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

CRIMINAL APPLICATION (BA) NO.1427 OF 2022
(Priyanka w/o Abhishek Pacchao 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.R. Deo, Advocate for the applicant.
Ms M.A. Barabde, APP for the State.

CORAM:- URMILA JOSHI-PHALKE, J.
DATED :- JANUARY 18, 2024

By preferring this application, the applicant is seeking bail under Section 439 of the Code of Criminal Procedure.

2. The applicant came to be arrested on 26/06/2022 in connection with Crime No.226/2022 registered at police station Hudkeshwar, Nagpur for the offences punishable under Sections 406, 409, 420 and 120-B of the Indian Penal Code and Section 3 of the Maharashtra Protection of Interest of Depositors (In Financial Establishments) Act, 1999.

3. The accusation against the present applicant is on the basis of report lodged by one Vaibhav Suresh Pandav who alleged that one Prashant Mahadeorao Mohod who is the brother by relation suggested him to invest the amount of Rs.3,00,000/- in the Horizon Investment of the applicant which gives return of Rs.90,000/- per month. It is alleged that when the complainant on 01/11/2021 went to the office of Horizon Investment and meet the co-accused who is the husband

of the present applicant namely Abhishek Gajanan Pacchao and said Abhishek introduced the complainant to the applicant and it was informed that if he invest the amount he will get return 20% to 30% per month, and therefore, he has invested the amount. It is further alleged that like the complainant several other depositors have deposited the amount but they have not received any returns and they were duped by the applicant and her husband. As per the allegation, the applicant is the Managing Director of H.A. Advisory and Software Pvt. Ltd. On the basis of said report, police have registered the crime against the present applicant.

4. Learned Counsel for the applicant submitted that from the recitals of the FIR it reveals that as the complainant wants to get the profit from the investment, and therefore, he was in search of the good investment plans and as he came across the said investment plan through one Prashant Mohod and therefore, he has invested the amount. It is not the case that the complainant was induced by the present applicant to invest the amount. He further submitted that the other investors have also invested the amount to get good returns from their investment. At the most, the act of the present applicant comes under the breach of the contract but the case doesn't cover under the criminal breach of trust. He submitted that at the most it can be termed as that the wrong business decision or the decision taken by the present applicant proves to be wrong but it does not

mean that there was a criminal breach of trust. For attracting the office under Section 405 of the Indian Penal Code, the intention and the *mens rea* of the applicant which is the ingredient which requires to be established by the prosecution. He further submitted that at the most the case of the present applicant covers under the illustration (d) given under Section 405 of the IPC which reads as under:

> ***<u>Illustration (d)</u>***
> *"if A, in the last illustration, not dishonestly but in good faith, believing that it will be more for Z's advantage to hold shares in the Bank of Bengal, disobeys Z's directions, and buys shares in the Bank of Bengal, for Z, instead of buying Company's paper, here, though Z should suffer loss, and should be entitled to bring a civil action against A, on account of that loss, yet A, not having acted dishonestly, has not committed criminal breach of trust."*

He submitted that in view of the definition given under Section 405 of the IPC Whoever, being in any manner entrusted with property, or with any dominion over property, dishonestly misappropriates or converts to his own use that property, or dishonestly uses or disposes of that property in violation of any direction of law prescribing the mode in which such trust is to be discharged, or of any legal contract, express or implied, which he has made touching the discharge of such trust, or wilfully suffers any other person so to do, commits "criminal breach of trust".

5. He submitted that there was no entrustment of any property or any dominion over the property. The investment was made by the investors at their own to get some benefits or the profits and unfortunately the applicant could not keep her promise to give the returns which resulted into the loss to the depositors as well as to the present applicants. There was no dishonest intention on the part of the present applicant, therefore, the offence of criminal breach of trust is not made out against the present applicant. Now, investigation is completed and charge-sheet is filed, further incarceration of the applicant is not required. He also invited my attention towards the fact that now trial is already commenced and the evidence of the complainant is recorded who has not supported the case of the prosecution and completely left the loyalty towards the prosecution. The trial will take its own time for its final disposal and no purpose will be served by keeping the present applicant behind bar. In view of that he be released on bail.

6. In support of his contention he placed reliance on ***Hridaya Ranjan Prasad Verma and ors. Vs. State of Bihar and another [(2000) 4 SCC 168]*** wherein the Honourable Apex Court has distinguished the breach of contract and the criminal breach of trust cheating. It is held by the Honourable Apex Court that cheating distinguish from mere breach of contract. The definition contemplates two separate classes of acts i.e. deception, fraudulent or dishonest inducement and deception by

intention but not fraudulent or dishonest inducement.

7. He further placed reliance on ***Satishchandra Ratanlal Shah Vs. State of Gujarat and anr. [(2019) 9 SCC 148]*** wherein also the Honourable Apex Court dealt with the criminal breach of trust and cheating and held that law recognizes a difference between simple payment/investment of money and entrustment of money or property. A mere breach of a promise, agreement or contract does not, *ipso facto*, constitute the offence of the criminal breach of trust under Section 405 IPC without there being a clear case of entrustment.

8. On the basis of the above submissions he submitted that even accepting the allegations as it is against the present applicant, trial is already commenced, investigation is completed and further incarceration of the present applicant is not required. Hence, the applicant deserves to be released on bail.

9. On the other hand, learned Additional Public Prosecutor strongly opposed the application on the ground that the applicant who is the Managing Director of the said investment company namely Horizon Investment who were running the share marketing business induced various investors to invest the amount and accordingly various investors have invested their hard earned money and instead of getting any profit from the said investment, they have lost their amount. She invited my attention towards the various statements recorded during

investigation and submitted that all these investors are the person from poor strata of the society who have invested their small savings to get the benefits or the returns and they have lost the entire amount. If the applicant is released on bail, they would lose their hope of getting the amount. In view of that, considering the *prima facie* material against the present applicant, bail application deserves to be rejected.

10. Having heard learned Counsel for the parties. Perused the investigation papers. It reveals from the investigation papers as well as from the recitals of the FIR that the applicant and her husband was running the firm by name Horizon Investment. As per the recitals of the FIR, the complainant has invested the amount as his brother suggested him to invest the amount for getting the handsome returns from the said investment. Likewise the complainant, several other depositors have invested the amount for getting the returns from the said investment. Unfortunately, instead of getting the investment, they lost their amount which was invested. Admittedly, several persons who are coming from the poor strata of the society have invested their hard earned money in the said investment. Whether the applicant was having intention to dupe the complainant or it is a wrong decision in the business is a matter of evidence or to recording the evidence this fact requires to be proved by the prosecution. At this stage, it appears that the applicant who was the Managing Director of the said investment

company could not keep her promise and could not pay the returns to the depositors, and therefore, crime is registered against her as well as her husband. Admittedly, investigation is now completed and charge-sheet is filed.

11. Though the nature of the offence is economic offence and it is settled law that when we are considering the economic offence it affects the economy of the country. At the same time, it is required to be taken into consideration the observation of the Honourable Apex Court in ***Satender Kumar Antil Vs. Central Bureau of Investigation, [(2022) 10 SCC 51]*** wherein it is held that the question for consideration is whether it should be treated as a class of its own or otherwise and also observed that this issue has already been dealt with by this Court in the case of ***P. Chidambaram v. Directorate of Enforcement, [(2020) 13 SCC 791]*** in para 23 which is reproduced as under :

> *"23. 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 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 to stand trial."*

12. It is further observed by the Honourable Apex Court while considering the aspect of the economic offence 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 offences alleged, if proved, may jeopardise 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, CBI, New Delhi. Therefore, their present in the custody may not be necessary for further investigation and released the applicant on bail.

13. The Honourable Apex Court further consider its decision in the case of ***Sanjay Chandra Vs. Central Bureau of Investigation [(2012) 1 SCC 40]*** in paragraph No.39 which is also reproduced hereunder :

> *"39. 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."*

14. In the light of the above observation if the facts of the present case are taken into consideration for the offence punishable under Section 420 and 406 of the IPC punishment provided is less than seven years and for the offence punishable under Section 409 of the IPC the punishment provided is imprisonment either description for a term which may extend to ten years, and shall also be liable to fine. Therefore, by applying the ratio laid down by the Honourable Apex Court in the case of *Sanjay Chandra* (supra) and after considering the seriousness of the charge and the severity of the punishment present application of the applicant for grant of bail deserves to be considered and applicant deserves to be released on bail. Accordingly I proceed to pass following order :

(i) The application is allowed.

(ii) The applicant - Priyanka w/o Abhishek Pacchao in connection with Crime No.226/2022 registered at police station Hudkeshwar, Nagpur for the offences punishable under Sections 406, 409, 420 and 120-B of the Indian Penal Code and Section 3 of the Maharashtra Protection of Interest of Depositors (In Financial Establishments) Act, 1999, be released on bail on furnishing P.R. bond in the sum of Rs.50,000/- with one solvent surety in the like amount.

(iii) The applicant shall attend the police station Economic Offence Wing, Nagpur on first day of every month, till the culmination of the trial and the concerned officer of the said police station, EOW, Nagpur shall record her presence.

(iv) The applicant shall attend the trial Court regularly without seeking any exemption unless there are exceptional circumstances.

(v) The applicant shall furnish her Cell phone number and address with the address proof.

(vi) The applicant shall surrender her passport before the Investigating agency.

(vii) The applicant shall not leave the jurisdiction of the Nagpur city without seeking prior permission of the District Court, Nagpur.

(viii) The applicant shall not directly or indirectly make any inducement and threat or promise to any person acquainted with the facts of the present case.

15. The application is disposed of.

(URMILA JOSHI-PHALKE, J.)

**Divya*