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

CRIMINAL APPLICATION (BA) NO. 994/2023

Deepak s/o Vasantrao Dighole V/s 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. S.V. Sirpurkar, counsel for the applicant.
Mrs. M.A.Barbde, APP for the non-applicant/State.

CORAM : URMILA JOSHI-PHALKE, J.
DATED : 07/02/2024.

1. By this application, the applicant has moved this application under Section 439 of the Code of Criminal Procedure, 1973, for seeking regular bail in connection with Crime No. 576/2022 registered with the non-applicant Police Station for offences punishable under Section 406, 409, 420, 468, 469 read with Section 34 of the Indian Penal Code, 1860. The applicant is arrested on 21/12/2022 and since then he is behind bar.

2. The accusation against the present applicant is on the basis of report lodged by Dilip Vasantrao Patil who is the Branch Manager of "Malkapur Urban Cooperative Bank, Malkapur (Akola Branch)". As per the allegations in the report, during inspection conducted by the Reserve Bank of India, some irregularities were noted in functioning of the said bank wherein the applicant is a customer. It is alleged that he has transferred amount of Rs. 2,02,00,000/- (Rs. 2 Crore 2 Lakhs) in various bank accounts by misusing his

account No. 24 and thereby duped the bank, on the basis of the said report, the police have registered the crime against the present applicant and the other co-accused.

3. As per the contention of the applicant, learned counsel Mr. S.V. Sirpurkar submitted that after perusal of the Auditor Report, the informant found that during the period of 05/05/2017 to 29/02/2020, the two account holders namely Nishant Multistate Co-operative Credit Society of Fixed Deposit bearing Account No. 172 and Arihant Multistate Co-operative Credit Society Fixed Deposit Account No. 185 are misused. It is further alleged that, the amount of Rs. 2,02,00,000/- (Rs.2 Crore 2 Lakhs) has been transferred in the account of present applicant, and the present applicant has allegedly transferred the said amount to various persons using RTGS and other mode. He submitted that, as far as the allegations are concerned, at the most, it can be said that his account was misused. There is no material to show that he has transferred the said amount. In fact, the applicant is the person who made a grievance about the same first time by filing the complaint with the Police on 05/09/2023. The said complaint is received by the Police Authorities. The co-accused Rajesh Jain has also made a confessional statement, in the confessional statement, he admitted that he is the person who has misused the various accounts. As far as the present applicant is concerned, his role is only to the extent that, his account is misused. Now the investigation is completed and charge-sheet is filed. The applicant is suffering from the

heart disease and day by day his health is deteriorating. The report of the Jail Authority also shows that the health of the present applicant is deteriorating in the jail atmosphere. In view of that, he be released on bail.

4. Learned APP strongly opposed the application by filing the reply and submitted that there is specific evidence against the present applicant showing that it is the present applicant who in connivance with the other co-accused misused his account and transferred the amount to the various persons. He has withdrawn the amount and thereafter, transferred the said amount to the other account holders. She submitted that considering the material which is collected during the investigation, *prima-facie* case is made out. She further submitted that the amount of Rs. 12 Lakhs from the Fixed Deposit, mortgaged loan account No. 300 in the name of Madhuri Jadhav was misused the amount from the fake account No. 337 of Shriram Joshi, the amount was credited. Thus, several accounts were misused by the present applicant and the other co-accused. Though the investigation is completed and charge-sheet is filed, considering the prima-facie case against the present applicant, application deserves to be rejected.

5. Having heard learned counsel for the applicant and learned APP for the State, perused the investigation papers. From which, it reveals that the co-accused has obtained the signatures of the account holders on the pretext of renewal of the loan accounts and opened the fake accounts bearing

No. 256 and 204 in the names some societies. He has transferred the said amount from the same fake accounts in the bank accounts of Sau Nayana Manatkar, Avinash Mantkar, Dipak Dighole and Savai Ratnakar, the present applicant who is the beneficiary of the said amount has also transferred the said amount to the accounts of various persons and thus, prima-facie material shows the involvement of the present applicant in the alleged offence. The Report from the Superintendent of Central Prison, Nagpur was called which shows that the physical condition of the applicant is not good, and he is suffering from heart disease, and day-by-day his health is deteriorating. The report shows that there is a weakness in his left arm as well as he is continuously under treatment, at present also, he is admitted in the hospital.

6. Learned counsel for the applicant invited my attention towards the judgment in the case of ***Satender Kumar Antil Versus Central Bureau Of Investigation & Anr*** reported in ***(2022) 10 SCC 51,*** wherein the category of economic offences is considered by the Hon'ble Apex Court and by referring the judgment of ***P. Chidambaram vs Directorate Of Enforcement*** reported in ***(2020) 13 SCC 791,*** the Hon'ble Apex Court has observed that we are conscious of the fact that the accused are charged with economic offence of huge magnitude, we are also conscious of the fact that the offence alleged it proved may jeopardy 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 Judge, C.B.I. and therefore, the presence in the custody may not be necessary for further investigation and release the applicant on bail.

7. The Hon'ble Apex Court in the case of ***Sanjay Chandra vs Central Bureau of Investigation*** reported in ***2012 (1) SCC 40*** held that 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 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 the possibility of the accused persons tempering 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 of the offence is punishment 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 and release the accused on bail.

8. Moreover, the observations of the Hon'ble Apex Court and the role of the present applicant in the alleged offence which shows that some amounts has been transferred to the other account, and some amount was withdrawn. Now, the investigation is completed and charge-

sheet is filed. Admittedly, the involvement of the present applicant is in the economic offence but considering another ground raised by the applicant that, his physical health is not good and it is deteriorating day-by-day in the jail atmosphere. The report of the Central Prison also substantiate it.

9. Considering the same, the further custody of the present applicant is not required and the role of the present applicant is also different then the co-accused/Rajesh Kantilal Shrishrimal (Jain) whose bail application is rejected. In view of that, application deserves to be allowed by imposing certain conditions. Accordingly, I proceed to pass the following order:

a) The criminal application is allowed.

b) The applicant – **Deepak Vasantrao Dighole,** is released on bail, in connection with Crime No. 576/2022 registered with the non-applicant Police Station for offences punishable under Section 406, 409, 420, 468, 469 read with Section 34 of the Indian Penal Code, 1860, on executing P.R. Bond of Rs. 30,000/- with one solvent surety in the like amount.

c) The applicant shall not leave the jurisdiction of Akola District without prior permission of the Court.

d) The applicant shall furnish his cellphone number (s) and address with address proof before the investigating officer.

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

The criminal application is **disposed of.**

[**URMILA JOSHI-PHALKE, J.]**