2024:BHC-NAG:908

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

CRIMINAL APPLICATION (BA) NO.1074 OF 2023
(Atul s/o Arun Meherkure Vs. The 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

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Mr. R.P. Joshi, Advocate for the applicant.
Mr. A.R. Chutke. Thakare, 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 19/05/2023 in connection with Crime No.319/2022 registered under Sections 406, 408, 409, 420, 465, 467 468, 471, 477-A, 120-B, 201 read with Section 34 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 Rajesh Sudhakar Landage who is an Auditor who observed the serious irregularities in the day to day business of the society and also ascertained that there is misappropriation of the huge amount of Rs.7,95,35,833/-.

4. As per the allegations, the Board of Directors and Office bearers of the society namely Rashtrasant Tukdoji Nagri Sahakari Credit Society Limited, Chimur have had the conspiracy and by misusing their position while performing their duties committed the misappropriation. It is alleged against the present applicant that the present applicant was working as a Pigmy agent have collected deposits from various depositors and not deposited the amount as per the deposits collected and misappropriated the amount worth of Rs.28,68,589/- The applicant has also obtained loan and not repaid the amount and outstanding amount is Rs.3,57,743/-. Further allegation against the present applicant is that he has deposited some amount in the name of the depositors and subsequently, withdrawn the same. Said amount comes to Rs.16,81,176/-. Thus, total misappropriation is of Rs.49,07,508/-.

5. Learned Counsel for the applicant submitted that as far as the allegations against the present applicant are concerned is on the basis of the audit report. In fact, no *prima facie* case is made out against the present applicant as the audit report nowhere shows any details regarding the said amount. He further submitted that even for the sake of argument, the allegations are taken as it is, further incarceration of the present applicant is not required as the investigation is already completed and charge-sheet is filed. The trial will take its own time for its final disposal. He further submitted that, now from the

investigation which is completely based upon the audit report ascertained the role of the present applicant. In fact, present applicant is not at all concerned with the alleged entries as he is not the employee of the said society, and therefore, the allegation that either he withdrawn the amount or he made some transfers is without any substance. He placed reliance on the decision of the Honourable Apex Court in the case of ***P. Chidambaram Vs. Central Bureau of Investigation [2019 SCC Online SC 1380]*** and ***P. Chidambaram v. Directorate of Enforcement, [(2020) 13 SCC 791]***.

6. He submitted that the Apex Court has considered the nature of the offence is economic offence and held that the consideration for the bail are on the basis of tripod test i.e. the flight risk of the applicant and tampering with the witnesses and influencing of the witnesses in favour of the appellant. He further submitted that the co-accused Anil Bhaurao Nannaware is released on bail by this Court. The similar role is attributed to the present applicant, and therefore, considering the investigation is completed and charge-sheet is filed. Further incarceration of the present applicant is not required, he be released on bail. He further submitted that the Apex Court repeatedly held that the condition of deposit of amount cannot be a condition of bail and it is further held by the Apex Court that it is settled law that the criminal proceedings cannot be converted into recovery proceeding, therefore, depositing of the amount

by the present applicant could not be a pre-condition to release the present applicant on bail. In view of that, the application deserves to be allowed.

7. *Per Contra,* learned Additional Public Prosecutor strongly opposed the application by pointing out that there is a *prima facie* case against the present applicant. The nature of the offence is economic offence. The investigation has disclosed that the accused persons have tried to destroy various documentary evidence, and therefore, various records pertaining to transfer, withdrawn and daily deposits which was not made available to the prosecution to ascertain the facts. Since the amount involved in the crime was in crores of rupees and many bank account holders have suffered pecuniary loss, therefore, the investigation was transferred to the economic offence wing. The nature of the offence is of a serious nature. The public money is involved and if applicant is released on bail, there is every possibility of tampering of the witnesses and he would not be available for trial. In view of that, the application deserves to be rejected. He also canvassed from the record that in what manner the offence was committed. He submitted that, the present applicant who was working as a Pigmy Agent used to collect the deposit in a day and not depositing the entire amount and was depositing less amount. The another manner which the applicant has applied for committing the offence that he has deposited some amount in the account of the depositors and subsequently,

withdrawn the same. He has also obtained the loan from the bank and amount of Rs.3,57,743/- is outstanding against him. Thus, considering the nature of the offence committed by the present applicant which shows that he was part of conspiracy and in pursuance of said conspiracy huge amount was misappropriated by the applicant along with the other co-accused and prays for rejection of the application.

8. Having heard learned Counsel for the parties. Perused the investigation papers. The entire investigation is based on the audit report. From the audit report, it reveals that the present applicant who was a Pigmy agent has collected deposits from the depositors and deposited less amount. The remaining amount is misappropriated by him.

For example :- if he collects the amount of Rs.47,540/- as per the mobile application which he was using, out of the same he used to deposit Rs.41,340/- and has deposited less amount i.e. Rs.6200.

Thus, the *modus operandi* of the present applicant was that though he was collecting the amount but not depositing the same entirely. He further submitted that the audit report further shows that sometimes he has deposited the amount in the account of the depositors and subsequently, withdraw the same and was using for his own use. Thus, the amount which is a public money is misappropriated by the present applicant.

9. The investigation papers further shows that the applicant who was serving as the Pygmy Agent and the audit report discloses in what manner the misappropriation was committed not only by the present applicant but the other Office Bearers and the Board of Directors of the said Society. As far as the present applicant is concerned, there is an allegation against him that by way of depositing the less amount, he has misappropriated the amount of Rs.20,40,951/- by way of depositing the amount and subsequently, withdrawing the same, he has misappropriated the amount of Rs.16,81,176/- whereas the outstanding amount of loan against him is Rs.3,57,743/-.

10. The audit report clearly discloses these facts and shows the involvement of the present applicant in the alleged offence. However, at the same time, the principle which is enumerated in various decisions is to be looked into that Bail is a Rule and Jail is an exception.

11. Learned Counsel for the applicant placed reliance on *P. Chidambaram Vs. Central Bureau of Investigation* (supra) wherein the Hon'ble Apex Court has considered the tripod taste and held that as applicant is not a flight risk and released him on bail. 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. Similar is the case in the present case also. The investigation is already completed and charge-sheet is filed and nothing in on record to show that if applicant/accused is released on bail he will be at a flight risk. The applicant is permanent resident of Chimur, District Chandrapur and having permanent abode there. The Honourable Apex Court in the case of ***Satender Kumar Antil Vs. Central Bureau of Investigation, [(2022) 10 SCC 51]*** wherein also considered the aspect of the economic offence and by referring the decision of *P. Chidambaram v. Directorate of Enforcement* (supra) and also by referring the another decision in ***Sanjay Chandra Vs. Central Bureau of Investigation [(2012) 1 SCC 40]*** wherein it is held that we cannot lose sight of the fact that the investigating agency has already completed investigation and the charge-sheet is already filed. The observation of the Honourable Apex Court is reproduced here for the reference :

> *"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. The observation of the Honourable Apex Court in _Sanjay Chandra_ (supra) is also reproduced here for reference :

> *"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."*

13. Admittedly, the grant or refusal to grant bail lies within the discretion of the court. The grant or denial is regulated, to a large extent which depends upon the facts and circumstances of each particular case. At the same time, it is also well settled that the right to bail is not to be denied merely because of the sentiments of the community against the accused are there. The primary

purposes of bail in a criminal case are to relieve the accused of imprisonment, the intention behind it not to deprive him from his liberty and it cannot be by way of punishment.

14. In view of that and considering that human liberty is a precious constitutional right, the application deserves to be allowed by imposing certain conditions. Accordingly I proceed to pass following order :

(i) The application is allowed.

(ii) The applicant - Atul s/o Arun Meherkure in connection with Crime No.319/2022 registered under Sections 406, 408, 409, 420, 465, 467 468, 471, 477-A, 120-B, 201 read with Section 34 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, Chandrapur on first day of every month, till the culmination of the trial.

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

(v) The applicant shall furnish his Cell phone number and address with the address proof and the names of two relatives along with their address proof.

(vi) 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*