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Megha Middha, is working as an Assistant Professor of Law in Mody University of Science and Technology, Lakshmangarh, Sikar (Rajasthan). She has an experience in the teaching of almost 3 years. She has completed her graduation in BBA LL.B (H) from Amity University, Rajasthan (Gold Medalist) and did her post-graduation (LL.M in Business Laws) from NLSIU, Bengaluru. Currently, she is enrolled in a Ph.D. course in the Department of Law at Mohanlal Sukhadia University, Udaipur (Rajasthan). She wishes to excel in academics and research and contribute as much as she can to society. Through her interactions with the students, she tries to inculcate a sense of deep thinking power in her students and enlighten and guide them to the fact how they can bring a change to the society

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Assistant professor of Law

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Avinash Kumar



Avinash Kumar has completed his Ph.D. in International Investment Law from the Dept. of Law & Governance, Central University of South Bihar. His research work is on "International Investment Agreement and State's right to regulate Foreign Investment." He qualified UGC-NET and has been selected for the prestigious ICSSR Doctoral Fellowship. He is an alumnus of the Faculty of Law, University of Delhi. Formerly he has been elected as Students Union President of Law Centre-1, University of Delhi. Moreover, he completed his LL.M. from the University of Delhi (2014-16), dissertation on "Cross-border Merger & Acquisition"; LL.B. from the University of Delhi (2011-14), and B.A. (Hons.) from Maharaja Agrasen College, University of Delhi. He has also obtained P.G. Diploma in IPR from the Indian Society of International Law, New Delhi. He has qualified UGC – NET examination and has been awarded ICSSR – Doctoral Fellowship. He has published six-plus articles and presented 9 plus papers in national and international seminars/conferences. He participated in several workshops on research methodology and teaching and

learning.

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CHANGING DIMENSIONS OF BAIL **JURISPRUDENCE IN ECONOMIC OFFENCES**

AUTHORED BY - RASHINA THESNIM

LLM (Criminal Law)

Government Law College, Ernakulam

INTRODUCTION

Socio-economic offences are those which not only affects the country economically but they also damage the very fabric of the society. The primary intention behind treating economic offences as a separate class of crime stem from the fact compared to a regular offence which is generally directed towards a particular person or section of society, economic offences affect and harm the populace at large by impairing the economic stability and wellbeing of the nation. Economic offences not only inflict pecuniary losses on individuals but also damage the national economy and have security implications as well. The offences of smuggling of narcotic substances, counterfeiting of currency and valuable securities, financial scams, frauds, money laundering and hawala transactions etc. evoke serious concern about their impact on national security.

The incarceration of an accused pending trial is considered necessary in the interests of justice when there is a reasonable apprehension that he might attempt to subvert the case against him by tampering with the evidence, by intimidating the witnesses, or where he poses a flight risk. In absence of such apprehensions, it is considered judicious to release the accused from custody on bail. In *Sanjay Chandra v. CBI*¹, the Supreme Court held that the object of bail is neither punitive nor preventative, it is merely to secure the appearance of the accused at the trial by a reasonable amount of bail. The Court further held that the deprivation of liberty must be considered a punishment unless it is absolutely necessary in the interests of justice. However, the approach of the judiciary towards granting bail to economic offenders is that bail should be granted only in exceptional cases after taking into consideration the relevant factors of the case and the prejudice that has been caused to society.

¹ (2012) 1 SCC 40

Economic offences are well-planned and organized crimes. They act as facilitators for other crimes. They drain the public wealth and elevate economic inequalities. Keeping in mind the consequences of such offences on the society, the courts have classified them to be of a distinct class.

Nature of Economic Offences;

An economic offence is a rampant and pervasive social wrongdoing; each country on the planet is confronting this socio-economic challenge in one or the other form. It is the most consequential threat to a nation's economy at large and law in particular. In *Y.S. Jagan Mohan Reddy v. CBI*², the Supreme Court explained the nature of economic offences and went on to hold that "the economic offences having deep-rooted conspiracies and involving huge loss of public funds need to be viewed seriously and considered as grave offences affecting the economy of the country as a whole and thereby posing serious threat to the financial health of the country.

Economic offences unlike regular offences are not stand alone in nature. i.e they are of continuing nature. The concept of an offence of a continuing nature was explained by the Supreme Court in *State of Bihar v. Deokaran Nenshi*³ "A continuing offence is one which is susceptible of continuance and is distinguishable from the one which is committed once and for all...the distinction between the two kinds of offences is between an act or omission which constitutes an offence once and for all and an act or omission which continues, and therefore, constitutes a fresh offence every time or occasion on which it continues. In the case of a continuing offence, there is thus the ingredient of continuance of the offence which is absent in the case of an offence which takes place when an act or omission is committed once and for all..."

Thus, as distinguished from general offences which are of a standalone nature, in a continuing offence the commission or consequences of such a crime is not affected over a small period of time or on a single occasion but are rather spread out over a considerable period of time. An example of such an offence is money laundering. Thus, in the case of a continuing offence, it is difficult to ascertain the conclusion or termination of the criminal act and its object. For example, in the case of money laundering, while the initial part of the offence is over quickly, the proceeds of the illegal act can theoretically be utilized over an indefinite period of time. It is in this background that releasing on bail an accused who is charged with committing an offence

² (2013) 7 SCC 439

³ (1972) 2 SCC 890

of a continuing nature becomes problematic since it is highly probable that he will attempt to frustrate the case against him especially since the criminal act would still be in progress.

In **Central Bureau of Investigation v. Jagjit Singh**⁴, the Supreme Court observed that economic offences not only creates a hazard in the financial interest of the society but also creates a deep dent in the economic spine of the nation.

The approach of the judiciary towards economic offenders can be saw in observations made by the Supreme Court in *State of Gujarat v. Mohanlal Jitmalji Porwal*⁵ wherein the Court laid down that the: "... entire community is aggrieved if the economic offenders who ruin the economy of the State are not brought to book. A murder may be committed in the heat of moment upon passions being aroused. An economic offence is committed with cool calculation and deliberate design with an eye on personal profit regardless of the consequence to the community."

In *Prem Kumar Parmar v. State*⁶, the Court observed that such offences are even worse than murders. It was observed that "The economic offences having deep rooted conspiracies and involving huge loss of public funds whether of nationalized banks or of the State and its instrumentalities need to be viewed seriously and considered as grave offences affecting the economy of the country as a whole and thereby posing serious threat to the financial health of our country. Therefore, the persons involved in such offences, particularly those who continue to reap the benefit of the crime committed by them, do not deserve any indulgence and any sympathy to them would not only be entirely misplaced but also against the larger interest of the society. The Court cannot be oblivious to the fact that such offences are preceded by cool, calculated and deliberate design, with an eye on personal gains, and in fact, not all such offences come to the surface. If a person knows that even after misappropriating huge public funds, he can come out on bail after spending a few months in jail, and thereafter, he can continue to enjoy the ill-gotten wealth, obtained by illegal means, that would only encourage many others to commit similar crimes in the belief that even if they have to spend a few months in jail, they can lead a lavish and comfortable life thereafter, utilizing the public funds acquired by them."

⁴ (2013) 10 SCC 686

⁵ AIR 1987 SC 1321

⁶ 231989 RLR 131. Available at: <https://indiankanoon.org/doc/58730884/>

In a recent judgment⁷, the Delhi High Court held that “... economic offences are offences which corrode the fabric of democracy and are committed with total disregard to the rights and interest of the nation and are committed by breach of trust and faith and are against the national economy and national interest...” These observations made by the High Court are in line with the views expressed by the Supreme Court holding economic offenders to be “a menace to the society”⁸.

Judicial Trends Towards Bail in Economic Offences;

The origins of the distinct treatment of economic offences vis-à-vis general offences at the stage of bail can be traced back to a batch of petitions that were heard by the Supreme Court back in 2013⁹. In *Y.S. Jagan Mohan Reddy v. CBI*¹⁰, the Supreme Court while dealing with the bail applications for offences under the Prevention of Corruption Act discussed the concept of an economic offence and its ramifications on the society at large and held that “Economic offences constitute a class apart and need to be visited with a different approach in the matter of bail. While granting bail, the court has to keep in mind the nature of accusations, the nature of evidence in support thereof, the severity of the punishment which conviction will entail, the character of the accused, circumstances which are peculiar to the accused, reasonable possibility of securing the presence of the accused at the trial, reasonable apprehension of the witnesses being tampered with, the larger interests of the public/State and other similar considerations.”

The landmark judgment delivered in *Jagan Mohan Reddy*¹¹ has been pivotal in changing the approach from bail as rule to custody as rule in cases concerning economic offences. The judicial approach laid down in *Jagan Mohan Reddy* was thereafter followed by the Supreme Court in *Gautam Kundu v. Directorate of Enforcement*¹² wherein the petitioners who were charged with offences under the Securities and Exchange Board of India Act, 1992 and the PMLA Act had challenged the order passed by the Calcutta High Court denying them bail. The Supreme Court relying on the precedent laid down in *Jagan Mohan Reddy* upheld the order passed by the High Court. The Court further went on to discuss the rationale behind the distinct treatment of economic offender and held that there is no doubt that PMLA deals with the offence of money laundering and Parliament has enacted this law as per commitment of the country to

⁷ Malvinder Mohan Singh v. State, 2020 SCC OnLine Del 2001

⁸ Enforcement Officer v. Bher Chand Tikaji Bora, (1999) 5 SCC 720

⁹ Y.S. Jagan Mohan Reddy v. CBI, (2013) 7 SCC 439, Nimmagadda Prasad v. CBI, (2013) 7 SCC 466.

¹⁰ Supra Note 2

¹¹ Supra Note 2

¹² (2015) 16 SCC 1.

the United Nations General Assembly. PMLA is a special statute enacted by Parliament for dealing with money laundering.

In *State of Bihar v. Amit Kumar*¹³, the Supreme Court while dealing with a matter concerning large scale fraud in intermediate examinations in Bihar reiterated the law laid down in *Jagan Mohan Reddy* and held that “It is well settled that socio-economic offences constitute a class apart and need to be visited with a different approach in the matter of bail. Usually, socio-economic offence has deep-rooted conspiracies affecting the moral fibre of the society and causing irreparable harm, needs to be considered seriously. When the seriousness of the offence is such, the mere fact that he was in jail for however long time should not be the concern of the courts. We are not able to appreciate such a casual approach while granting bail. The government’s interest in preventing crime by arrestees is both legitimate and compelling. Although “bail is the rule and jail is an exception” is well established in our jurisprudence, we have to measure competing forces present in facts and circumstances of each case before enlarging a person on bail.”

The Supreme Court in *P. Chidambaram v. Directorate of Enforcement*¹⁴ recognizing the long-term ramifications of economic offences and laid down that: “Power under Section 438 CrPC being an extraordinary remedy, has to be exercised sparingly; more so, in cases of economic offences. Economic offences stand as a different class as they affect the economic fabric of the society. The privilege of the pre-arrest bail should be granted only in exceptional cases... Exercising the power to grant anticipatory bail in cases of the Prevention of Money-Laundering Act would be to scuttle the statutory power of the specified officers to arrest which is enshrined in the statute with sufficient safeguards... Grant of anticipatory bail, particularly in economic offences would definitely hamper the effective investigation.” The Court further held that a delicate balance is required to be established between safeguarding the personal liberty of an individual and the societal interest, and refusal to grant anticipatory bail cannot be termed as a denial of the rights conferred upon the accused under Article 21 of the Constitution of India. In this case, the Court also recognized that money laundering poses a serious threat not only to the economy of the country but also to its integrity and sovereignty.

¹³ (2017) 13 SCC 751

¹⁴ (2019) 9 SCC 24

A similar view was taken by the Court in *Serious Fraud Investigation Office v. Nittin Johari*¹⁵ where the Court while dealing with a bail application under Section 212(6) of the Companies Act, 2013, which imposes similar twin conditions for bail, once again reiterated that economic offences constitute a class apart and need to be viewed seriously and considered as grave offences affecting economy of country as a whole and thereby posing serious threat to the financial health of the country. Cases involving economic offences are among a small minority of crimes where the court has regularly overruled fears associated with custodial interrogation and has gone on to favour incarceration of the accused to facilitate a fruitful investigation by the authorities.

CONCLUSION

From the above discussion, it is apparent that there is a departure from the basic jurisprudence of bail being the norm and jail being the exception to a scenario where custody has become the rule in economic offences considering the gravity of economic offences whose ramifications are far-reaching and extend over a prolonged period of time. In other words, the courts have departed from the basic jurisprudence of bail being the norm and jail being the exception and have put the interests of society first in preventing and punishing *economic* offenders. Judicial decisions suggest certain factors that are to be kept in mind while exercising discretion in granting of bail. A person who is able to commit an economic offence can easily tamper with evidence and cause obstructions to the investigation process and thus courts should exercise greater caution while dealing with application for bail in such cases.

¹⁵ (2019) 9 SCC 165