



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

CRIMINAL APPLICATION (BA) NO. 874 OF 2024

Shahul Anand Simon (alias Shimon) 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. R.P. Joshi, counsel for the applicant.

Mr. K.R.Lule, APP for non-applicant/State.

CORAM : URMILA JOSHI-PHALKE, J.
DATED : 16/10/2024.

1. By this application, applicant is seeking bail under Section 483 of the Bhartiya Nagarik Suraksha Sanhita, 2023 (Section 439 of the Code of Criminal Procedure), in connection with Crime No.409/2023 registered with the non-applicant/police station for the offences punishable under Sections 406, 409, 420, 468 read with Section 34 of the Indian Penal Code, 1860 and Section 3 of the Maharashtra Protection of Interest of Depositors (in Financial Establishments) Act, 1999 (hereinafter referred to as 'MPID'), the applicant is arrested on 19/04/2023 and since then he is behind bars.

2. Learned counsel Mr. R.P. Joshi for applicant, submitted that applicant is director of Eden's Bachat Nidhi Company Limited bearing registration No. 305569. The company was involved in collecting funds from public against interest and lending it to the needy persons. The crime is registered against the applicant, on an allegation that they have collected the money from the investors to the tune of Rs.62,13,143/- and investors have not received either interests

or principle amount and, therefore, investors approached the police station and lodged the report. The crime is also registered under Section 3 of the Maharashtra Protection of Interest of Depositors (In Financial Establishments) Act. He submitted that due to Covid-2019 pandemic situation, the applicant could not pay the amount, though he was having an intention to pay, the amounts are not misappropriated. At the most, the act attributed is to the extent of non-refund of money which is of a civil nature and prays for grant of bail.

3. Learned APP strongly opposed the said application on the ground that total 67 investors invested amounts on inducement by applicant. It reveals from investigation papers that maximum investors are retired government employees who have invested their retiral amounts in the said company with a hope that they would get good returns. In fact, they have not received interest as well as the principle amount. As far as intention of applicant is concerned, the same can be ascertained from the circumstance that applicant has withdrawn amounts from all accounts only to deprive investors from receiving money. In view of that, the application deserves to be rejected.

4. Having heard learned counsel for applicant and learned APP for the State and perused investigation papers, from which it reveals that the informant and his father deposited Rs.17.5 Lacks, as they were assured that they would get interest @ 2% on their deposited amounts per month. Despite collecting deposits, neither the principle amount nor

the interest was paid. The applicant is the director. In all 67 victims are duped to the tune of Rs.62,13,143/-. To deprive investors, applicant have withdrawn amounts from respective accounts.

5. Learned counsel for applicant, placed reliance in the order passed by the Hon'ble Apex Court in the case of ***Manish Sisodia vs Directorate Of Enforcement Manish Sisodia vs Directorate Of Enforcement [2024 (3) RCR (Criminal) 877]*** and submitted that despite the directions given by this court, the trial Court has not proceeded with the trial and even the charges are not framed. The applicant can not be kept behind bar for the indefinite period. He submitted that the Hon'ble Apex Court in the case of ***Manish Sisodia (supra)*** observed that, it could thus clearly be seen that this Court expected the trial to be concluded within a period of 6-8 months. The liberty was reserved to approach afresh in the trial did not conclude within the period of 6-8 months. The liberty was also granted in case, the trial proceeded at a snail's pace in next three months.

6. It is further observed that though in the first order of this Court, liberty was reserved to move afresh for bail if the trial proceeded at a snail's pace within a period of three months from the date of the said order, the commencement of the trial is yet to see the light of the day. In these circumstances, in view of the first order of this Court, the appellant was entitled to renew his request.

7. He submitted that in the similarly manner, this Court has also while rejecting the application gave a liberty to the present applicant to move the application after eight months, if trial is not concluded. The trial Court has not framed and the charges also. Thus, in view of the observations of the Hon'ble Apex Court, in the similar situation, as the trial is not even progress. In view that, the applicant has right to renew his request and considering there is no progress in the trial, he be released on bail. He further invited my attention towards the observation of the Hon'ble Apex Court in the case of *P Chidambaram Vs Director of Enforcement [(2020) 13 SCC 791]* and submitted that in the case of *P Chidambaram* (supra) the tripod test are determined by the Hon'ble Apex Court and it is observed that, 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.

8. 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, by the facts and circumstances of each particular case. As far as the present case is concerned, admittedly, despite the order passed by this Court, there is no progress in the trial, even the charges are not framed and therefore, the observation of the Hon'ble Apex Court in the case of ***Manish Sisodiya*** (supra) is squarely applicable in the present case also. Moreover, now investigation is already completed, as far as further incarceration is concerned which is not required. 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 – ***Shahul Anand Simon (alias Shimon)*** shall be released on bail, in connection with Crime No.409/2023 registered with the non-applicant/police station for the offences punishable under Sections 406, 409,

420, 468 read with Section 34 of the Indian Penal Code, 1860 and Section 3 of the Maharashtra Protection of Interest of Depositors (in Financial Establishments) Act, 1999, on executing P.R. bond of Rs. 1,00,000/- with one solvent surety in the like amount.

- c] The applicant shall attend the concerned police station twice in a month on 1st and 15th day of every month till conclusion of the trial.
- d] The applicant shall not induce, threat of promise any witnesses who are acquainted with the facts of the present case.
- e] The applicant shall surrender the passport if he is having before the investigating officer.
- f] The applicant shall not leave the jurisdiction of the Chandrapur District without prior permission of the Court.
- g] The applicant shall attend the proceeding before the trial Court without seeking any exemption unless there are exceptional circumstances.

The criminal application is **disposed of**.

[URMILA JOSHI-PHALKE, J.]