



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

CRIMINAL WRIT PETITION NO.688/2023

Hitesh S/o Tulsidas Nachwani,
Aged about 36 years, Occ. Business,
R/o. Shivaji Nagar, Yavatmal,
District Yavatmal.

...PETITIONER

...V E R S U S...

The State of Maharashtra,
through Police Station Officer,
Police Station, Lohara, Yavatmal,
District Yavatmal.

...RESPONDENT

Shri/s K.S. Narwade and N.R. Shiralkar, Advocates for petitioner.
Shri Aalap Palshikar, A.P.P. for respondent.

CORAM:- M.W. CHANDWANI, J.
DATED : 31st JANUARY, 2024.

ORAL JUDGMENT:

. **Rule.** Rule made returnable forthwith. Heard finally
with consent of the learned counsel for the parties.

2. A short but interesting question raised in this petition
is, on showing willingness by an accused to deposit the amount,
allegedly misappropriated in a crime, whether the Court while
allowing the anticipatory bail application was justified in imposing
a condition of depositing the amount allegedly misappropriated.

3. The facts relevant for decision of this writ petition are as under:

4. On a report lodged by General Manager of District Industries Center, Yavatmal with Lohara Police Station alleging misappropriation of funds of the Government by the ineligible industry in connivance with one Shri Ajay Rathod, a clerk of the District Industries Center, Yavatmal, offences punishable under sections 409, 420, 464, 468, 471 read with section 34 of the Indian Penal Code came to be registered against the petitioner and other accused vide Crime No.236/2023. The allegation against the petitioner is that he has received the amount as an incentive in his bank account from the District Industries Center, for which he was not entitled.

5. Apprehending his arrest, the petitioner approached the Additional Sessions Judge, Yavatmal seeking anticipatory bail. Pending the said application, the petitioner submitted a pursis expressing his readiness to return the amount credited in his bank account in excess to his entitlement. After hearing the parties, the learned Additional Sessions Judge, Yavatmal protected the applicant with extra relief of anticipatory bail with a rider of

condition no.(vi), which reads thus:

“(vi) He shall return the amount, which is subject matter as well as mentioned in the FIR, duly deposited in his account to the Government of Maharashtra, within one month from the date of this order and it shall be verified by the concerned I.O., Director of Industries, Yavatmal shall verify and acknowledge the receipt of said amount to the I.O.”

6. Feeling aggrieved with the said condition, the present writ petition is filed.

7. Mr. Narwade, learned counsel for the petitioner vehemently submitted that Court while granting the anticipatory bail cannot impose such condition of return of the amount, particularly when the investigation is yet to be completed and charge-sheet is yet to be filed. According to him, sub-section (2) of section 438 of the Code of Criminal Procedure 1973, the Court does not have power to impose a condition which is onerous or unreasonable or excessive. The condition to deposit the amount which is subject matter of the alleged crime is onerous and unreasonable, therefore the said condition needs to be quashed and set aside. He submits that the practice of imposing condition for depositing the amount as pre-requisite for grant of pre-arrest

bail shall be deprecated. He relies on the recent decision of the Supreme Court in *Ramesh Kumar Vs. State of NCT of Delhi*¹

8. Per contra, Mr. Palshikar, learned APP objected the petition on the ground that the petitioner himself has shown wiliness to deposit the difference amount voluntarily. Now, after getting the bail order he cannot take U-turn as he is governed by the principles of estoppel. According to him, since the petitioner has shown willingness therefore the condition no.(vi) has appeared in the bail order, now the petitioner is questioning the condition imposed by the learned Additional Sessions Judge, Yavatmal. Hence, learned APP seeks rejection of the petition

9. While granting relief under section 438(1) of Cr.P.C the court may impose appropriate conditions under section 438 (2) of Cr.P.C. in light of the facts of the particular case. Thus, there is no manner of doubt that the court, having regards to the facts and circumstances of the case can impose necessary, just and efficacious conditions while enlarging an accused anticipatory bail. In context of grant of bail, all such conditions that would facilitate the appearance of the accused before the investigating

¹ 2023 LiveLaw (SC) 496

officer/court, unhindered completion of investigation/trial and safety of the community assume relevance. However, the condition cannot be harsh, onerous or excessive as to frustrate the very of grant of anticipatory bail under section 438 of Cr.P.C.

10. In ***Dilip Singh vs. State of Madhya Pradesh***¹, the Hon'ble Apex Court sounded a note of caution in the following words:

“3. By imposing the condition of deposit of Rs 41 lakhs, the High Court has, in an application for pre-arrest bail under Section 438 of the Criminal Procedure Code, virtually issued directions in the nature of recovery in a civil suit.

4. It is well settled by a plethora of decisions of this Court that criminal proceedings are not for realisation of disputed dues. It is open to a court to grant or refuse the prayer for anticipatory bail, depending on the facts and circumstances of the particular case. The factors to be taken into consideration, while considering an application for bail are the nature of accusation and the severity of the punishment in the case of conviction and the nature of the materials relied upon by the prosecution; reasonable apprehension of tampering with the witnesses or apprehension of threat to the complainant or the witnesses; reasonable possibility of securing the presence of the accused at the time of trial or the likelihood of his abscondence; character, behaviour and standing of the accused; and the circumstances which are peculiar to the accused and larger interest of the public or the State and similar other considerations. A criminal court, exercising jurisdiction to grant bail/anticipatory bail, is not expected to act as a recovery agent to realise the dues of the complainant, and that too, without any trial.”

11. Yet again in ***Bimla Tiwari vs. State of Bihar***² the Hon'ble

1 (2021) 2 SCC 779

2 (2023) SCC OnLine SC 51

Apex Court said:

“9. We have indicated on more than one occasion that the process of criminal law, particularly in matters of grant of bail, is not akin to money recovery proceedings but what has been noticed in the present case carries the peculiarities of its own.

10. We would reiterate that the process of criminal law cannot be utilised for arm-twisting and money recovery, particularly while opposing the prayer for bail. The question as to whether pre-arrest bail, or for that matter regular bail, in a given case is to be granted or not is required to be examined and the discretion is required to be exercised by the Court with reference to the material on record and the parameters governing bail considerations. Putting it in other words, in a given case, the concession of pre-arrest bail or regular bail could be declined even if the accused has made payment of the money involved or offers to make any payment; conversely, in a given case, the concession of pre-arrest bail or regular bail could be granted irrespective of any payment or any offer of payment.

11. We would further emphasize that, ordinarily, there is no justification in adopting such a course that for the purpose of being given the concession of pre-arrest bail, the person apprehending arrest ought to make payment. Recovery of money is essentially within the realm of civil proceedings.”

12. In the recent decision in *Ramesh Kumar* (supra) relied by the petitioner the Supreme Court came down heavily on the practice of directing the accused while seeking anticipatory bail under section 438 of the Cr.P.C. in private disputes to pay the amount of cheating or misappropriation and incorporating a condition in that behalf for deposit/payment as a pre-requisite for grant of bail. However, in the said judgment, an exception is carved out that where an allegation of misappropriation of public

money by the accused is levelled and the accused while seeking indulgence of the Court to have his liberty secured/restored volunteers to account for the whole or any part of the public money allegedly misappropriated by him. The Court, while considering the larger public interest the money misappropriated can allow to deposit such amount.

13. Thus, the Court should not direct for depositing the amount of cheating or misappropriation in a private dispute as a pre-requisite for grant of bail. However, in case of the larger public interest, particularly where the public money is involved, the court can allow an accused of misappropriation of public fund to deposit amount allegedly misappropriated by him while considering the anticipatory bail application. After all, in larger public interest, no court should be averse to putting public money back in the system if the situation is conducive thereof. However, such an approach would not be warranted in cases of private disputes where private parties complain of their money being involved in the offence of cheating.

14. Reverting to the case in hand, where the allegations of misappropriation of public money by the accused including

petitioner have been levelled. According to the prosecution the petitioner in connivance with the other accused got the amount credited in his account excess to the amount of his entitlement. The said amount allegedly misappropriated by the accused is public money belonging to the ex-checker. It is the petitioner who himself has volunteered to deposit the difference of amount, which he received in his bank account and on his show of willingness the Court has passed the order directing him to deposit the public money allegedly misappropriated by him. Therefore, the petitioner now cannot take somersault and submit that the said condition is unreasonable. The petition stands dismissed. Rules is discharged, accordingly.

JUDGE

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