Manik Madhukar Sarve vs Vithal Damuji Meher on 28 August, 2024

Author: Abhay S. Oka

Bench: Hima Kohli, Abhay S. Oka

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2024 INSC 636

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.3573 OF 2024
[@ SPECIAL LEAVE PETITION (CRL.) NO.3945 OF 2022]

MANIK MADHUKAR SARVE & ORS.

VERSUS

VITTHAL DAMUJI MEHER & ORS.

JUDGMENT

AHSANUDDIN AMANULLAH, J.

Leave granted.

2. The present appeal arises from the final judgment and order dated 13.10.20211 (hereinafter referred to as the "Impugned Order"), passed by 1 Operative portion pronounced in Open Court on 13.10.2021, however the detailed Order was uploaded on the High Court's official website on 30.10.2021. a learned Single Judge of the High Court of Judicature at Bombay, Nagpur Bench (hereinafter referred to as the "High Court") in Criminal Application (BA) No.867/2021, whereby and whereunder respondent no.1 was released on bail in connection with Crime No.217/2019 registered with Police Station Kotwali, Nagpur for offences punishable under Sections 409, 420, 467, 468, 471 and 120-B of the Indian Penal Code, 1860 (hereinafter referred to as the "IPC") and

Section 3 of the Maharashtra Protection of Interest of Depositors (in Financial Establishments) Act, 1999 (hereinafter referred to as the "MPID Act"). Be it noted, we have dismissed connected petitions vide common Order dated 07.05.2024 in S.L.P. (Crl.) Nos.3946/2022 and 3938/2022. On even date, judgment was reserved in the instant appeal. BRIEF FACTS:

> 3. The case of the prosecution is that one accused viz. Khemchand Meharkure is the President of Jai Shriram Urban Credit Co-operative Society Limited (hereinafter referred to as the "Society") and he, in connivance with the co-accused, misappropriated an amount of 79,54,26,963/- (Rupees Seventy Nine Crores Fifty Four Lakhs Twenty Six Thousand Nine Hundred and Sixty Three). Also, it is projected in the charge-sheet that statements of 798 depositors further revealed that their deposits aggregating 29,06,18,748/- (Rupees Twenty Nine Crores Six Lakhs Eighteen Thousand Seven Hundred and Forty Eight) were not returned and the amount was misappropriated. The appellants herein are some of the depositors, who purportedly fell victim to the Society. The financial irregularities have been categorized by the prosecution under twenty-three different heads.
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> 4. It is the further case of the prosecution that the respondent no.1 is a co-conspirator and a close friend of the alleged mastermind, Khemchand Meharkure. Respondent No.1 deposited an amount of 2,38,39,071/- (Rupees Two Crores Thirty Eight Lakhs Thirty Nine Thousand and Seventy One) with the Society in his name and in the names of his family members. As stated in the chargesheet, the respondent no.1 was paid an amount of 9,69,28,500/- (Rupees Nine Crores Sixty Nine Lakhs Twenty Eight Thousand Five Hundred) which was withdrawn from the Society and paid to him as financial assistance, upon the directions of the alleged mastermind, Khemchand Meharkure. It is further alleged that the respondent no.1 purchased five immovable properties for approximately 10,00,00,000/- (Rupees Ten Crores) in the name of Khemchand Meharkure.
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> 5. During investigation, respondent no.1 was arrested on 28.04.2021.

The High Court vide the Impugned Order has released him on bail noting that the material on record is not sufficient to establish his complicity. SUBMISSIONS BY THE APPELLANTS:

> 6. Learned counsel for the appellants submitted that the High Court erred in not appreciating the role of the respondent no.1/accused as stated in the charge-sheet and record of the case. It is submitted that the respondent no.1 and his family members were the ones to whom the amount was given by the Society's office-bearers. Respondent No.1 is the one who majorly benefitted from the scam, therefore, the High Court ought not to have released the respondent no.1.
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> 7. It was submitted that as per the charge-sheet, amount worth 79,54,26,963/- (Rupees Seventy Nine Crores Fifty Four Lakhs Twenty Six Thousand Nine Hundred and Sixty Three) has been illegally disposed of by the perpetrators of the crime. Such

huge amount was siphoned off by indulging in irregularities and illegal activities. Our attention was drawn towards the Forensic Audit Report wherein it has been revealed that the President of the Society colluded with the respondent no.1/accused and relatives of respondent no.1/accused invested an amount of 2,38,39,071/- (Rupees Two Crores Thirty Eight Lakhs Thirty Nine Thousand and Seventy One) against which he was given financial assistance of 9,69,28,500/- (Rupees Nine Crores Sixty Nine Lakhs Twenty Eight Thousand and Five Hundred), which amount was not refunded.

8. Learned counsel further pointed out that the impugned order did not take into consideration the statements of the Society's staff recorded during investigation. It was advanced that the High Court ought to have appreciated that the chances of the respondent no.1, as also the other co-accused enlarged on bail, influencing material witnesses such as the Society's staff etc. cannot be ruled out. Therefore, it was submitted that this was a fit case, where bail granted by the High Court ought to be cancelled by this Court.

SUBMISSIONS ON BEHALF OF RESPONDENTS NO. 2 AND 3/ STATE:

9. Learned counsel for the State/official respondents adopted the arguments of the appellants and prayed for cancellation of the bail granted to the respondent no.1. Learned counsel drew our attention to the statements of the clerks employed with the Society. A perusal of the statement of one Prashant Savai would show that he worked as a Clerk with the Society since 2006 to 2014. He stated that the respondent no.1 in the year, 2013 deposited 2,38,00,000/- (Rupees Two Crores Thirty Eight Lakhs) with the Society. He received 3,25,000/- (Rupees Three Lakhs Twenty Five Thousand) as interest from the Society. The same was paid to the respondent no.1 by way of cash. No entry was recorded in the cashbook and/or other books of accounts maintained by the Society. But a note-sheet was prepared by the Society. He further stated that an amount of 3,50,00,000/- (Rupees Three Crores Fifty Lakhs) was paid to the respondent no.1 by a witness. He also stated that he prepared receipts of the payment handed over to the respondent no.1 by way of cash. The Society also prepared a note-sheet in which an amount of 9,69,00,000/- (Nine Crores Sixty Nine Lakhs) is shown as having been paid to the respondent no.1.

10. It was submitted that the statement of one Anil Nagdeve would show that he prepared vouchers and also the Fixed Deposit and made necessary entries in the cash-book; however, no such entries are reflected in the books of accounts of the Society. Another witness, Arun Kathane has specifically stated that the respondent no.1 used to visit the Society and was in constant touch with the President.

11. It was submitted that the Bank Statements of the respondent no.1 came to be seized from the Vidarbh Konkan Gramin Bank. Entries of 37,50,000/- (Rupees Thirty Seven Lakhs and Fifty Thousand) and 5,00,000/- (Rupees Five Lakhs) are

> shown as credited in the account of the respondent no.1. As per the Forensic Audit Report, the said figure matches with the saving account. According to the Forensic Audit Report, cash deposit of the amount of 45,28,500/- (Rupees Forty Five Lakhs Twenty Eight Thousand and Five Hundred) is also shown in the name of the respondent no. 1. An amount of 85,75,150/- (Rupees Eighty Five Lakhs Seventy Five Thousand One Hundred and Fifty) and 32,90,850/-

(Rupees Thirty Two Lakhs Ninety Thousand Eight Hundred and Fifty) is also shown in the name of the wife of the respondent no.1. It is further noted during investigation that the said amount is not reflected for the purposes of income-tax. Similarly, respondent no.1 and the Society's President executed Sale Deed(s) and purchased various properties in cash. It is averred that later on, they applied for correction in the Sale Deed by making modification that the amount was inadvertently shown to be paid in cash but in fact the payment(s) is/were made through cheque(s).

12. It was submitted that a money trail has been unearthed between the respondent no.1 and the Society. Therefore, it was prayed that the privilege of bail granted to him by the High Court be cancelled. SUBMISSIONS BY RESPONDENT NO.1/ACCUSED:

13. At the outset, learned counsel for the respondent no.1 submitted that the said respondent is innocent and not involved in the alleged crime. It was stated that he has been falsely implicated by the police. It was submitted that there is absolutely no evidence to incriminate Respondent No.1 in the subject-case. Therefore, in any event, on the basis of the allegations made, no case at all, as alleged vide Crime No.217/2019 is made out against respondent no.1.

14. It was submitted that there is no substantial material on record, except disclosure statements of witnesses in police custody, to prove any kind of agreement between respondent no.1 and the main accused/President of the Society. It was pointed out that the main accused, referred to as the President/Chairman of the Society in the charge-sheet, has been released on bail by the High Court vide order dated 22.08.2022. Referring to this order, it was urged that the High Court had raised doubts on the existence of material evidence relating to criminal conspiracy and held that "considering the number of witnesses and voluminous charge sheet there is no point in keeping the applicant in jail for an uncertain period."

15. It was submitted that the alleged loan has never been transferred to the respondent no.1. There is no electronic evidence, except mere statements of the three witnesses. Learned counsel advanced that these statements could not be treated as gospel truth. It has not been proved that respondent no.1 was the beneficiary of the alleged scam. Moreover, there is no worthwhile evidence to suggest that respondent no.1/his family purchased the properties to the tune of the alleged loan amount or used the alleged loan amount to purchase any properties. Even according to the Forensic Audit Report, respondent no.1, including his family cumulatively, had received no more than a 1,28,00,000/- (Rupees One crore Twenty Eight Lakh) loan. Consequently, there are contradictions regarding alleged receipt of the loan amount in question.

16. It was further submitted that the authenticity of the aforesaid Forensic Audit Report is also under challenge as the handwriting/specimen of the respondent no.1 has been sent for forensic examination, report whereof is still awaited. Further, it was submitted that respondent no.1 was never associated in the affairs of the Society and had never held any position in the Society.

17. Lastly, it was submitted that respondent no.1 is a senior citizen and has complicated age-related medical issues, for which he is undergoing treatment due to the severity of the condition(s). Hence, it is submitted that there are no chances of his absconding. It was stated that investigation is complete and charge-sheet has been filed much prior in time to the grant of bail. Stating that no prejudice has been caused to the smooth running of the trial so as to invoke the intervention of this Court, it was prayed that the instant appeal be dismissed. ANALYSIS, REASONING AND CONCLUSION:

18. Having given our anxious thought to the controversy, we find that the exercise of discretion by the learned Single Judge in the impugned order under Section 439(1)2 of the Code of Criminal Procedure, 1973 2 "439. Special powers of High Court or Court of Session regarding bail.—(1) A High Court or Court of Session may direct—

(a) that any person accused of an offence and in custody be released on bail, and if the offence is of the nature specified in sub-section (3) of Section 437, may impose any condition which it considers ne - cessary for the purposes mentioned in that sub-section;

(b) that any condition imposed by a Magistrate when releasing any person on bail be set aside or modified:

> Provided that the High Court or the Court of Session shall, before granting bail to a person who is accused of an offence which is triable exclusively by the Court of Session or which, though not so triable, is punishable with imprisonment for life, give notice of the application for bail to the Public Prosecutor un- less it is, for reasons to be recorded in writing, of opinion that it is not practicable to give such notice:
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> (hereinafter referred to as the "Code"), granting bail to the respondent no.1 cannot be sustained.
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> 19. Courts while granting bail are required to consider relevant factors such as nature of the accusation, role ascribed to the accused concerned, possibilities/chances of tampering with the evidence and/or witnesses, antecedents, flight risk et al. Speaking through Hima Kohli, J., the present coram in Ajwar v Waseem, 2024 SCC OnLine SC 974, apropos relevant parameters for granting bail, observed:
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> "26. While considering as to whether bail ought to be granted in a matter involving a serious criminal offence, the Court must consider relevant factors like the nature of the accusations made against the accused, the manner in which the crime is alleged to have been committed, the gravity of the offence, the role attributed to the accused,

> the criminal antecedents of the accused, the probability of tampering of the witnesses and repeating the offence, if the accused are released on bail, the likelihood of the accused being unavailable in the event bail is granted, the possibility of obstructing the proceedings and evading the courts of justice and the overall desirability of releasing the accused on bail. (Refer: Chaman Lal v. State of U.P.3; Kalyan Chandra Sarkar v. Rajesh Ranjan alias Pappu Yadav (supra)4; Masroor v. State of Uttar Pradesh5; Prasanta Kumar Sarkar v. Ashis Chatterjee6; Neeru Yadav v. State of Provided further that the High Court or the Court of Session shall, before granting bail to a person who is accused of an offence triable under sub-section (3) of Section 376 or Section 376-AB or Section 376-DA or Section 376-DB of the Indian Penal Code (45 of 1860), give notice of the application for bail to the Public Prosecutor within a period of fifteen days from the date of receipt of the notice of such applica- tion."

3 (2004) 7 SCC 525.

4 (2004) 7 SCC 528.

5 (2009) 14 SCC 286.

6 (2010) 14 SCC 496.

Uttar Pradesh7; Anil Kumar Yadav v. State (NCT of Delhi)8; Mahipal v. Rajesh Kumar @ Polia (supra)9.

27. It is equally well settled that bail once granted, ought not to be cancelled in a mechanical manner. However, an unreasoned or perverse order of bail is always open to interference by the superior Court. If there are serious allegations against the accused, even if he has not misused the bail granted to him, such an order can be cancelled by the same Court that has granted the bail. Bail can also be revoked by a superior Court if it transpires that the courts below have ignored the relevant material available on record or not looked into the gravity of the offence or the impact on the society resulting in such an order. In P v. State of Madhya Pradesh (supra)10 decided by a three judges bench of this Court [authored by one of us (Hima Kohli, J)] has spelt out the considerations that must weigh with the Court for interfering in an order granting bail to an accused under Section 439(1)of the CrPC in the following words:

> "24. As can be discerned from the above decisions, for cancelling bail once granted, the court must consider whether any supervening circumstances have arisen or the conduct of the accused post grant of bail demonstrates that it is no longer conducive to a fair trial to permit him to retain his freedom by enjoying the concession of bail during trial [Dolat Ram v. State of Haryana, (1995) 1 SCC 349 : 1995 SCC (Cri) 237]. To put it differently, in ordinary circumstances, this Court would be loathe to interfere with an order passed by the court below granting bail but if such an order is found to be illegal or perverse or premised on material that is 7 (2014) 16 SCC 508.

8 (2018) 12 SCC 129.

9 (2020) 2 SCC 118.

10 (2022) 15 SCR 211.

irrelevant, then such an order is susceptible to scrutiny and interference by the appellate court."" (emphasis supplied)

20. In State of Haryana v Dharamraj, 2023 SCC OnLine 1085, speaking through one of us (Ahsanuddin Amanullah, J.), the Court, while setting aside an order of the Punjab and Haryana High Court granting (anticipatory) bail, discussed and reasoned:

> "7. A foray, albeit brief, into relevant precedents is warranted. This Court considered the factors to guide grant of bail in Ram Govind Upadhyay v. Sudarshan Singh, (2002) 3 SCC 598and Kalyan Chandra Sarkar v. Rajesh Ranjan, (2004) 7 SCC 528.
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> In Prasanta Kumar Sarkar v. Ashis Chatterjee, (2010) 14 SCC 496, the relevant principles were restated thus:
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> '9. ... It is trite that this Court does not, normally, interfere with an order passed by the High Court granting or rejecting bail to the accused. However, it is equally incumbent upon the High Court to exercise its discretion judiciously, cautiously and strictly in compliance with the basic principles laid down in a plethora of decisions of this Court on the point. It is well settled that, among other circumstances, the factors to be borne in mind while considering an application for bail are:
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> (i) whether there is any prima facie or reasonable ground to believe that the accused had committed the offence;
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> (ii) nature and gravity of the accusation;
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> (iii) severity of the punishment in the event of conviction;
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> (iv) danger of the accused absconding or fleeing, if released on bail;
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> (v) character, behaviour, means, position and standing of the accused;
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> (vi) likelihood of the offence being repeated;
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> (vii) reasonable apprehension of the witnesses being influenced; and
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> (viii) danger, of course, of justice being thwarted by grant of bail.'

8. In Mahipal v. Rajesh Kumar alias Polia, (2020) 2 SCC 118, this Court opined as under:

'16. The considerations that guide the power of an appellate court in assessing the correctness of an order granting bail stand on a different footing from an assessment of an application for the cancellation of bail. The correctness of an order granting bail is tested on the anvil of whether there was an improper or arbitrary exercise of the discretion in the grant of bail. The test is whether the order granting bail is perverse, illegal or unjustified. On the other hand, an application for cancellation of bail is generally examined on the anvil of the existence of supervening circumstances or violations of the conditions of bail by a person to whom bail has been granted.

...'

9. In Bhagwan Singh v. Dilip Kumar @ Deepu @ Depak, 2023 INSC 761, this Court, in view of Dolat Ram v. State of Haryana, (1995) 1 SCC 349; Kashmira Singh v. Duman Singh, (1996) 4 SCC 693 and X v. State of Telangana, (2018) 16 SCC 511, held as follows:

'13. It is also required to be borne in mind that when a prayer is made for the cancellation of grant of bail cogent and overwhelming circumstances must be present and bail once granted cannot be cancelled in a mechanical manner without considering whether any supervening circumstances have rendered it in conducing to allow fair trial. This proposition draws support from the Judgment of this Court in Daulat Ram v. State of Haryana, (1995) 1 SCC 349, Kashmira Singh v. Duman Singh (1996) 4 SCC 693 and XXX v. State of Telangana (2018) 16 SCC 511.'

10. In XXX v. Union Territory of Andaman & Nicobar Islands, 2023 INSC 767, this Court noted that the principles in Prasanta Kumar Sarkar (supra) stood reiterated in Jagjeet Singh v. Ashish Mishra, (2022) 9 SCC 321.

11. The contours of anticipatory bail have been elaborately dealt with by 5-Judge Benches in Gurbaksh Singh Sibbia v. State of Punjab, (1980) 2 SCC 565 and Sushila Aggarwal v. State (NCT of Delhi), (2020) 5 SCC 1. Siddharam Satlingappa Mhetre v. State of Maharashtra, (2011) 1 SCC 694 is worthy of mention in this context, despite its partial overruling in Sushila Aggarwal (supra). We are cognizant that liberty is not to be interfered with easily.

More so, when an order of pre-arrest bail already stands granted by the High Court.

12. Yet, much like bail, the grant of anticipatory bail is to be exercised with judicial discretion. The factors illustrated by this Court through its pronouncements are illustrative, and not exhaustive. Undoubtedly, the fate of each case turns on its own facts and merits." (emphasis supplied)

21. In Ajwar (supra), this Court also examined the considerations for setting aside bail orders in terms below:

> "28. The considerations that weigh with the appellate Court for setting aside the bail order on an application being moved by the aggrieved party include any supervening circumstances that may have occurred after granting relief to the accused, the conduct of the accused while on bail, any attempt on the part of the accused to procrastinate, resulting in delaying the trial, any instance of threats being extended to the witnesses while on bail, any attempt on the part of the accused to tamper with the evidence in any manner. We may add that this list is only illustrative and not exhaustive. However, the court must be cautious that at the stage of granting bail, only a prima facie case needs to be examined and detailed reasons relating to the merits of the case that may cause prejudice to the accused, ought to be avoided. Suffice it is to state that the bail order should reveal the factors that have been considered by the Court for granting relief to the accused.
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> 29. In Jagjeet Singh (supra)11, a three-Judges bench of this Court, has observed that the power to grant bail under Section 439 Cr. P.C. is of wide amplitude and the High Court or a Sessions Court, as the case may be, is bestowed with considerable discretion while deciding an application for bail. But this discretion is not unfettered. The order passed must reflect due application of judicial mind following well established principles of law. In ordinary course, courts would be slow to interfere with the order where bail has been granted by the courts below. But if it is found that such an order is illegal or perverse or based upon utterly irrelevant material, the appellate Court would be well within its power to set aside and cancel the bail. (Also 11 (2022) 9 SCC 321.
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> refer: Puran v. Ram Bilas12; Narendra K. Amin (Dr.) v. State of Gujarat13)"
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> (emphasis supplied)

22. The learned Single Judge, in the impugned order, has simply proceeded on the premise that there were only allegations made by some persons against the respondent no.1 and he was not a member of the Society which had committed such financial irregularities. Moreover, we find that the learned Single Judge, whilst noting that "no positive finding need be recorded on the sufficiency of the said material to establish conspiracy, which issue will be addressed by the trial Court, after the evidence is adduced", has without any basis thought it fit to record that in his "prima facie opinion, it is extremely debatable whether such material is sufficient to establish conspiracy."

> 23. The impugned order goes on to state that respondent no.1 was not involved in the affairs of the Society nor was he responsible for the irregularities alleged. At the present stage, where the charge-sheet stands filed, it emerges that there is some material indicative of the involvement of respondent no.1 in the withdrawal of 9,00,00,000/-

(Rupees Nine Crores), based on the records and cash-book entries and 12 (2001) 9 SCC 338.

13 (2008) 13 SCC 584.

other book of accounts though he had invested amounts only to the tune of about 2,38,00,000/- (Rupees Two Crores Thirty Eight Lakhs). Even the Forensic Audit Report exhibits material to this effect.

24. We bear in mind the submission that respondent no.1 was a close associate of the President of the Society with regular business/other dealings between the two. Investigation also indicates that out of the monies withdrawn from the Society's account by the respondent no.1, investments were later made in property in the name of his relatives. Further, the High Court has completely lost sight of the fact that the deposits in/to the Society were made by people having meagre earnings without anything else to fall back upon. Tentatively speaking, it seems that the President of the Society systematically siphoned off these funds, with the aid of other office-bearers as also through respondent no.1. We consciously refrain from elaborately discussing/detailing the evidence or our views thereon following the dicta in Niranjan Singh v Prabhakar Rajaram Kharote, (1980) 2 SCC 559; Vilas Pandurang Pawar v State of Maharashtra, (2012) 8 SCC 795 and Atulbhai Vithalbhai Bhanderi v State of Gujarat, 2023 SCC OnLine SC 560.

25. In cases where the allegations coupled with the materials brought on record by the investigation and in the nature of economic offence affecting a large number of people reveal the active role of the accused seeking anticipatory or regular bail, it would be fit for the Court granting such bail to impose appropriately strict and additional conditions. In the present case, even that has not been done as the High Court has imposed usual conditions simpliciter:

> "8. The applicant be released on bail in connection with Crime 217/2019, registered with Police Station Kotwali, Nagpur, for offences punishable under sections 409, 420, 467, 478, 471, 120-B of Indian Penal Code, Section 3 of the Maharashtra Protection of Interest of Depositors (in Financial Establishments) Act, on executing PR bond of Rs. 16,000/- (Rupees Sixteen Thousand) with one solvent surety of the like amount.
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> 9. The applicant shall attend Economic Offences Wing, Nagpur as and when required by the Investigating Officer.
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> 10. The applicant shall not, directly or indirectly, make any attempt to influence the witnesses or otherwise tamper with the evidence.

11. The applicant shall not leave the country without the permission of the trial Court." (emphasis supplied)

26. The High Court, we have no hesitation in saying so, erred in law. Ergo, for reasons recorded above and upon circumspect consideration of the attendant facts and circumstances, we hold that the discretion exercised by the learned Single Judge of the High Court to grant bail to the respondent no.1 was not in tune with the principles that conventionally govern exercise of such power, a plurality of which stand enunciated in the case-law supra. Moreover, though respondent no.1 had already suffered incarceration for a period of about six months at the time when bail was granted, yet in view of the nature of the alleged offence, his release on bail can seriously lead to dissipation of the properties where investments have allegedly been made out of Society funds. At the end of the day, the interests of the victims of the scam have also to be factored in.

27. Accordingly, the appeal succeeds. The impugned order stands set aside. Respondent No.1 is directed to surrender within a period of three weeks from today, failing which the trial Court shall proceed in accordance with law. We clarify that the observations made hereinabove are limited to the aspect of testing the legality of the impugned order. They shall not be treated as definitive/conclusive regarding respondent no.1 or any other accused. The trial Court in seisin shall proceed uninfluenced and in accordance with law. Given the peculiar circumstances, where bail is being cancelled after a period of almost 3 years, it is deemed appropriate to grant liberty to the respondent no.1 to apply for bail at a later period or in the event of a change in circumstances. Needless to state, such application, if and when preferred, shall be considered on its own merits, without being prejudiced by the instant judgment. The authorities concerned are directed to render appropriate care and assistance as regards the medical condition of the respondent no.1.

.....J. [HIMA KOHLI] .....J. [AHSANUDDIN AMANULLAH] NEW DELHI AUGUST 28, 2024