



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

**CRIMINAL APPLICATION (BA) NO. 800 OF 2024**

Tapas Nandadulal Ghosh  
Vs.  
State of Maharashtra, Through Police Station, Sitabuldi, Nagpur

---

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

Court's or Judge's orders

---

Mr. Tarun Prmar, Counsel for the applicant.  
Ms. Shamshi Haider, APP for non-applicant /State.

**CORAM : URMILA JOSHI-PHALKE, J.**  
**DATED : 18 /10/2024**

1. The applicant came to be arrested on 09.12.2020 in connection with Crime No.505/2020 registered with Police Station, Sitabuldi, Nagpur for the offence punishable under Section 409, 420, 467, 468, 470 and 471 read with Section 34 of the Indian Penal Code.

2. The crime is registered on the basis of report lodged by sister-in-law of the victim by name Mr. Kiran Devpujari. At the time of filing of the said complaint, Smt. Mukta Bobde was aged about 94 years and suffering from age related health issues, therefore, the complainant has filed the complaint on her behalf. The victim was the owner of the "Seasons lawns", situated at Aakashwani Square, Nagpur. The applicant was appointed to take care of lawn bookings and other related works having pay

scale of Rs.9000/- per month as a salary and Rs.2500/- per booking as commission. The job of the applicant to take bookings, depositing booking money, and cheques in victim's bank account, incurring expenditure for maintenance of lawns, operating victim's account, and keeping accounts of the entire Seasons lawns. The applicant conspired with his wife and other-accused and did not show the actual bookings done by in various guests, and diverted the booking amount to its own account and accounts of other co-accused, and in this way, he betrayed the victim. On the basis of the said report, police have registered the crime against the present applicant.

3. Heard learned Counsel for the applicant who submitted that applicant is arrested on 09.12.2020 and since then he is behind bar. There is no progress in the trial. There is delay in conclusion of the trial and applicant cannot be kept behind bar for indefinite period. It is further submitted that even accepting the allegations as it is, no offence made out against the present applicant and therefore on merits also, the applicant is entitled to release on bail.

4. Learned APP strongly opposed the said application on the ground that 94 years old lady was duped by the present applicant, who was completely relied upon the present applicant. The present

applicant was working with her and looking after the entire transactions and the bank accounts. He has obtained the bookings, but not deposited the amount in the account of the victim and misappropriated the said amount. The amount which misappropriated is more than 2 Crore 50 Lakhs. Thus, considering the stake involved in the offence, the application deserves to be rejected.

5. In support of the contention of the learned Counsel for the applicant placed reliance on **Javed Gulam Nabi Shaikh Vs. State of Maharashtra and another in Criminal Appeal No.2787/2024 decided on 03.07.2024** and **Sheikh Javed Iqbal @ Ashfaq Ansari @ Javed Ansari Vs. State of Uttar Pradesh in Criminal Appeal No.2790/2024 decided on 18.07.2024**, **Manish Sisodia Vs. Directorate of Enforcement arising out of SLP(Criminal) No.8781/2024**, **Balwinder Singh Vs. State of Punjab petition for Special Leave to Appeal (Crl.) No.8523/2024**, **Criminal Application (BA) No.429/2024 Dattatraya Shrikrushna Shejole Vs. The State of Maharashtra decided on 06.08.2024**, wherein the aspect of delay in trial is considered by the Apex Court and it was held 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.

6. After hearing the learned Counsel for the applicant and learned APP for the State, perused the investigation papers from which it reveals that the applicant was serving with the victim Smt. Mukta Bobde, who was 94 years old and was looking after her bank transaction as well as the transaction towards the bookings of the 'Season lawn'. The entire transaction of the banks was also looked after by the present applicant. Behind the back of victim, who is 94 years old lady, the present applicant has obtained the bookings not deposited the amount to the account of the victim but the said amount was deposited in his account. Now the charge is already framed and the prosecution has examined 10 witnesses. Thus, contention of the learned Counsel for the applicant that there is no progress in the trial is not substantiated by this fact. Though prosecution has cited 76 witnesses, but it is not that the prosecution would examine all the witnesses. The directions can be given to the trial Court to expedite the trial and disposed of the trial. The apprehension raised by the learned APP is also required to taken into consideration that if applicant/accused released on bail, he would not be available for trial and trial will held up as he is the resident of West Bengal State.

7. In the present case, considering the nature of the amount that victim was duped for 2.5 Crores and the involvement of the present applicant is in economic offence. The Hon'ble Apex Court while dealing with the offence, involving economic offences of huge magnitude, in the case of **Y.S.Jagan Mohan Reddy vs. CBI, reported in (2013)7 SCC 439** laid down that:

"while granting bail, the court has to keep in mind the nature of accusations, the nature of evidence in support thereof, the severity of the punishment which conviction will entail, the character of the accused, circumstances which are peculiar to the accused, reasonable possibility of securing the presence of the accused at the trial, reasonable apprehension of the witnesses being tampered with, the larger interest of the public/State and other similar considerations."

The Hon'ble Apex Court, in the case of **State of Gujarat vs. Mohan Lal Jitmalji Porwal, reported in (1987)2 SCC 364** held as follows:

"5. ....The entire community is aggrieved if the economic offenders who ruin the economy of the State are not brought to book. A murder may be committed in the heat of moment upon passions being aroused. An economic offence is committed with cool calculation and deliberate design with an eye on personal profit regardless of the consequence to the

community. A disregard for the interest of the community can be manifested only at the cost of forfeiting the trust and faith of the community in the system to administer justice in an even-handed manner without fear of criticism from the quarters which view white collar crimes with a permissive eye unmindful of the damage done to the national economy and national interest.....”

8. Considering the role of the applicant in the crime, having involved enormous and huge amount, the apprehension that it would be difficult to secure the presence of the accused and the huge amount of the victim who at the relevant time was 94 years old is at a stake and the role of the applicant which is clearly exposed. The application of the present applicant deserves to be rejected as far as merit is concerned.

9. The aspect of the delay is also considered by the Apex Court in the case of **Gurwinder Singh Vs. State of Punjab and another reported in 2024 LiveLaw (SC) 100**, the Hon’ble Apex Court has considered the judgment of **KA Najeeb Vs. Union of India reported in (2021) 3 SCC 713** and distinguished the same by observing that in the case of KA Najeeb the appellant has been in jail for last five years which is contrary to law laid down in the said case. While this argument may appear compelling at first glance, it lacks depth and

substance. In KA Najeeb's case this court was confronted with a circumstance wherein except the respondent-accused, other co-accused had already undergone trial and were sentenced to imprisonment of not exceeding eight years therefore this court's decision to consider bail was grounded in the anticipation of the impending sentence that the respondent-accused might face upon conviction and since the respondent-accused had already served portion of the maximum imprisonment i.e., more than five years, this court took it as a factor influencing its assessment to grant bail. Further, in KA Najeeb's case the trial of the respondent-accused was severed from the other co-accused owing to his absconding and he was traced back in 2015 and was being separately tried thereafter and the NIA had filed a long list of witnesses that were left to be examined with reference to the said accused therefore this court was of the view of unlikelihood of completion of trial in near future.

10. As far as present case is concerned, the trial is under way and ten witnesses are already examined. Mere delay in trial pertaining to the grave offences like the present one wherein the 94 years old lady was duped by the present applicant who was looking after the entire transaction of banks as well as booking of the lawns etc. and the apprehension that if applicant/accused is released on bail, he would not be available for the trial, appears to be reasonable. In view of that, the application deserves

(8)

28.ba.800.2024

to be rejected. Accordingly, I proceed to pass following order:

The application is rejected.

**(URMILA JOSHI-PHALKE, J.)**

Sarkate