2024:BHC-NAG:8686

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

Criminal Application (BA) No. 691 of 2024

Arun S/o Sambhaji Meherkure
Versus
The State of Maharashtra through Police Station Officer, Police Station Chimur, District Chandrapur

Office Notes, Office Memoranda of Coram, appearances, Court's Orders or directions and Registrar's order	Court's or Judge's Order

Shri R.P.Joshi, Advocate for the applicant.
Mrs. Harshada Prabhu, APP for the non-applicant/State.

CORAM : URMILA JOSHI-PHALKE, J.
DATED : 6th AUGUST, 2024.

By preferring this application, the applicant is seeking bail under Section 439 of the Code of Criminal Procedure.

2. The applicant came to be arrested on 19th May, 2023 in connection with Crime No. 319 of 2022 registered under Sections 406, 408, 409, 420, 465, 467, 468, 471, 477-A, 120-B, read with Section 34 of the Indian Penal Code and Section 3 of the Maharashtra

Protection of Interest of Depositors (In Financial Establishments) Act, 1999.

3. The accusation against the present applicant is on the basis of report lodged by Rajesh Sudhakar Landage who is an Auditor who observed the serious irregularities in the day to day business of the society and also ascertained that there is misappropriation of the huge amount of Rs.7,95,35,833/-

4. As per the allegations the present applicant was secretary for the period of 2012-17 and Vice President from 2017-21. As per the allegations, the Board of Directors and Office bearers of the society namely Rashtrasant Tukdoji Nagri Sahakari Credit Society Limited, Chimur have had the conspiracy and by misusing their position while performing their duties committed the misappropriation. It is alleged that the present applicant who was initially the Secretary and subsequently was Vice President is also involved in misappropriation and the amount of Rs.6,62,814/- was received by him by this misappropriation. Further allegation against the present applicant is that he has not deposited the said amount which was misappropriated by him and he was also part of the conspiracy hatched by the other office bearers and in presence of that

conspiracy the deposits of the depositors were misappropriated.

5. Learned counsel for the applicant Shri R.P.Joshi submitted that as far as the allegation against the present applicant is concerned on the basis of audit report. In fact, no *prima facie* case is made out against the present applicant as the audit report nowhere shows any details regarding the said amount. He further submitted that even for the sake of argument, the allegations are taken as it is, further incarceration of the present applicant is not required as the investigation is already completed and the chargesheet is already filed. He submitted that trial would take its own time for final disposal and the applicant cannot be kept behind the bar by way of punishment.

6. He further submits that now from the investigation papers it reveals that even accepting the allegations as it is, the amount of Rs.6,62,814/- is shown against the present applicant. This Court has already considered the bail application of the co-accused Atul Meherkure and Amol Meherkure against whom more serious allegations are levelled. He submitted that considering the investigation is completed, the charge-sheet is filed and in view of the tripod test laid down by the Hon'ble Apex Court in the judgment of *P.*

Chidambaram Vs. Central Bureau of Investigation [2019 SCC Online SC 1380] and P.Chidambaram Vs. Directorate of Enforcement, [(2020) 13 SCC 791], the applicant shall be released on bail.

7. Per contra, learned Additional Public Prosecutor strongly opposed said application by pointing out that there is *prima facie* case against the present applicant. The nature of the offence is economic offence. The investigation has disclosed that the present applicant was initially Secretary for the period 2012-17 and subsequently acted as a Vice President. During his tenure, the scam was committed by hatching the conspiracy between the Board of Directors and office bearers. The various records pertaining to transfer withdraw and daily records, it reveals the involvement of the present applicant in the alleged offence. She submitted that the nature of the offence is a serious wherein public money is involved. If the applicant released on bail, there is every possibility of tampering the witnesses as well as he would not be available for trial. In view of that the application deserves to be rejected.

8. After hearing learned counsel for the applicant and learned Additional Public Prosecutor for the non-applicant/State. The entire investigation is

based on the audit report. From the audit report, it reveals that the present applicant who was Secretary is involved in the misappropriation. The matter in which the offence was committed can be explained by setting an example that if the pigmy agent collects the amount of Rs.47,540/- and out of the same, he used to deposit Rs.41,340/- and he used to deposit the less amount. As far as the present applicant is concerned, the allegation is that he was acting as a Secretary and the deposits were misappropriated by the present applicant as well as other co-accused. Thus, the modus operandi reveals from the audit report. Thus, the involvement of the present applicant is revealed from the investigation papers and the amount which was misappropriated by the present applicant was Rs. 6,62,814/-. Admittedly, he has not deposited the said amount after it was taken out from the audit report. Audit report clearly discloses this fact and shows the involvement of the present applicant in the alleged offence. However, considering the investigation is already completed and the charge-sheet is already filed and other two accused against whom the more serious offences are already released on bail. The application of the present application deserves consideration.

9. Learned counsel for the applicant placed reliance on *P. Chidambaram Vs. Central Bureau of Investigation* (supra), wherein the Hon'ble Apex Court has considered the tripod taste and held that as applicant is not a flight risk and released him on bail. It is further observed by the Honourable Apex Court while considering the aspect of the economic offence that we are conscious of the fact that the accused are charged with economic offence 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. Similar is the case in the present case also. The investigation is already completed and charge-sheet is filed and nothing in on record to show that if applicant/accused is released on bail he will be at a flight risk. The applicant is permanent resident of Chimur, District Chandrapur and having permanent abode there. The Honourable Apex Court in the case of *Satender Kumar Antil Vs. Central Bureau of Investigation, [(2022) 10 SCC 51]* wherein also considered the aspect of the economic offence and by referring the decision of *P. Chidambaram v. Directorate*

of Enforcement (supra) and also by referring the another decision in *Sanjay Chandra Vs. Central Bureau of Investigation [(2012) 1 SCC 40]* wherein it is held that we cannot lose sight of the fact that the investigating agency has already completed investigation and the charge-sheet is already filed.

10. Admittedly, the grant or refusal to grant bail lies within the discretion of the court. The grant or denial is regulated, to a large extent which depends upon the facts and circumstances of each particular case. At the same time, it is also well settled that the right to bail is not to be denied merely because of the sentiments of the community against the accused are there. The primary purposes of bail in a criminal case are to relieve the accused of imprisonment, the intention behind it not to deprive him from his liberty and it cannot be by way of punishment.

12. In view of that and considering that human liberty is a precious constitutional right, the application deserves to be allowed by imposing certain conditions. Accordingly I proceed to pass following order :

(i) The application is allowed.

(ii) The applicant – Arun Sambhaji Meherkure in connection with Crime No.319/2022 registered under Sections 406, 408, 409, 420, 465, 467 468, 471, 477-A, 120-B, read with Section 34 of the Indian Penal Code and Section 3 of the Maharashtra Protection of Interest of Depositors (In Financial Establishments) Act, 1999, be released on bail on furnishing P.R. bond in the sum of Rs.50,000/- with one solvent surety in the like amount.

(iii) The applicant shall attend the police station Economic Offence Wing, Chandrapur on first day of every month, till the culmination of the trial.

(iv) The applicant shall attend the trial Court regularly without seeking any exemption unless there are exceptional circumstances.

(v) The applicant shall furnish his Cell phone number and address with the address proof and the names of two relatives along with their address proof.

(vi) The applicant shall not directly or indirectly make any inducement and threat or promise to any person acquainted with the facts of the present case.

13. Criminal application disposed of.

[URMILA JOSHI-PHALKE, J.]