

Order below Exh. 43

This is an application u/s. 480 of the Bharatiya Nagarik Suraksha Sanhita (hereinafter referred to as the B.N.S.S.).

2. Accused submits that this is his first bail application. This application has been filed after filing of chargesheet as investigation is completed. This applicant had also preferred an application for anticipatory bail u/s. 438 of the Cr.PC. bearing Bail Application No. 230/2024. The said application was finally rejected by the Hon'ble Sessions Court at Panvel on 14.06.2024. The applicant has also challenged the order before the Hon'ble Bombay High Court which was also rejected. Thereafter, the applicant surrendered before the concerned investigating officer and ultimately he was arrested on 29.06.2024 and produced before the Court. He was granted police custody on 06.07.2024, 08.07.2024 and 10.07.2024. As of now, the applicant is in judicial custody.

3. The informant Prashant Haridas Gaikar is Divisional Manager of IIFL Finance Company. This company disburse loan including gold loan and is having its branch at Uran. The informant came to know that the accused along with other co-accused Amita Chavan without depositing the loan amount had returned pledged golden ornaments to the customers namely Nishant Koli and Jitendra Koli. The accused has cheated the company to the tune of Rs. 6,63,532/-. The company came to know that the applicant is accepting the amount from customers in order to foreclose the loan or towards deposit of loan amount in their individual accounts. The applicant has deposited some

part of amount in loan account of some customers and rest amount was used by them. The statement of Axis Bank, Bank of Maharashtra and HDFC Bank shows multiple transactions of high deposit amount. The applicant accepted cash and failed to deposit in the loan account. Total 27 customers were cheated. The said amount goes to Rs. 1,26,35,411/-.

3. The applicant says and submits that he is innocent and has not committed any offence as alleged by the prosecution. The applicant is falsely implicated in the present crime. He is made scapegoat by the bank officials to suppress certain material facts pertaining to bank transactions. The applicant was granted ad-interim Anticipatory Bail. He has co-operated the investigating officer during the said period. He was in police custody for 13 days. The other accused Vikram Ganesh Mokal, Amita Chavan, Pratiksh Pralhad Thakur are enlarged on bail. The applicant submits that he is not seeking bail on the ground of parity to elaborate discussion of evidence collected by the investigating officer which is filed in chargesheet is impermissible at the time of deciding bail application.

4. The entire offence of which the present application is arrested pertains to documentary offence. Entire documents are in the safe custody of this Court and therefore, there is no question of tampering with the evidence and also no prejudice will be caused to the prosecution if the applicant is enlarged. The basic jurisprudence relating to bail is that bail is rule and refusal is exception. The gravity of the offence has to be gathered from the facts and circumstances arising in each case.

5. He further says and submits that he is permanent resident of Uran and staying with his family. He is having deep roots in the society

and therefore, he is ready for trial. The offence leveled against the accused is triable by this Court. Considering these aspects, even Sec. 409 of the I.P.C. is punishable with life, but this Court cannot punish more than 3 years. The evidence filed by the prosecution is voluminous. The trial against the accused could not be concluded in a short span of time and therefore, the applicant cannot be kept behind the bars for indefeasible period of time. The applicant is ready to abide each and every conditions imposed by this Court and is ready to attend the concerned Court. On the above counts, he prays that he may be enlarged on bail in connection with C.R. No. 187/2024 registered at Uran police station.

6. Learned A.P.P. filed say at Exh. 44 and fought the application tooth and nail. According to her, the accused no. 1 was working as Manager in IIFL Finance Ltd. Bank, Branch Uran. He has cheated the customers by taking the loan amount and he has deposited the same in his account. He failed to deposit the said amount in the loan account of customers. He has transferred the said amount to his relatives and cheated the customers. He has taken the amount from Jitendra Koli, Nishant Koli and has returned them the golden ornaments but has failed to deposit the amount in their loan accounts. He has taken said amount in his individual account to the tune of Rs. 6,63,532/-. Likewise, he has cheated 27 customers worth Rs. 75,90,315/- and other 19 customers to Rs. 44,58,100/-. He has cheated customers to the amount of Rs. 1,26,11,947/-. He has misappropriated the said amount. The accused no. 2 Amita Raghunath Chavan has also helped him. If the accused is released on bail, he will tamper with the evidence of the prosecution and will pressurize the witnesses. Therefore, she prayed to reject the application.

7. Heard learned advocate Shri. Gangan and learned A.P.P. Smt. Chhapekar. It is now relevant to peruse the verbatim of the complaint/report of the informant against the accused. There are allegations against the present accused that he has cheated the customers by taking the amount and failed to deposit in their concerned loan account and he has taken the said amount in his individual accounts. As of now, the investigation is completed and chargesheet is filed before the Court. The evidence filed along with chargesheet is voluminous.

8. I deem it apt to refer the principles for consideration for deciding application of bail. The Hon'ble Supreme Court in case of **Suman Pandey Vs. State of U.P and others reported in MLR 2007 (3) 698** **SC** laid down necessary factors for grant of bail -

- (1) The nature of accusation and severity of punishment in case of conviction and nature of supporting evidence
- (2) Reasonable apprehension of tampering of witnesses or apprehension to threat complainant
- (3) Prima facie satisfaction of the Court in support of the charge

9. The learned advocate for the applicant has pressed into service the authority of the **Hon'ble Supreme Court in the case of Shri. P. Chidambaram Vs. C.B.I. reported in 2020 AIR (SCW) 1699.** In the present case, it is observed by the Hon'ble Supreme Court that the law in regard to grant of bail is well settled. The discretion has to be exercised in judicious manner and not as matter of course. Though at the stage of granting bail a detailed examination of evidence and elaborate documentation of the merit of the case, need not be undertaken, there is need to indicate in such orders reasons for prima facie concluding why bail was been granted particularly where the accused is having charge of

committing serious offence. Any order devoid of such reason would suffer from non-application of mind. It is also necessary for the Court, granting bail to consider among other circumstances, the following factors also before granting bail; they are (a) the nature of accusation and severity of punishment in case of conviction and the nature of evidence, (b) reasonable apprehension of tampering witnesses or apprehension to threat complainant, (c) prima facie satisfaction of Court in support of the charge.

10. In the case at hand, the A.P.P. has suspected tampering at the behest of the accused. The Hon'ble Supreme Court in *P. Chidambaram* (Supra) observed in para no. 32. The appellant is not a 'flight risk' and in view of the condition imposed, there is no possibility of his absconding from the trial. Statement of the prosecution that the appellant has influenced the witnesses and there is likelihood of his influencing witnesses cannot be the ground to deny the bail.

11. It has been observed by the Hon'ble Supreme Court and High Courts in catena of judgments that 'the deprivation of personal liberty without ensuring speedy trial is not in consonance with Article 21 of the Constitution. Access to justice and speedy trial has been well recognized as hall mark of liberty guaranteed in part 3 of the Constitution and the accused cannot be made to suffer further incarceration. It is but true that the offence leveled against the accused are economic offences. Merely the fact that the offence is economic offence will not superimpose a label of incarceration on the face of the accused for indefinite period. There is no line and length for further investigation. Letting the accused to languish the accused in jail for further indefinite period would leave a cascading effect on the Constitutional right of life and personal liberty of the accused which is inclusive of right of fair and speedy trial. The

offences leveled against the accused are triable by this Court. There are voluminous documents filed along with chargesheet which can take much time for evidence. The trial may take considerable time. No purpose will be served by keeping accused behind bars. Therefore, accused is entitled to be released on bail. However, considering apprehension of learned A.P.P., heavy surety and certain conditions need to be imposed. Consequently, I pass following order.

ORDER

1. Application is allowed.
2. Accused is released on bail on his executing PB. of Rs. 50,000/- along with a solvent surety of like amount, if not required in other crime.
3. Accused shall not commit similar nature of offence, he shall not tamper with prosecution evidence/witnesses, he shall not induce threat or give promise to any person for refraining him or dissuading him from leading evidence or disclosing facts to the Court or police officer.
4. If he fails to follow any of above condition, his bail will stand cancelled by way of procedure u/s. 437 (5) of the Cr.P.C.
5. A soft copy of this bail order be forwarded to applicant/accused through Superintendent, Taloja Jail by e-mail for information in view of observation of the Hon'ble Apex Court in the case of In Re Policy Strategy For Grant of Bail in SMWP (CRIMINAL) No. 4/2021, dated 31.01.2023.

Uran,
Date : 16.10.2024

(L.B.M.M.A. Syed)
Judicial Magistrate, F.C., Uran