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

CRIMINAL APPLICATION (BA) NO.1217 OF 2024

(Sachin s/o Bhalchandrarao Yawalkar Vs. The State of Maharashtra thr. PSO Police Station Kalmeshwar, Dist. Nagpur)

Office Notes, Office Memoramda of Coram, appearances, Court's orders of directions and Registrar's Orders.	*Court's or Judge's orders.*

Mr. S. K. Bhandarkar, Advocate for Applicant.
Mr. M. K. Pathan, APP for Non-Applicant/State.

CORAM: URMILA JOSHI PHALKE, J.
DATE: 2nd MAY, 2025.

1. Heard.

2. By this application under Section 483 (439 of the CrPC) of the Bhartiya Nagrik Suraksha Sanhita, 2023, applicant is seeking bail in connection with Crime No.325/2024 registered with the Police Station Kalmeshwar, District Nagpur for offences punishable under Sections 406, 420, 467, 468, 471, and 120-B read with Section 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). The applicant came to be arrested on 09.05.2024 and since then he is behind the bar.

3. As per allegations in the FIR lodged by Nitesh Takit on 25.04.2024, that he is working as a 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 applicant, who is the Manager in the said company and the co-accused who are Directors, also assured him and other investors to pay 3% interests per month and therefore, the complainant invested the amount of Rs.26,40,000/- and also collected the money from the other investors. Thus, the total amount involved is Rs.6,98,00,000/-. It is alleged that the present applicant has induced the various investors to invest the money but they have neither received any returns nor their principal amounts was repaid to them and even, not a single solar panel as planned is erected. Thus, the investors are duped by the applicant and the other co-accused.

4. Heard learned counsel for the applicant and learned APP for the State. Learned counsel for the applicant submitted that as far as the applicability of Section 467 of the IPC is concerned which is not attracted. The amount invested by the complainant is Rs.26,40,000/-. The properties of the other co-accused are concerned, the same are purchased by obtaining the loans. As far as the present applicant is concerned only allegation against him is that he induced the other investors to invest the amount, he is not party to the agreement enter into the complainant and

other the co-accused. He is witness to the said agreement. He has only complied with the directions which are given by his employer. He has not received any pecuniary gain by the said investments the other co-accused who played the active role are already released on bail. Considerable amount by the other co-accused is already repaid. In view of that, further incarceration of the present applicant is not required and therefore, he be released on bail.

5. Learned APP strongly opposed for the same and submitted that it is the present applicant who was a local person has got acquaintance with the villagers and he induced the villagers to invest the amount by trusting the words of the present applicant, the villagers and the complainant has invested the amount. The investment obtained by the co-accused from public is contrary to Section 73 of the Companies Act, 2013. No permission was taken by the co-accused required under Section 45-IA of the RBI Act 1935, the establishment of the company itself is illegal. Not a single Solar Plant is erected for which the amount was collected. The documents prepared are also forged one. The bank accounts shows that the co-accused received the amount in his personal account and not in the account of the company. Thus, the involvement of the present applicant in the inducement to the investors is established from the investigation papers and in view of that, the application deserve to be rejected.

6. On hearing both the sides and perusing the investigation papers, it reveals that the co-accused Shailesh

Shankarrao Choudhari was Director of the said company and the amounts were obtained from the investors by entering into an agreement which is a loan agreement. From the statements recorded, it revealed that the co-accused obtained the said investment by promising handsome returns and 3% interest on the invested amount. During investigation, it revealed that the present applicant was working as a Manager and he has also induced the various investors to invest the amount and being a local person the people trusted on his word and accordingly invest the amount.

7. Admittedly, the investigation is already completed and charge-sheet is filed.

8. The various statements of the witnesses also discloses that some of the amount is refunded to them. The involvement of the present applicant as far as the inducement is concerned reveals from the investigation papers. The involvement of the present applicant is also in the economic offence.

9. 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.

10. 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."*

11. 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.

12. In the present case, there is no dispute that involvement of the accused is in economic offence. The investment of various investors is on the inducement of the present applicant but considering the investigation is already completed, charge-sheet is already filed and there is no possibility of conclusion of the trial in a near future and some of the witnesses stated that some of the investors have received the partial amount. In view of that, the application deserves to be allowed. Accordingly, I proceed to pass following order:

ORDER

(1) The criminal application is allowed.

(2) The applicant shall be released on bail, in connection with Crime No.325/2024 registered with the Police Station Kalmeshwar, District Nagpur for offences punishable under Sections 406, 420, 467, 468, 471, and 120-B read with Section 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 executing a P.R. bond in the sum of Rs.1,00,000/- with one solvent surety of the like amount.

(3) The applicant shall attend the office of the Economic Offence Wing twice a month i.e. 1^{st} and 15^{th} of every month, till conclusion of the trial.

(4) The applicant 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 applicant 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 applicant shall not leave the jurisdiction of the Nagpur District without prior permission of learned Judge of the Special

Court, Nagpur.

(7) The applicant shall surrender his passport, if he is having before the Special Court.

13. Application is stand disposed of.

(URMILA JOSHI-PHALKE, J.)

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