



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

CRIMINAL APPLICATION (BA) NO. 1169 OF 2024

Mr. Devendra S/o Narendra Chordia 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. A.M. Jaltare, counsel for applicant.

Mr. N.B. Jawade, APP for non-applicant/State.

Mr. S.D. Dewani, counsel for complainant.

CORAM : URMILA JOSHI-PHALKE, J.
DATED : 03/03/2025.

1. The applicant came to be arrested on 30/07/2024 in connection with Crime No. 350/2024 registered at Police Station Ganeshpeth, Nagpur for the offence punishable under Sections 406, 420, 465, 468, 469, 471, 473, 476, 201 of Indian Penal Code, 1860.

2. The crime is registered on the basis of a report lodged by Inderchand Lakichand Jain alleging therein that the complainant and father of the applicant are the partners in a firm by the name of Jain Pharma. The applicant is holding the degree of D-Pharm, and he was looking after the day-to-day affairs of said business. The complainant informed his relative, namely Manish Parakh, the owner of RX Mediworld, to start a medicine business to Jain Pharma, and accordingly, he started the business. During the course of business, the applicant took Rs. 39,15,64,089/- in advance from the said Manish Parekh and only sent material which cost Rs. 27,67,56,258/- to the said Manish Parekh. Thereafter,

on 10/07/2024, when the informant inquired to the applicant, the applicant told the informant that material has to be received from the Jyot Pharma Gujrat, and thereafter, he supplies the same. It was revealed during the investigation that the present applicant has misappropriated the amount of Rs. 4,58,57,900/-. It further revealed during the investigation that the present applicant has not supplied the stock to Manish Parkeh but sold the said stock at an additional rate to the other business. On the basis of the said report, police have registered the crime against the present.

3. Learned counsel for the applicant submitted that as far as the investigation part is concerned, which is already completed, further incarceration of the present applicant is not required. He further submitted that the applicant is not at a flight risk and therefore, by applying the tripod test given by the Hon'ble Apex Court in the case of *P. Chidambaram*, the applicant is entitled to be released on bail.

4. He further invited my attention towards the various statements of the witnesses and submitted that the entire money transaction is out of the business and therefore, considering the statements of the witnesses and considering the fact that the entire investigation is already completed and the charge sheet is filed. The charge is also framed against the applicant. His further incarceration is not required.

5. Learned APP strongly opposed the said application and submitted that from the investigation papers, it reveals that the applicant has not only misappropriated the amount, but he has sold the said stock to the other customers on additional rent. He has also appointed some staff, shown their salary at the additional rate, and not paid salary. Thus, considering the prima-facie material against the present applicant, if he is released on bail, he would again indulge in similar types of activities, and therefore, the application deserves to be rejected.

6. After hearing both sides and on perusal of the investigation papers, it reveals that out of the business transactions, the applicant has obtained the orders from the complainant and obtained the advance amount. The said advance amount, he has siphoned on his own account and used for his own purpose. The statement of the witness, who is an employee, initially shows that he has also sold the said stock to the other customers at the additional rate. Thus, as far as the involvement of the present applicant in the alleged offence is concerned, there is sufficient material to connect him with the alleged offence. But now, considering the investigation is already completed, the charge-sheet is already filed, and charges are already framed, the trial is yet to be commenced, it would take time to dispose of the trial. Moreover, the applicant is a permanent resident of Parshivani, District Nagpur, and he is not at a flight risk.

7. The nature of the economic offence is considered by the Hon'ble apex court in the case of *Satender Kumar Antil Versus Central Bureau Of Investigation & Anr [2022 LiveLaw (SC) 577]* wherein the Hon'ble Court by referring the decision of *P Chidambaram v. Directorate of Enforcement, [(2020) 13 SCC 791]* it is held that, it is not advisable on the part of the court to categorise all the offences into one group and deny bail on that basis.

8. It is further observed that from the cumulative perusal of the judgments cited on either side including the one rendered by the Constitution Bench of this Court, it would 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 be 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.

9. By applying the principal of tripod test, in the present case, now investigation is already completed and charge-sheet is already filed, charge is already framed. The applicant is not at a flight risk. Considering all these aspect, the application deserves to be allowed. Accordingly, I proceed to pass the following order;

- a] The application is allowed.
- b] The applicant – **Mr. Devendra s/o Narendra Chordia**, shall be released on bail, in connection with Crime No. 350/2024

registered at Police Station Ganeshpeth, Nagpur for the offence punishable under Sections 406, 420, 465, 468, 469, 471, 473, 476, 201 of Indian Penal Code, 1860, on executing P.R. bond of Rs. 50,000/- with one surety of like amount.

- c] The applicant shall attend the concerned police station once in a month on each of every month between 10.00 a.m. to 01.00 p.m. till culmination of the trial.
- d] The applicant shall not indulge involved himself in the business activities of the Jain Pharma till culmination of the trial.
- e] The applicant shall not leave the jurisdiction of the Nagpur District without prior permission of the Chief Judicial Magistrate First Class Court No.1, Nagpur.
- f] The applicant shall surrender his passport if he is having before the Court.
- g] The applicant shall not induce, threat or promise any witnesses who are acquainted with the facts of the case.

10. The criminal application is disposed of.

[URMILA JOSHI-PHALKE, J.]