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

CRIMINAL APPLICATION (BA) NO.690 OF 2024
(Chandu s/o Asaram Sonkusare 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

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Mr. K.S. Motwani, Advocate for the applicant.
Mr. K.R. Lule, APP for the State.

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

The applicant came to be arrested on 06/11/2023 in connection with Crime No.232/2023 registered with Police Station Kurkheda, District Gadchiroli for the offence punishable under Sections 409 and 420 of the Indian Penal Code.

2. The crime is registered on the basis of the report lodged by Gitesh Keshav Sonkusare working as a Manager of Samarth Urban Co-Operative Society, Kurkheda on an allegation that the applicant was working as a Pygmy Agent with the said Society and was collecting the amount from the depositors under daily deposit scheme and saving scheme and then depositing the same with the society. However, with intention to wrongful gain, the applicant has not deposited the amount collected from the depositors and thereby committed the offence of misappropriation of Rs.11,73,595/-. It is alleged that the applicant has collected the amount from the 62 account

holders and deposited the same in the co-operative society and thereby caused loss to the investors. On the basis of the said report, police have registered the crime against the present applicant.

3. Learned Counsel for the applicant submitted that as far as the allegation against the present applicant is concerned which are false in nature. Merely on suspicion he is implicated in the alleged offence. In fact, now investigation is completed and charge-sheet is filed, further incarceration of the present applicant is not required. In view of that, he be released on bail.

4. Learned APP strongly opposed the said application and submitted that the applicant was working as a Pygmy Agent collected money from the 62 account holders and not deposited the same. Thus, caused the loss to the investors who have invested their hard earned money in the said society. He submitted that considering the stake of the misappropriation of the amount, if applicant-accused is released on bail, he would tamper the prosecution evidence and would not be available for trial. In view of that, the application deserves to be rejected.

5. I have heard learned Counsel for both the parties. Perused the investigation papers from which it reveals that the crime is registered on the basis of report lodged by the Manager alleging that the present applicant

has collected the investment from the 62 account holders and he was under obligation to deposit the same in their accounts but he has not deposited the same. During the investigation, the statements of the investors were also recorded and from which also it reveals that the applicant has collected the money but not deposited the same. Thus, *prima facie* case is made out against the present applicant but considering that now investigation is completed and charge-sheet is filed, further incarceration of the applicant is not required. Though involvement of the present applicant is in the economic offence, it is necessary to consider the observation of the Hon'ble Apex Court in the case of ***P. Chidambaram v. Directorate of Enforcement, (2020) 13 SCC 791,*** 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. It further observed that 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."

6. In the case of ***Sanjay Chandra Vs. Central Bureau of Investigation [(2012) 1 SCC 40]*** wherein also the Hon'ble Apex Court held as under :

> *"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."*

7. Considering the above propositions laid down by the Hon'ble Apex Court and considering the fact that now the investigation is completed and charge-sheet is filed, further incarceration of the present applicant is not required. In view of that, the application deserves to be allowed by imposing certain conditions. Accordingly, I proceed to pass the following order :

(i) The application is allowed.

(ii) The applicant - Chandu s/o Asaram Sonkusare in connection with Crime No.232/2023 registered with Police Station Kurkheda, District Gadchiroli for the offence punishable under Sections 409 and 420 of the Indian Penal Code, be released on bail on executing PR bond of Rs.25,000/- with one surety in the like amount.

(iii) The applicant shall attend the concerned police station once in a month i.e. on 5th day of every month and the Police Station Officer shall record his presence.

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

(v) The applicant shall not leave the jurisdiction of Kurkheda, District Gadchiroli without seeking prior permission of the Court.

(vi) The applicant shall not induce, threat or promise any witnesses in any manner who are acquainted with the facts of the case.

8. The application is disposed of.

(URMILA JOSHI-PHALKE, J.)

**Divya*