2024:BHC-NAG:13556

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

CRIMINAL APPLICATION (BA) NO. 1006 OF 2024

Rajendraprasad s/o Ramprasad Tiwari
Vs.
State of Maharashtra, Through Police Station, Kelwad, District Nagpur

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

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Mr. M. V. Amale, Counsel for the applicant.
Ms. Kavita Bhongde, APP for non-applicant /State.

CORAM : URMILA JOSHI-PHALKE, J.
DATED : 04/12/2024

1. Initially, this application was tagged along with the Criminal Application (BA) No.648/2024. Now it is detagged.

2. Applicant came to be arrested on 08.08.2023 in connection with Crime No.09/2022, registered with Police Station, Kelwad, District Nagpur for the offences punishable under Sections 406, 411, 413, 420, 467, 468, 471, 120-B, 201 of the Indian Penal Code.

3. The crime is registered on the basis of report lodged by Satish Prakash Aadhe on an allegation that the he was unemployed and hence he was searching for a job and got acquaintance with one Ramesh Kamone who introduced him with the co-accused Shilpa Palparti. At around April month

end and the co-accused Shilpa along with the Ramesh Kamone contacted with the complainant and visited his village Khurajgaon. The co-accused Shilpa is labour contractor and Ramesh Kamone was a Teacher. On 12.05.2020 the co-accused Shipla and Ramesh Kamone contacted the complainant and asked Rs.10 Lakhs for securing job in WCL or State Bank of India. At the relevant time, the complainant transferred the amount of Rs.2,38,000/- in the account of Ramesh Kamone. On 29.05.2020 co-accused Shilpa contacted the complainant along with one Amit Kowe and they visited the complainant at Gandhi Putala, Saoner. At the relevant time, they told the complainant that job of Clerk is available in WCL and demanded the amount from Rs.5,85,000/-. The complainant paid Rs.3,73,000/- in cash to co-accused Shilpa and Rs.2,12,000/- was transferred through NEFT in account No.13390133313649 of Ramesh Kamone at Federal Bank Limited.

4. It is further alleged that the present applicant and the other co-accused have issued the interview letter to the complainant accordingly, the complainant visited the office of the WCL along with his wife, at the relevant time, co-accused Shilpa was present. Thereafter, the mock interview was arranged and the forged appointment letter was issued to the complainant and subsequently, he came to know that it was a forged appointment letter and therefore, he approached to the police and lodged the

report. On the basis of the said report, police have registered the crime against the preset applicant and the other co-accused.

5. Heard learned Counsel for the applicant who submitted that as far as the present applicant is concerned, his name is not mentioned in the FIR. There is no specific allegation against the present applicant to show that he was the person who hatched the conspiracy and in pursuance of that conspiracy obtained the money from various persons on the promise of service in the WCL and duped the complainant or any other witnesses. The complainant has not stated his role as far as the payment of the money is concerned. During the investigation, some statements are recorded by the Investigating Officer i.e. Gaurav Govindrao Kalbande and Pramod Nattuji Khubalkar. On the basis of the said statement, the involvement of the present applicant revealed in the said crime. He submitted that in fact, one agreement between the present applicant and Pramod Nattuji Khubalkar shows that present applicant has obtained the hand loan from the said Khubalkar, therefore the statement of the Khubalkar that he has paid the money to the present applicant for providing the job is falsified by this document. He submitted that now investigation is already competed, charge-sheet is filed, further incarceration of the present applicant is not required and therefore, he be released on bail.

6. Learned APP strongly opposed the said application and submitted that during the investigation, the involvement of the present applicant was revealed. The investigation papers shows that there was a fraud committed by the present applicant and other co-accused to the extent of Rs.14,09,47,075/-. As far as the present applicant is concerned, during investigation it reveals that he has received the amount of Rs.2,00,000/- from Gajanan Bondre, Rs.2,00,000/- from one Swapnil Charpe. One of the co-accused Amit Kove has already committed suicide as various persons approached to him and demanded money. The suicide note written by said deceased/accused Amit Kove also discloses the role of the present applicant. She further submitted that from the investigation papers, it reveals that present applicant has represented himself as Officer of Railway and prepared the forged documents to show that he is the employee of the Railway and obtained the money from various persons by promising them that he would provide a job to them in the Railway also. Thus, considering the role of the present applicant, bail application deserves to be rejected.

7. After hearing both sides and on perusal of the investigation papers, it reveals that the allegation against the present applicant and other co-accused that by taking the disadvantage of the unemployment of the various youths, the promise was given to them

that they would provide them a job and amounts were obtained. As far as the involvement of the present applicant is concerned, which reveals from the statements of the witnesses namely, Gaurav Govindrao Kalbande and Pramod Nattuji Khubalkar. It further reveals during the investigation that the present applicant has obtained the amount of Rs.2,00,000/- from one Gajanan Bondre, Rs.2,00,000/- from one Swapnil Charpe and some amount from one Irfan Sheikh. The account statement of the bank account of the present applicant reveals that he has received the said amount. During the investigation, it further reveals that the present applicant has also prepared the forged Identify Card and various documents to show that he is the employee of the Central Railway. Thus, as far as the involvement of the present applicant in the present crime is concerned, is revealed. The involvement of the present applicant is in the economic offence. The aspect of the economic offence is considered by the Hon'ble Apex Court in the case of **Satender Kumar Antil Vs. Central Bureau of Investigation and Anr**. reported in **2022 LiveLaw (SC) 577** wherein the Hon'ble Apex Court has considered its earlier decision **P. Chidambaram v. Directorate of Enforcement,** reported in **(2020) 13 SCC 791**, and held that "after taking note of the earlier decisions governing the field. 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.” By referring the Judgment of **P. Chidambaram** (refer supra) it is held by the Hon’ble Apex Court that “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 be fall 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. The Hon'ble Apex Court has also considered its earlier Judgment in **Sanjay Chandra v. CBI** reported in **(2012) 1 SCC 40** wherein it is observed as under "Coming back to the facts of the present case, both the courts have refused the request for grant of bail on two grounds: the primary ground is that the offence alleged against the accused persons is very serious involving deep-rooted planning in which, huge financial loss is caused to the State exchequer; the secondary ground is that of the possibility of the accused persons

tampering with the witnesses. In the present case, the charge is that of cheating and dishonestly inducing delivery of property and forgery for the purpose of cheating using as genuine a forged document. The punishment for the offence is imprisonment for a term which may extend to seven years. It is, no doubt, true that the nature of the charge may be relevant, but at the same time, the punishment to which the party may be liable, if convicted, also bears upon the issue. Therefore, in determining whether to grant bail, both the seriousness of the charge and the severity of the punishment should be taken into consideration.”

9. In the light of the above observations of the Hon’ble Apex Court if the facts of the present case are taken into consideration admittedly, the grant or refusal to grant bail lies within the discretion of the court. The grant or refusal is regulated, to a large extent, by the facts and circumstances of each particular case. But at the same time, right of bail is not to be denied merely because of the sentiments of the community against the accused are involved. The very purpose 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.

10. Admittedly, the involvement of the present applicant is in economic offence of a huge magnitude however, considering the fact that the trial will take its own time for its final disposal and it cannot lose sight of the fact that the investigating agency has already completed the investigation and also filed charge-sheet. In view of that, the presence of the present applicant in custody is not required and therefore, the applicant has made out a case for grant of bail. In view of that I proceed to pass following order:

ORDER

(i) The application is allowed.

(ii) The applicant **Rajendraprasad s/o Ramprasad Tiwari** shall be released on bail in connection with Crime No.09/2022, registered with Police Station, Kelwad, District Nagpur for the offences punishable under Sections 406, 411, 413, 420, 467, 468, 471, 120-B and 201 of the Indian Penal Code, on executing PR Bond in the sum of Rs.1,00,000/- with one solvent surety in the like amount.

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

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

(v) The applicant shall surrender his Passport if he is having before the concerned Court.

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

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

(viii) The applicant shall furnish his address with the address proof along with the names of two relatives along with their address and address proof.

(ix) The contravention of any of the conditions imposed would lead to the cancellation of bail.

11. The application is disposed of.

(URMILA JOSHI-PHALKE, J.)

Sarkate