2024:BHC-NAG:9525

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

CRIMINAL APPLICATION (BA) NO.704 OF 2024

Shashank s/o Gunwant Virulkar
Vs.
State of Maharashtra, Through Police Station Officer, Police Station Sonegaon, Nagpur

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

Mr. A. S. Dhore, Counsel for the applicant.
Mr. U. R. Phasate, APP for non-applicant /State.
Mr. D. V. Dhondurkar, Counsel for assist to prosecution.

CORAM : URMILA JOSHI-PHALKE, J.
DATED : 23/08/2024

1. The applicant came to be arrested on 24.04.2024 in connection with Crime No.70/2024 registered with Police Station, Sonegaon, Nagpur for the offences punishable under Sections 420 and 406 read with 34 of the Indian Penal Code and under Section 3 of the Protection of Interest of Depositors in Financial Establishments Act, 1999.

2. The crime is registered on the basis of the report lodged by the informant Tushar Rajendra Vaidya alleging that he runs a Gym under the name and styled as Marble Fitness in Nagpur. From last two and half years, one Shashank Gunwant Virulkar i.e. the present applicant attending the Gym for exercise and therefore, he got acquaintance with him. The applicant and his wife informing about their

business of accepting the investment or deposits and to make further investments in the share market etc. and also promised him that if he invested the amount, he would get additional interest at the rate of 15% per month and he would get the handsome returns on this investment. The applicant and his wife induced the investment with them on promise to return the invested amount plus interest thereon at the rate of 12 to 15 % per month. On trusting the present applicant, he has invested the amount of Rs.11,46,000/-, but received only Rs.3,61,750/-. On the basis of said report, police have registered the crime against the present applicant.

3. During the investigation, the other investors also came forward before the investigating agency whose statements were recorded and it reveals that in a similar manner, they were also induced for the investment and the amount which was collected by the present applicant is more than Rs.1,60,00,000/-. On the basis of the said report, police have registered the crime against the present applicant.

4. Heard learned Counsel Mr. Dhore for the applicant who submitted that now the investigation is completed and charge-sheet is filed. As far as the allegations are concerned, the offences alleged are punishable with imprisonment up to seven years. The investigation is already completed and charge-sheet

is already filed, further incarceration of the present applicant is not required. Moreover, he submitted that the applicant is involved in a trading business and as a part of business, he only asked the complainant and other investors to invest the amount. He has not floated any scheme, there was no intention to dupe. It was the complainant and the other investors who have invested the amount for trading and due to some reasons they could not get the returns and therefore, this false report is lodged against the present applicant and his wife. He submitted that now the investigation is completed therefore, further incarceration of the present applicant is not required, in view of that, he be released on bail.

5. Learned APP, assisted by the learned Counsel for the complainant strongly opposed the said application and submitted that by inducing the informant as well as the other investors, the applicant has obtained the money and the investors were duped. The intention of the applicant reveals since inception. They also pointed out the statements of the witnesses which show that what was the *modus operandi* of the present applicant to get the investment and to dupe the investors. They submitted that even considering that the investigation is completed and charge-sheet is filed, considering the involvement of the present applicant

in the economic offence, the application deserves to be rejected.

6. After hearing the learned Counsel for the applicant and learned APP for the State, perused the recitals of the FIR as well as investigation papers from which it reveals that the investigation is already completed and charge-sheet is filed. From the recitals of the FIR and various statements of the witnesses it reveals that the applicant was involved in a trading business and he asked the investors as well as the complainant to invest the amount by informing them that they could get the benefits and additional interest on the invested amount and thereafter, the investors have invested the amount. Initially, the investors have received some benefits, but subsequently, they could not get the benefit and therefore, the FIR came to be lodged against the present applicant. Considering the statements of the various witnesses, the involvement of the present applicant revealed. However, considering the investigation is completed and charge-sheet is filed, moreover, the offences alleged are punishable with imprisonment up to seven years, and considering the nature of the crime, the observation of the Hon'ble Apex Court in the case of **P. Chidambaram Vs. Directorate of Enforcement** reported in **(2020) 13 SCC 791** wherein Hon'ble Apex Court has considered the gravity of the offence, the object of the Special Act, and the attending circumstances

which are a few of the factors to be taken note of, along with the period of sentence. It is observed by the Hon'ble Apex Court in the case of **Satender Kumar Antil Vs. Central Bureau of Investigation and another** reported in **(2022) LiveLive (SC) 577** that 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. In the case of **P. Chidambaram Vs. Directorate of Enforcement** (supra) the observation of the Hon'ble Apex Court in para No.23 reads as under:

> *"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."

8. It is further observed by the Hon'ble Apex Court that we are conscious of the fact that the accused are charged with economic offences 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 Court. Therefore, their presence in the custody may not be necessary.

9. Similar of the fact that in the present case, the offence alleged are punishable with imprisonment up to seven years. Admittedly, the involvement of the present applicant is in the economic offence. However, considering the fact that the investigating agency has already completed the investigation and filed the charge-sheet before the Court therefore, the presence in the custody of the present applicant is not necessary for further investigation. In view of that, the application deserves to be allowed. Accordingly, I proceed to pass following order:

ORDER

(i) The application is allowed.

(ii) The applicant **Shashank s/o Gunwant Virulkar** shall be released on bail on executing PR Bond of Rs.50,000/- with one solvent surety of the like amount, in connection with Crime No.70/2024 registered with Police

Station, Sonegaon, District Nagpur for the offences punishable under Sections 420 and 406 read with 34 of the Indian Penal Code and under Section 3 of the Protection of Interest of Depositors in Financial Establishments Act, 1999.

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

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

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

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

(vii) The applicant shall not indulge himself in similar type of the activities.

(viii) Contravention of any of the conditions would lead to the cancellation of the bail.

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

10. The application is disposed of.

(URMILA JOSHI-PHALKE, J.)

Sarkate