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

CRIMINAL APPLICATION (BA) NO.999/2024
Shailesh Shankarrao Choudhari
..vs..
The State of Maharashtra, through PSO PS Kalmeshwar, District Nagpur

WITH

CRIMINAL APPLICATION (BA) NO.1041/2024
Ishwar s/o Sheshrao Bhalavi
..vs..
The State of Maharashtra, through PSO PS Kalmeshwar, District Nagpur

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

BA No.999/2024
Shri Harish Dangre, Counsel for the Applicant.
Shri N.B.Jawade, Additional Public Prosecutor for the State.

BA No.1041/2024
Shri S.K.Bhandarkar, Counsel for the Applicant.
Shri N.B.Jawade, Additional Public Prosecutor for the State.

CORAM : URMILA JOSHI-PHALKE, J.
CLOSED ON : 07/04/2025
PRONOUNCED ON : 21/04/2025

1. By these applications under Section 483 (439 of the CrPC) of the Bhartiya Nagrik Suraksha Sanhita, 2023, applicants are seeking bail in connection with Crime

No.325/2024 registered with the non-application/police station for offences punishable under Sections 406, 420, 467, 468, 471, and 120-B read with 34 of the IPC and under Section 138 of the Negotiable Instruments Act and under Section 3 of the Maharashtra Protection of Interest of Depositors (in Financial Establishments) Act, 1999 (the MPID Act).

2. The applicants came to be arrested on 9.5.2024 and 9.2.2024 respectively and since then they are in jail.

3. As per allegations in FIR lodged by Nitesh Takit (the complainant) on 25.4.2024, that he is working as Government Contractor in Nagpur district since the year 2019. He got acquaintance with one Sachin Bhalchandra Yawalkar who informed him that he is working as Agent in one “Eco Range Green Energy Solution Private Limited”. The said company is working for “Solar Power Plants” and the company is in need of finance and if the complainant invests in the company, handsome amount of interests will be received. The applicants, who are Directors, also assured him and other investors to pay 3% interests per month and thus the complainant invested

Rs.26,40,000/- and also collected the money from the other investors. Total amount involved is Rs.6,98,00,000/-. It is alleged that though they invested the money, they have neither received any returns nor their principal amounts are paid to them. Even, not a single solar panel as planned is erected. Thus, the investors are duped by the applicants.

4. Heard learned counsel Shri Harish Dangre (in BA No.999/2024) and learned counsel Shri S.K.Bhandarkar for the applicant (in BA No.1041/2024) and learned Additional Public Prosecutor Shri N.B.Jawade for the State.

5. Learned counsel appearing for respective applicants submitted that Section 467 of the IPC is not at all attracted. The amount invested by the complainant is Rs.26,40,000/-. As far as the properties of the applicants are concerned, the same are purchased by obtaining the loans. The wife of applicant Shailesh Shankarrao Choudhari is serving. The statements of the witnesses disclose that some of the amounts is already repaid to the investors. The agreements entered into the complainant and the applicants show that the applicants have

obtained the money as a loan. Such agreements are also entered with various investors. There is an agreement between MSEDCL and the company. Due to some unavoidable circumstances, the Plant is not yet started and, therefore, the entire amount of the complainant could not be repaid. Learned counsel further submitted that the company, for which the amount was accepted as investment, was duly incorporated. The said company was in process of establishing and doing the business for which the money was accepted. Project Report and Power Purchase Agreement are seized. Money invested by the investors was duly documented. Considerable amount is already repaid. As far as applicant Shailesh Shankarrao Choudhari is concerned, he was active from February 2023 till 31.3.2023. He has not played any active role in the said transactions. Now, investigation is already completed and chargesheets are already filed. Further incarceration of the applicants is not at all required. In view of that, they be released on bail.

6. Learned Additional Public Prosecutor for the State strongly opposed the applications and submitted that alleged

amount invested is a huge amount of Rs.6,98,00,000/-. In view Section 45-IA of the the RBI Act 1935, without registering a financial institution, the applicants cannot collect the money. The investment obtained by the applicants from public is contrary to Section 73 of the Companies Act, 2013. As no permission was taken by the applicants required under Section 45-IA of the RBI Act 1935, the establishment of the company itself is illegal. Not a single Solar Plant is registered for which the amount was collected. The documents prepared are also forged one. The bank accounts show that applicant Shailesh Shankarrao Choudhari received the amount in his personal account and not in the account of the company. In pursuance of the agreement, no work is done. Thus, investors are duped and, therefore, the applications deserve to be rejected.

7. On hearing both the sides and perusing the investigation papers, it reveals that applicant Shailesh Shankarrao Choudhari was Director of the said company till 31.3.2023. The amounts are obtained from the investors by entering into an agreement which is a loan agreement. From the statements recorded, it revealed that the applicants

obtained the said investment by promising handsome returns and 3% interest on the invested amount. During investigation, it revealed that during the period of Directorship of applicant Shailesh Shankarrao Choudhari, he has taken active role in inducing the investors to deposit the amount in the company. From the statements of the witnesses, it revealed that the investments are obtained on the pretext that "Eco Range Green Energy Solution Private Limited" entered into Power Purchase Agreement to install Solar Panels and Solar Plants and the investments are obtained in terms of loans. As per the investigating agency, in fact, no such agreement was executed between the company of the applicants and MSEDCL, that is the forged document.

8. Admittedly, the investigation is already completed and chargesheets are filed.

9. The various statements of the witnesses also disclose that some of amounts is refunded to them. Thus, involvement of the applicants in the alleged crime revealed from the investigation papers. The involvement of the

applicants is in the economic offence.

10. The Hon'ble Apex Court in the case of **Satender Kumar Antil vs. Central Bureau of Investigation and anr, reported in (2022)10 SCC 51** held that gravity of 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 categorize all the offences into one group and deny bail on that basis.

11. The Hon'ble Apex Court, in the case of **P.Chidambaram vs. Directorate of Enforcement, reported in (2020)13 SCC 791** observed thus:

> "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

> provides 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 grant or refusal to grant bail lies within the discretion of the court. The grant or denial is regulated, to a large extent, by the facts and circumstances of each particular case. The primary purposes of bail in criminal case are to relieve the accused of imprisonment and to keep the accused constructively in the custody of the court by ensuring that he would be available for the trial whenever his presence is required.

13. In the present case, there is no dispute that involvement of the accused is in economic offence. The investments of various investors are involved. However, considering the investigation is already completed and chargesheets are already filed and there is no possibility of

conclusion of the trial in near future and 57 witnesses stated that some of the investors have received partial amounts, the applicants cannot be kept behind the bar by way of punishment.

14. For all above these grounds, as the applicants have made out a case for grant of bail, I proceed to pass following order:

ORDER

(1) The criminal applications are **allowed**.

(2) The applicants shall be released on bail, in connection with Crime No.325/2024 registered with the non-application/police station for offences punishable under Sections 406, 420, 467, 468, 471, and 120-B read with 34 of the IPC and under Section 138 of the Negotiable Instruments Act and under Section 3 of the Maharashtra Protection of Interest of Depositors (in Financial Establishments) Act, 1999, on their executing a P.R.Bond in the sum of Rs.1.00 lac by each of them with one solvent surety of the like amount by each of them.

(3) The applicants shall attend the office of the Economic

Offence Wing twice a month i.e. 1st and 15th of every month, till conclusion of the trial.

(4) The applicants shall not induce or threat or promise to any of witnesses connected with the crime in question and shall not tamper the prosecution evidence.

(5) The applicants shall not deal with any movable or immovable properties by any mode of conveyance without prior permission of the District Court, till conclusion of the trial.

(6) The applicants shall not leave the jurisdiction of the Nagpur district without prior permission of learned Judge of the Special Court, Nagpur.

(7) The applicants shall surrender their passports, if any, before the Special Court.

Applications stand **disposed of**.

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

!! BrWankhede !!