

**ORDER BELOW EXH.1**

By this application under section 439 of The Code of Criminal Procedure, 1973, (hereinafter 'CrPC'), the applicant/accused - Ratheesh Unnikrishnan Chaurikandath is seeking bail in connection with Crime No. 958/2023 registered with Nigdi police station for the offences punishable under sections 406, 409 and 420 read with section 34 of the Indian Penal Code, 1860 (hereinafter 'IPC'), sections 3 and 4 of the Maharashtra Protection of Interest of Depositors (In Financial Establishments) Act, 1999 and sections 3, 4, 5 read with section 21 and 23 of the Banning of Unregulated Deposit Schemes Act, 2019.

2] In brief the applicant's case is that he is arrested in connection with the aforesaid crime number. The State CID has already filed charge-sheet on 13/05/2021. The case is pending before the Sessions Court. While filing the charge-sheet, present applicant and two other managers were not arrested though the Directors of Goodwin Jewellers Private Limited were arrested. The applicant is arrested on 10/08/2023. Presently he is in judicial custody. No prima facie case exists against him. The charge-sheet reveals that all the allegations are against the directors of Goodwin Jewellers Private Limited. The applicant has a permanent residence. He has simply acted as per the instructions of his seniors. No suspicious activity or transaction can be found in his bank accounts. He never evaded to cooperate the investigating agency. Entire case is based on documentary evidence. He is ready to assist the investigating agency. The trial is not likely to commence immediately and will take long time to conclude. The applicant has

cooperated the investigating agency and his statement was also recorded. He is ready and willing to abide by the conditions imposed by the Court.

3] Application is opposed by the State on the grounds that the applicant was serving as a Manager for 9 to 10 years at Goodwin Jewellers Private Limited, Chinchwad Branch. He was alluring the customers. His account with Federal Bank is being probed and there is possibility of suspicious financial transactions in said account. The applicant did not give satisfactory answers about the transactions in said account. Huge amounts are seen to be credited in his bank account apart from his salary. The applicant is from Kerla. He may visit Kerla and may transfer his properties in the name of his relatives. He has purchased a flat at Pune. The total amount of the investors involved is Rs.34 cores 71 lakhs and the number of investors is 1459. The applicant was in direct contact with the main accused. If granted bail, he may threaten the workers. There is possibility of the applicant misappropriating the amounts with the help of such workers. The investigation is on to know whether the applicant has opened accounts with the banks in his or his relatives names. The forensic audit is awaited. Applicant might have invested the amounts misappropriated by him by purchasing the properties benami. He may threaten the witnesses or pressurize them. The applicant was traveling to foreign countries. A lookout notice was issued against him. If granted bail, he may flee out of India which may hamper the investigation and trial.

4] Perused. Heard.

5] The advocate for applicant initially sought to contend that the lookout notice was illegal. However, on being questioned about the scope of this proceeding, he did not pursue said issue.

6] According to the advocate for the applicant, applicant's arrest was illegal since it was in contravention of section 41(A) of CrPC. He submits that in such a case the applicant is straightway entitled to bail. To support his submissions, he relied upon :-

- 1] *Satender Kumar Antil Vs. Central Bureau of Investigation and Ors., MANU/SC/0851/2022.*
- 2] *Mohammed Zubair Vs. state of NCT of Delhi & Ors., MANU/SC/0918/2022.*
- 3] *Md. Asfak Alam Vs. State of Zarkhand, MANU/SC/0811/2023.*

7] On the other hand, learned APP submitted that provisions of section 409 of IPC are attracted in this case and so section 41(A) of CrPC is not attracted.

8] Considering that the allegations leveled against the applicant and the co-accused are of misappropriating the amounts of the investors in the capacity of merchant, provisions of section 409 of IPC are prima facie attracted. In view of this, provisions of section 41(A) of CrPC are not attracted in this case.

9] In *Satender Kumar Antil's* case, the Honourable Supreme Court has observed -

*“Innocence of a person Accused of an offense is presumed through a legal fiction, placing the onus on the prosecution to prove the guilt before the Court. Thus, it is for that agency to satisfy the Court that the arrest made was warranted and enlargement on bail is to be denied.”*

10] In view of the observations of the Honourable Apex Court cited supra, it needs to be seen what ground is made out by the State to deny the bail to the applicant.

11] The State has relied upon the statement of account of the applicant with Federal Bank. I have perused the same. It is for a period from 01/12/2009 to 11/06/2021. Thus, it is for about a period of 12 years. Total transaction in said account is of Rs.26,51,453/-. Perusal of such bank statement reveals that there is no alarming or suspicious transaction in it.

12] It is also contended that the applicant, jointly with his wife, has purchased a flat at Chinchwad. It was sought to be canvassed that such flat was purchased from the money misappropriated by the applicant. However, the applicant has produced on record the home loan documents revealing that the flat was purchased by availing the home loan facility. These documents are not disputed by the Investigating Officer.

13] The applicant has claimed that his statement was recorded by the investigating agency and so he has cooperated with the investigation. However, said claim was refuted by the State claiming that no such statement was ever recorded. However, afterwards, the Investigating Officer has tendered a report at Exh.10 mentioning that a case diary mentions that the statement of the applicant was recorded on 15/07/2021, though the statement of the applicant was not found in the investigating papers.

14] Considering the discussion above, it is evident that the claims made by the State against the applicant are mere suspicious and prima facie are found not correct.

15] It is also contended by the State that the applicant was visiting foreign countries and so was avoiding to cooperate in investigation, lookout notice was issued against him.

16] Applicant has produced on record his letter of employment with Al kamar Al Arabi based at Kuwait. What appears is that the applicant traveled to Kuwait for the purpose of employment. This was after recording his statement on 15/07/2021. Therefore, it cannot be accepted that the applicant did not cooperate during investigation. No documents are produced on record to indicate that the notice was served on the applicant to which he did not respond.

17] The other grounds mentioned by the State against the applicant are the general grounds such as applicant possibly threatening the witnesses, fleeing from justice and hampering the investigation. Such apprehensions can be taken care by imposing proper conditions.

18] According to the prosecution itself, there are around 1459 investors. Those many would be the witnesses for the prosecution, probably more than that. The trial is yet not commenced. The FIR was lodged on 30/10/2019. The investigation was completed as against the main accused i.e. the Directors of Goodwin Jewellers Private Limited and charge-sheet is also tendered. Thus, major part of investigation even as against present accused is already completed. In such circumstances, when the applicant merely acted as a Manager and the documents on record do not reveal that he got undue benefit of his position and he did not misappropriate any amount as suggested by the State, the applicant has made out a case for grant of bail.

19] It is contended by the State that forensic audit of the accounts of the applicant is awaited. I have perused the statements of the bank account of the applicant produced on record. I have already concluded that there are no suspicious or transaction of huge amount in the applicant's accounts. In such circumstances, applicant cannot be kept behind bar awaiting forensic audits.

20] Advocate for applicant relied upon *Santosh Vs. State of Maharashtra, MANU/SC/1313/2017, Motiram Vs. State of Madhya Pradesh, MANU/SC/0132/1978* and *P Chidambaram Vs. Directorate of Enforcement, MANU/SC/1670/2019*.

21] I have gone through the authority cited supra wherein the principles regarding grant or refusal of bail are discussed.

22] Having gone through the circumstances of this case, I have already concluded that the applicant has made out a case to grant bail on conditions. Hence, the applicant can be granted bail by imposing appropriate conditions.

### ORDER

- 1 Bail Application No. 5560/2023 is allowed.
- 2 The applicant viz. Ratheesh Unnikrishnan Chaurikandath be released, in Crime No.958/2023 registered with Nigdi police station for the offences punishable under sections 406, 409 and 420 read with section 34 of IPC, sections 3 and 4 of the Maharashtra Interest of Depositors Protection (In Financial Establishments) Act, 1999 and sections 3, 4, 5 read with section 21 and 23 of the Banning of

Unregulated Deposit Schemes Act, 2019 on furnishing PB and SB of Rs.50,000/- and one or more sureties in the like amount.

- 3 He shall co-operate the investigating agency for investigation.
- 4 He shall visit the office of Investigating Agency on every 2<sup>nd</sup> and 4<sup>th</sup> Sunday between 10.00 am to 2.00 pm.
- 5 He shall not leave India without permission of the Court.
- 6 He shall deposit the passport with the Investigating Agency until further orders.
- 7 He shall not contact the informant or any other witness by any mode of communication and shall not try to influence them in any manner.
- 8 He shall provide his permanent residential address and contact numbers along with permanent residential addresses and contact numbers of his two close relatives to the investigating officer or the station in charge of concerned police station, within 7 days from the date of his release on bail.

Date : 25/09/2023  
Pune

(Ajit N. Mare)  
Additional Sessions Judge, Pune

I affirm that the contents of this PDF file Order are same word for word as per original Order.

Name of Stenographer	Nitin M. Shinde (Stenographer – Grade-III)
Court Name	Shri. Ajit N. Mare District Judge – 5 & Additional Sessions Judge, Pune
Date of Order	25/09/2023
Order signed by Presiding Officer on	25/09/2023
Order uploaded on	06/10/2023