction which was between the complainant and the various traders, and one trader has sold out the said food grains to the other traders and the agriculturist, and the complainant has not received the amount towards the sale transaction. Admittedly, the present proceedings are not a recovery proceeding, and therefore, the contention of the learned APP that, some amount is yet to be received from the present applicant as well as other co-accused cannot be considered at this stage. Even accepting the contention of the prosecution as it is, that the involvement of the present applicant is in the economic offence then also the observations of the Hon’ble Apex Court needs to be taken into consideration in the case of ***P. Chidambaram v. Directorate of Enforcement [(2020) 13 SCC 791]***; ***Satender Kumar Antil Versus Central Bureau Of Investigation & Anr [2022 Livelaw (Sc) 577]; Sanjay Chandra Vs. Cbi, [(2012) 1 SCC 40]*** , wherein the Hon’ble Apex Court has considered 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.

17. It is further observed by the Hon'ble Apex Court ***Sanjay Chandra Vs. CBI*** referred (supra) that 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 cases 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.

18. The tripod test is laid down by the Hon'ble Apex Court while considering the bail application in the case of ***P. Chidambaram v. Directorate of Enforcement*** referred (supra) wherein the Hon'ble Apex Court has observed, it has been held even economic offence 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.

19. In the light of the above observation of the Hon'ble Apex Court and by applying the tripod test, admittedly, the present applicant is not at a flight risk; he is the permanent resident and also the businessman. Though it is alleged that involvement is in the economic offence but considering now the investigation is already completed and charge-sheet is filed, his presence in the custody may not be necessary for further investigation. In view of that, the application deserves to be allowed. Accordingly, I proceed to pass the following order.

a] The criminal application is **allowed.**

b] The applicant- Mahendra s/o Hadmana Ram Mali, shall be released on bail, in connection with Crime No. 373/2023 registered with Police Station Narkhed for the offence punishable under Section 409, 413 and 120-B read with Section 34 of the Indian Penal Code, 1860, on executing P.R. Bond of Rs. 50,000/- with one solvent surety in the like amount.

c] The applicant shall attend the Nagpur Gramin Police Station twice a month on 1st and 15th day of every month, and the investigating officer shall record his presence.

d] The applicant shall surrender his passport if he is having and shall not leave India without prior permission of the Court.

e] The applicant shall attend the proceedings before the Magistrate Court without seeking any exemption unless there are exceptional circumstances.

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

The criminal application is **disposed of.**

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

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