2024:BHC-NAG:882

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

CRIMINAL APPLICATION (ABA) NO.727/2023
Shri Tirupatrao s/o Musaliah Bolla and anr
..vs..
State of Mah., thr.PSO PS Mouda, Nagpur, thr.Economic Offence Wing (Rural), Nagpur Rural, Nagpur.

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

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Shri D.V.Chauhan, Counsel for Applicants.
Shri D.I.Jain, Counsel for the Complainant.
Ms.T.H.Udeshi, Additional Public Prosecutor for the State.

CORAM : URMILA JOSHI-PHALKE, J.
CLOSED ON : 17/01/2024
PRONOUNCED ON : 23/01/2024

1. Heard.

2. Apprehending arrest at the hands of police, in connection with Crime No.783/2023 registered with the non-applicant/police station for offences punishable under Sections 109, 120B, 409, 413, 420, 467, 468, and 471 of the Indian Penal Code and under Section 66D of the Information Technology Act, 2000 and under Section 3 of the Maharashtra Protection of Interest of Depositors (in Financial Establishments) Act, 1999, applicants approached this court for grant of anticipatory bail.

3. The accusations against applicants, on the basis of report lodged by Ramkrushna Manikrao Nimbulkar are, that he as well as other prosecution witnesses are poor uneducated

agriculturists and labourers. Co-accused Ramanrao Bolla, the husband of applicant No.2, owns his godown at Gumthala (Mouda), Bhandara Road, Nagpur and purchases a large quantity of commodities like paddy, gram, and wheat etc. He is dealing in business of trading. Another co-accused Vakalpudi Satyanarayan is grain trader. He also owns a hotel at Nayakund. In the year 2017, one Roshan Pande, who is driver and hotel manager of co-accused Vakalpudi, informed the complainant that the co-accused works to procure compensation for loss caused to farmers. The compensation under the Government Scheme had already been approved to some of agriculturists, however, since the said farmers do not have bank accounts in their names, they are in need of witnesses and guarantors to open their bank accounts with corporation bank. Thus, the co-accused on a pretext of opening bank accounts obtained their signatures on blank forms and obtained loan in their names. The loan amount was siphoned by co-accused Ramanrao Bolla by transferring the same to the accounts of his other firms looked after by applicants. On 9.4.2018, when the complainant and other agriculturists received Notices for repayment of the loan, they came to know about the said fraud committed by the co-accused and, therefore, they approached the police station and lodged the report. On the basis of the said report, the police registered the crime.

4. Learned counsel Shri D.V.Chauhan for applicants,

submitted that applicant No.1 is brother and applicant No.2 is wife of co-accused Ramanrao. The names of applicants are not mentioned in the FIR. The applicants are Directors of Tirumala Dal Udyog and Hanuman Dal Industries. Applicant No.2 is shown to be Director of Tirumala Dal Udyog. However, her husband, co-accused Ramanrao, was looking after all transactions. Applicant No.1 is owner of Hanuman Dal Industries. These firms are not opened over night for money trading. Tirumala Dal Udyog, is the proprietary firm of applicant No.2 and her husband. The tax invoices and audit report show that since long these industries are in existence. GST Returns are also filled up by applicants. Thus, these firms are not established for siphoning of funds. Co-accused Ramanrao is already behind bar and the entire investigation based upon the documentary evidence. The investigating officer already collected necessary documents. The transferring of the amount in the accounts of the firms of applicants by co-accused is alleged. Applicant No.2 is completely unaware about these transactions as her husband was looking after affairs of the firm. As such, custodial interrogation of applicants is not required. After issuance of Notice under Section 41A, they have cooperated the investigating agency and, therefore, they be protected by granting anticipatory bail.

5. *Per contra*, learned Additional Public Prosecutor Ms.T.H.Udeshi for the State submitted that there are criminal

antecedents against applicants. During investigation, it revealed that on a pretext of opening bank accounts, signatures of 158 farmers were obtained and huge loan amount was obtained and, thereafter, immediately loan amount of Rs.77,78,38,400/- was transferred to different 12 companies of applicants and co-accused Ramanrao. The bank record of the concerned corporation bank *prima facie* shows involvement of applicants. Amount of Rs.99,88,000/- is transferred in the account of applicant No.2 and similarly huge amount was transferred to account of applicant No.1 also. She submitted that not only the corporation bank but also IDBI Bank and Vaishya Bank are also duped. The public money is utilized for illegal purpose and names of farmers are jeopardized. Initially, Notice under Section 41A was issued which was refused by applicants and there was no cooperation during investigation. As such, the application deserves to be rejected. Apart from highlighting of such illegal activities of applicants, she submitted that custodial interrogation of applicants is required for investigation purpose considering the large magnitude of amounts.

6. Before considering, whether applicants have made out a case for grant of anticipatory bail or not, it would be relevant to refer legal position enunciated by the Honourable Apex Court in the case of **Gurbaksh Singh Sibbia vs. State of Punjab, reported in (1980)2 SCC 565** wherein the constitution

bench considered as to the manner in which judicial discretion is to be exercised by the court while considering applications for grant of bail. The Honourable Apex Court in the said judgment observed, as follows:

> "31. In regard to anticipatory bail, if the proposed accusation appears to stem not from motives of furthering the ends of justice but from some ulterior motive, the object being to injure and humiliate the applicant by having him arrested, a direction for the release of the applicant on bail in the event of his arrest would generally be made. On the other hand, if it appears likely, considering the antecedents of the applicant, that taking advantage of the order of anticipatory bail he will flee from justice, such an order would not be made. But the converse of these propositions is not necessarily true. That is to say, it cannot be laid down as an inexorable rule that anticipatory bail cannot be granted unless the proposed accusation appears to be actuated by mala fides; and, equally, that anticipatory bail must be granted if there is no fear that the applicant will abscond. There are several other considerations, too numerous to enumerate, the combined effect of which must weigh with the court while granting or rejecting anticipatory bail. The nature and seriousness of the proposed charges, the context of the events likely to lead to the making of the charges, a reasonable possibility of the applicant's presence not being secured at the trial, a reasonable apprehension that witnesses will be tampered with and "the larger interests of the public or the state" are some of the considerations which the court has to keep in mind while deciding an application for anticipatory bail. The relevance of these considerations was pointed out in The State v. Captain Jagjit Singh, which, though, was a case under the old Section 498 which corresponds to the present Section 439 of the Code. It is of paramount consideration to remember that the freedom of the individual is as necessary for the survival of the society as it is for the egoistic purposes of the individual. A person seeking anticipatory bail is still a free man entitled to the presumption of innocence.

He is willing to submit to restraints on his freedom, by the acceptance of conditions which the court may think fit to impose, in consideration of the assurance that if arrested, he shall be enlarged on bail.

32. A word of caution may perhaps be necessary in the evaluation of the consideration whether the applicant is likely to abscond. There can be no presumption that the wealthy and the mighty will submit themselves to trial and that the humble and the poor will run away from the course of justice, any more than there can be a presumption that the former are not likely to commit a crime and the latter are more likely to commit it. In his charge to the grand jury at Salisbury Assizes, 1899 (to which Krishna Iyer, J. has referred in Gudikanti), Lord Russel of Killowen said: (SCC p.243, para 5)

> “............ it was the duty of magistrates to admit accused persons to bail, wherever practicable, unless there were strong grounds for supposing that such persons would not appear to take their trial. It was not the poorer classes who did not appear, for their circumstances were such as to tie them to the place where they carried on their work. They had not the golden wings with which to fly from justice."

This, incidentally, will serve to show how no hard and fast rules can be laid down in discretionary matters like the grant or refusal of bail, whether anticipatory or otherwise. No such rules can be laid down for the simple reason that a circumstance which, in a given case, turns out to be conclusive, may have no more than ordinary signification in another case.

33. We would, therefore, prefer to leave the High Court and the Court of Session to exercise their jurisdiction under Section 438 by a wise and careful use of their discretion which, by their long training and experience, they are ideally suited to do. The ends of justice will be better served by trusting these courts to act objectively and in consonance with principles governing the grant of bail which are recognised over the years, than by divesting them of their discretion which the legislature has conferred upon them, by laying down inflexible rules of general

> application. It is customary, almost chronic, to take a statute as one finds it on the grounds that, after all "the legislature in its wisdom" has thought it fit to use a particular expression. A convention may usefully grow whereby the High Court and the Court of Session may be trusted to exercise their discretionary powers in their wisdom, especially when the discretion is entrusted to their care by the legislature in its wisdom. If they err, they are liable to be corrected."

7. In the case of **Siddharam Satlingappa Mhetre vs. State of Maharashtra and ors, reported in (2011)1 SCC 694** the Honourable Apex Court, after considering various judgments in detail, laid down following factors and parameters while considering anticipatory bail :

> "(i) The nature and gravity of the accusation and the exact role of the accused must be properly comprehended before arrest is made;
>
> (ii) The antecedents of the applicant including the fact as to whether the accused has previously undergone imprisonment on conviction by a Court in respect of any cognizable offence;
>
> (iii) The possibility of the applicant to flee from justice;
>
> (iv) The possibility of the accused's likelihood to repeat similar or other offences;
>
> (v) Where the accusations have been made only with the object of injuring or humiliating the applicant by arresting him or her;
>
> (vi) Impact of grant of anticipatory bail particularly in cases of large magnitude affecting a very large number of people;
>
> (vii) The courts must evaluate the entire available material against the accused very carefully. The court

> must also clearly comprehend the exact role of the accused in the case. The cases in which accused is implicated with the help of sections 34 and 149 of the Penal Code,1860 the court should consider with even greater care and caution because over implication in the cases is a matter of common knowledge and concern;
>
> (viii) While considering the prayer for grant of anticipatory bail, a balance has to be struck between two factors namely, no prejudice should be caused to the free, fair and full investigation and there should be prevention of harassment, humiliation and unjustified detention of the accused;
>
> (ix) The court to consider reasonable apprehension of tampering of the witness or apprehension of threat to the complainant;
>
> (x) Frivolity in prosecution should always be considered and it is only the element of genuineness that shall have to be considered in the matter of grant of bail and in the event of there being some doubt as to the genuineness of the prosecution, in the normal course of events, the accused is entitled to an order of bail."

8. Thus, the settled law makes it clear that the court is expected to strike a balance in such cases to ensure that no prejudice is caused to free, fair and full investigation, while ensuring that there is no harassment, humiliation and unjustified detention of the accused persons.

9. The submissions made by learned counsel for applicants and learned Additional Public Prosecutor for the State are taken into consideration in the light of investigation papers placed on record. The investigation papers show that applicant No.1, the brother, and applicant No.2, the wife of the co-accused,

are proprietors of Hanuman Dal Industries and Tirumala Dal Udyog. The statements of various agriculturists and the complainant reveal that their signatures are obtained on pretext of opening bank accounts for getting compensation under the Government Scheme. However, said signatures obtained on blank papers are used for obtaining loans in the names of various agriculturists. The statement of accounts and chart placed on record by learned Additional Public Prosecutor for the State show that amount Rs.49,94,058/- is transferred from the bank account of one Nagamani Veervenkatarao Vakaludi, who is the co-accused, to the the account of applicant No.2 on 31.3.2017. Similarly, from the account Annaji Laxman Chaudhari, amounts Rs.30,11,043/- and Rs.19,26,829/- are transferred to the account of Hanuman Rice Industries owned by applicant No.1 on 27.2.2017. The amount Rs.30,81,043/- was again transferred on 27.2.2017 through NEFT to the Bank account of applicant No.1 and amount Rs.49,89,029/- is transferred from the account of Jagdish Laxman Gajbhiye and amount Rs.47,98,608/- is transferred from the account of Sukhdev Laxman Gajbhiye. Thus, there are several transactions entered in the bank accounts of applicants.

10. The report of fraud monitoring cell collected by investigating officer shows that loans were sanctioned against produce stored in godowns of co-accused Ramanrao Bolla. The

loan proceeds of Rs.104.21 crores were remitted to accounts of firms pertaining to co-accused Ramanrao; his wife Vijayalaxmi i.e. applicant No.2; his brother Tirupatrao i.e. applicant No.1, and his other family members. The statements of various witnesses, especially farmers, show involvement of co-accused in the alleged offence. The Notices under Sections 91 of the Code of Criminal Procedure and 41A are already issued to applicants.

11. Learned Additional Public Prosecutor for the State submitted that considering the huge magnitude of amounts involved, this is not a fit case wherein discretion can be used. Admittedly, the public money is utilized by the co-accused for illegal purposes. The loans not only are obtained in the names of farmers but also the said amounts are transferred to the various firms of applicants. Considering the nature of the crime and considering the nature of the evidence, which is the economic offence of huge magnitude wherein the public money is involved, learned Additional Public Prosecutor for the State rightly placed reliance on the decision of the Honourable Apex Court in the case of **Y.S.Jagan Mohan Reddy vs. CBI, reported in (2013)7 SCC 439** wherein following parameters are laid down:

> i) economic offences constitute a class apart and need to be visited with a different approach in the matter of bail. The economic offence having deep

rooted conspiracies and involving huge loss of public funds needs to be viewed seriously and considered as grave offences affecting the economy of the country as a whole and thereby posing serious threat to the financial health of the country, and

ii) while granting bail, the court has to keep in mind the nature of accusations, the nature of evidence in support thereof, the severity of the punishment which conviction will entail, the character of the accused, circumstances which are peculiar to the accused, reasonable possibility of securing the presence of the accused at the trial, reasonable apprehension of the witnesses being tampered with, the larger interest of the public/State and other similar considerations.

12. Learned counsel for applicants placed reliance on the order passed by this court (Coram : Manish Pitale, J.) on 31.7.2019 in Criminal Application (ABA) No.475/2019 with connected application and submitted that in similar facts and circumstances, the court observed that applicants might not have actively involved in each and every aspect of misappropriation of funds and released applicants therein on bail. In the present case also, the co-accused was looking after the proprietary firms.

13. Considering huge amounts are transferred in bank accounts of firms of applicant No.2, I am not impressed by the said submission made by learned counsel for applicants. In fact, the material placed on record is sufficient to show involvement of applicants in economic offences who betrayed trust of poor farmers. The investigation reveals that the public money is at stake and the role of applicants is clearly exposed.

14. In the light of the above, the application deserves to be rejected and the same is rejected.

The application stands **disposed** of.

(**URMILA JOSHI-PHALKE, J.**)

!! BrWankhede !!