IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE SIDE JURISDICTION
CRIMINAL ANTICIPATORY BAIL APPLICATION NO. 752 OF 2015

Shan Fatima Shaikh .....Applicant
V/s.
The State of Maharashtra ....Respondent

WITH
CRIMINAL APPLICATION NO. 454 OF 2015
IN
CRIMINAL ANTICIPATORY BAIL APPLICATION NO. 752 OF 2015

Pawan Kumar Badriprasad Gupta and another ….Intervener

IN THE MATTER BETWEEN

Shan Fatima Shaikh .....Applicant
V/s.
The State of Maharashtra ....Respondent

WITH
CRIMINAL ANTICIPATORY BAIL APPLICATION NO. 475 OF 2015

Siraj Patni ….Applicant
V/s.
The State of Maharashtra ….Respondent

WITH
CRIMINAL APPLICATION NO. 321 OF 2015
IN
CRIMINAL ANTICIPATORY BAIL APPLICATION NO. 475 OF 2015

Pawan Kumar Badriprasad Gupta ….Intervener

IN THE MATTER BETWEEN

Siraj Patni ….Applicant
V/s.
The State of Maharashtra ….Respondent

WITH
CRIMINAL ANTICIPATORY BAIL APPLICATION NO. 529 OF 2015

Tahir Vora ….Applicant
V/s.
The State of Maharashtra ….Respondent

WITH
CRIMINAL APPLICATION NO. 401 OF 2015
IN
CRIMINAL ANTICIPATORY BAIL APPLICATION NO. 529 OF 2015

Pawan Kumar Badriprasad Gupta ….Intervener

IN THE MATTER BETWEEN

Tahir Vora ….Applicant
V/s.
The State of Maharashtra ….Respondent

Mr. Amin Solkar for Applicant in ABA 752 of 2015
Mr. C. K. Pendse i/b Mr. Shavez Mukri for Applicant in ABA 475 of 2015
Mr. Sandeep R. Karnik for Applicant in ABA 529 of 2015
Mr. Mubin Solkar i/b Ms. Tahera Abdul Rashid Qureshi for Intervener in all matters
Ms. P. P. Shinde APP for the State in all matters.
Mr. Sunil Pawar, A.P.I., E.O.W. - 7, Mumbai.

CORAM : SMT. SADHANA S. JADHAV, J.
DATED : 2nd JULY 2015

PC :

Heard. These are applications under section 438 of Code of Criminal Procedure, 1973. Applicants herein are seeking pre-arrest bail in crime no. 246 of 2014 registered at Goregaon Police Station on 08/07/2014 for offence punishable under section 420 r/w 34 of Indian Penal Code and section 3 & 4 of Prize Chit and Money Circulation Schemes (Banning) Act, 1978 and section 3 & 4 of The Maharashtra Protection of Interest of Depositors (In Financial Establishments) Act, 1999. Crime no. 246 of 2014 is being investigated by Economic Offences Wing and is re-registered as crime no. 1 of 2014 for offence punishable under sections 420, 406, 120 (B) of Indian Penal Code and section 3 & 4 of The Maharashtra Protection of Interest of Depositors (In Financial Establishments) Act, 1999.

2) It is the case of prosecution that on 05/07/2014, one Pawan Kumar Badriprasad Gupta, resident of Delhi lodged a report at the police station alleging therein that he is a public servant working in Intelligence Bureau. That in July 2013, his neighbour Devesh Kumar Dubey informed him that he had invested a substantial amount in Megafine Agro Concept having its registered office at Mumbai. That Shri. Devesh Kumar Dubey was working as

an agent of the said company. Complainant was further informed that the company gives good returns. He also learnt that there was another agent namely Ashok Kumar Gola residing in Delhi who was working as agent of Megafine Agro Concept Ltd. Complainant contacted Ashok Kumar Gola and learnt about the said scheme. The information received from Devesh Kumar Dubey was confirmed, hence, complainant had decided to invest in the said firm. He had invested money in the name of his wife. From 28/07/2013 to 29/01/2014, he had invested Rs. 22,75,000/- with the said firm. It is alleged that the present applicants were directors of the company. That they are beneficiaries. In the month of July-2013, August-2013 & September-2013, firm had given him good returns to the tune of Rs. 4,02,550/-. Since November 2013, he was not receiving any returns. He did not receive cheques as promised and therefore, he was constrained to approach Devesh Kumar Dubey and Ashok Kumar Gola who assured him that he would get the returns in the near future, however, they evaded to pay the said returns. He had approached office at Mumbai, where he met Mohammed Yunus Maniyar and Tahir Vora who informed him that they are the directors of the said firm. They assured him that he would get money with interest. Upon the said assurance, he returned home. Thereafter, Devesh Kumar Dubey and Ashok Kumar Gala gave him cheque of Rs. 13,00,000/- which was dishonoured. On 21/05/2014, he received a cheque of Rs. 18,97,450/- which was dishonoured. Upon further enquiry, he learnt that several people had been cheated and therefore, he approached police station and lodged a report on the basis of which crime no. 246 of 2014 was registered. In the course of investigation of said crime, it was revealed that there are 2600 investors who had invested the amount by way of cash as well as on-line investments. Investigating agency had received about 1,334 complaints in the course of investigation of crime no. 1 of 2014.

3) Applicants before this Court are seeking pre-arrest bail and all of them have unequivocally submitted that firm was being run and managed by Mohammed Yunus Maniyar. That the police have not made any attempt to arrest him and that he is taking treatment in Ashtavinayak Nursing Home. It is stated that he had met with an accident and has been operated for fracture of shaft femer and shaft tibia. Learned APP upon instructions submits that it is an admitted position that he is admitted in the said hospital. No attempts are made to even show a formal arrest.

4) Learned counsel for the applicant in anticipatory bail application no.

475 of 2015 submits that he is not a director of the said firm. That by an appointment letter dated 01/06/2013, he has been appointed as an Administrative Manager for Farm Fresh Unit by Megafine Agro Concept Ltd. He has annexed his salary slip to show that he receives a salary of Rs. 19,800/- per month. According to him, he is not concerned with the affairs of the company and that only because there was no vacancy for the said post, he was working as cashier and was entrusted with the work of receiving the payments and had issued receipts in the name of company. It is submitted that applicant has not been a beneficiary of the said scheme. That he has not received a single penny. It is further submitted that applicant has invested Rs. 24,00,000/- in the financial establishment. His name is reflected in the list of investors and according to learned counsel, he is the victim of the scheme floated by Mohammed Yunis Maniar.

5) It is pertinent to note that applicant has not only passed the buck upon co-accused, but has made serious allegations against Shan Fatima Shaikh, Mohammed Yunus Maniyar. It is stated that most of the investments were made prior to the joining of the applicant. According to learned counsel, although he was appointed as an Administrative Manager for Farm Fresh

Unit, at the time he joined Farm Fresh Outlet was not in operation and therefore, he was given the position of Administrative Manager in the firm and was to work with Managing Director Shan Fatima Shaikh. It is stated in the application that in February 2014, Shan Fatima Shaikh was not traceable for one month and her investors had started approaching other directors as she had fraudulently shown her proprietorship firm Shan Investments as subsidiary company of Megafine Agro Concept Ltd. It is also submitted that directors of the said firm were working out settlement scheme and had formed a committee namely Honest Welfare Organization comprising of 550 members. Learned counsel submits that applicant is being falsely implicated. Applicant has placed on record the receipts showing that his wife Shaheen Siraj Patni had deposited huge amounts in the said firm. The receipts are of 06/10/2013, 18/11/2013, 01/02/2014 & 28/03/2014. It is pertinent to note that applicant had joined service on 01/06/2013 and within 4 months, he had deposited Rs. 6,00,000/- in the said firm. It is not stated that his wife had independent source of income.

6) Learned APP submits that applicant was the authorized signatory of the invested company. He was looking after four jobs of plans for investment.

One was big plan where interest to be paid by the company was 10% to 12% per month. Pin plan where investor would receive interest at the rate of 17.833% per month for 12 months. Mega plan which double the investment in 10 months. Growth plan in which 10% interest per month and certificate and return of principal amount after one year. Present applicant was working as a manager with Shan Fatima Shaikh and therefore, it would not befit him to say that Shan Fatima Shaikh was responsible for the whole fraud and that she had deceived by showing Shan Investments as subsidiary company of Megafine Agro Concept Ltd.

7) Learned counsel for the applicant submits that it is not possible for him to return any amount to the investors as he was only an employee of the said firm and not a beneficiary. Learned counsel submits that this is not a case for custodial interrogation and therefore, prays that applicant be granted pre-arrest bail. According to applicant Shan Fatima Shaikh had received an amount which she did not deposit with the financial establishment and thatr she had absconded.

8) It cannot be simply said at this stage that he is not responsible for the affairs of the financial establishments. Learned Sessions Court has observed

in the order that learned counsel representing present applicant had given the list of investors. A submission was made before Sessions Court that applicants would make efforts to repay the amount. Learned Sessions Court has observed that

> "During the course of arguments, it was founds that a proposal given by applicants to pay Rs. 6 Crores that too within 6 months is a flee bite proposal as against alleged outstanding amount of alleged fraudulent default."

9) Learned counsel for the applicant in anticipatory bail application no. 529 of 2015 at the outset submits that the main culprit is Mohammed Yunus Maniyar and no attempt is being made to arrest him. It is submitted that present applicant is acquainted with Mohammed Yunus Maniyar as their families were next to each other. He was appointed as nominal director on 16/01/2011 to complete the formalities and he had been engaged for operating company websites, namely Megafine Agro Concept.Com and Megafine Agro Limited.Com wherein he was dealing with on-line investors of the company. He was operating two bank accounts at Vapi and Gujarat where investors used to make on-line payments. It is submitted that he is not a beneficiary. He has

also alleged that husband of Shan Fatima Shaikh has approached the company as commission agent. That she had contributed to the company and was appointed as a director on 16/01/2011. According to him, investors had approached her directly and paid their money to Shan Investments. That she had transferred the funds in her own account. It is vehemently submitted that Mohammed Yunus Maniyar and Shan Fatima Shaikh were only authorized signatories. He has also alleged that Shan Fatima Shaikh had fled with amount of investment and that he is being falsely implicated. He has placed on record the accounts showing on-line investments and has submitted that his custodial interrogation is unwarranted and unjustified.

10) Learned APP has placed on record the statement of accounts of present applicant which shows that he is benefited from the said scheme. Learned APP has submitted that applicant has been shown as a director of the said company. Papers of investigation would clearly indicate that present applicant applicant was an active member of the said firm and had received huge amounts by way of on-line investment. Several investors have been duped. Learned counsel for intervener submits that there is sufficient incriminating material against applicant. Since this is an application seeking pre-arrest bail,

it would not be proper to discuss the material collected by investigating agency in the course of investigation. It would be suffice to say that there is ample material against present applicant. Learned counsel for the intervener has submitted that present applicant was present in Hungama meeting dated 27/06/2014 and has signed the minutes of meeting. It is also submitted that applicant was in-charge of accepting and handling and diverting the on-line investments received by the companies and flow of the said amount was managed by present applicant.

11) Learned counsel for the applicant in anticipatory bail application no. 752 of 2015 submits that present applicant has graduated in the faculty of statistics and has attained her post graduation in Intellectual Property Rights. She was running her property firm Shan Investment since last 15 years and was also working as consultant with private firms. According to the learned counsel, present applicant was introduced to Mohammed Yunus Maniyar. That he had induced her to invest in his Megafine group of companies. That applicant had invested Rs. 1 Crore by way of cash and last installment was paid by her on 29/09/2012. That Mohammed Yunus Maniyar had given her post dated cheques. That Maqsood Ahmed i.e. father of the applicant was also

induced by Mohammed Yunus Maniyar. He invested Rs. 50,00,000/- by way of cash and cheque. That her husband has also invested in the said firm and is working as an agent. He had narrated several investors from Saharanpur. Learned counsel further submits that on 04/01/2013, Shan Investments was merged with Megafine Group of Companies. Investors were induced to deposit in different lucrative schemes in Shan Investments. Money invested in Shan Investments was transferred by RTGS and NEFT to Megafine firm whereas some of the investors had directly deposited with Megafine. That applicant has become a director of Megafine on 22/03/2013. According to learned counsel applicant had suspected the bonafides of Mohammed Yunus Maniyar and see to satisfy the claims of the investors and had held Hungama meeting. That she had received an authorized memorandum of understanding purportedly executed between Mohammed Yunus Maniyar and herself and therefore, she suspected the bonafides of Mohammed Yunus Maniyar. That she threatened Mohammed Yunus Maniyar of dire consequences and that she would file a police complaint against him and thereafter, he had taken the entire liability of satisfying the investors. It is urged that Mohammed Yunus Maniyar had accepted the liability before the police. After Hungama meeting, it was decided that Maniyar would execute a Power of Attorney in favour of applicant and that he would give a declaration that applicant would sell all the properties owned by Maniyar and Megafine and satisfy the claims of the investors. It is specifically urged that Siraj Patni who is applicant in anticipatory bail application no. 475 of 2015 had stolen all the documents and computers pertaining to Shan Investments from the corporate office durinbg 14/07/2014 and 16/07/2014, but she had refrained herself from filing a complaint due to the threats given to her by Mohammed Yunus Maniyar. Learned counsel for the applicant submits that custodial interrogation of the applicant would not be imperative.

12) Section 41 (A) of Code of Criminal Procedure, 1973. contemplates

> "**Notice of appearance before police officer –** (1) [The police officer shall], in all cases where the arrest of a person is not required under the provisions of sub-section (1) of section 41, issue a notice directing the person against whom a reasonable complaint has been made, or credible information has been received, or a reasonable suspicion exists that he has committed a cognizable offence, to appear before him or at such other place as may be specified in the notice.
>
> (2) Where such a notice is issued to any person, it shall be the duty of that person to comply with the terms of the notice.
>
> (3) Where such person complies and continues to comply with the

notice, he shall not be arrested in respect of the offence referred to in the notice unless, for reasons to be recorded, the police officer is of the opinion that he ought to be arrested.

(4) Where such person, at any time, fails to comply with the terms of the notice or is unwilling to identify himself, the police officer may, subject to such orders as may have been passed by a competent Court in this behalf, arrest him for the offence mentioned in the notice.]]"

13) According to him, applicant had caused her presence before police officer pursuant to the notice under section 41 (A) of Code of Criminal Procedure, 1973. That investigation agency would not be able to demonstrate any incriminating material against present applicant and therefore, applicant prays for pre-arrest bail.

14) Learned APP has placed on record several documents which would clearly indicate that present applicant has not only been a beneficiary of the said schemes floated by her, but has induced people to invest huge amounts. Learned APP submits that SEBI has given a letter to the investigating agency that Megafine Companies are not enlisted with SEBI. It is pertinent to note that applicants in criminal application nos. 475 of 2015 and 529 of 2015 have categorically blamed present applicant whereas according to present

applicant, accountant namely Siraj Patni had stolen her computer and other documents. The conduct of the accused is *writ large* on the face of record when they are blaming each other and have submitted that none of them is never responsible for the fraud committed by Megafine Company. Learned APP has submitted that Megafine has six sister concerns namely Megafine Wellness Pvt Ltd, Megafine Investment and Finance Consultants Pvt. Ltd., Megafine Realtors Pvt. Ltd., Megafine Farm Fresh, Megafine Co-operative Agro Farming and Marketing Society Ltd and United Aquacultures. According to the applicants, investors belong to a particular community where it would be an offence to receive interest and therefore, they have invested in the present firms with greed to get better returns. All this would, at the same time indicate that applicants have also taken advantage of psyche of the investors and had introduced them to deposit huge amounts by ascertaining handsome returns.

15) Learned counsel for intervener submits that it is true that investors allowed themselves to be cheated by false assurances and promises given by applicants. According to learned counsel, schemes were floated in order to cheat the people at large. The fact that all the applicants have chosen to blame

each other and have passed the buck on Mohammed Yunus Maniyar would apparently reflect their conduct and their malafides.

16) Learned counsel for the applicants hace placed reliance upon the Judgment of Hon'ble Apex Court in the case of **Arnesh Kumar v/s. State of Bihar (2014) 8 SCC 273** wherein Hon'ble Apex Court has observed:

> "11. Aforesaid provision makes it clear that in all cases where the arrest of a person is not required Under Section 41(1), Code of Criminal Procedure, the police officer is required to issue notice directing the accused to appear before him at a specified place and time. Law obliges such an accused to appear before the police officer and it further mandates that if such an accused complies with the terms of notice he shall not be arrested, unless for reasons to be recorded, the police office is of the opinion that the arrest is necessary. At this stage also, the condition precedent for arrest as envisaged Under Section 41 Code of Criminal Procedure has to be complied and shall be subject to the same scrutiny by the Magistrate as aforesaid."

17) Respective counsel submit that in view of the said judgment, applicants deserve pre-arrest bail.

18) In the case of **Subrata Roy Sahara v. Union of India, (2014) 8 SCC 470** Hon'ble Apex Court has has that :

> "That to enforce a financial liability ordered by a Court, one of the permissible means is by way of arrest and detention. It may be pointed out that there are large number of stand alone statutory enactment whereunder arrest and detention may be ordered for the execution of a financial liability."

19) True that the observation was in respect of executing the liability fixed by the Court. In the present case, applicants have not only denied the liability, but are holding each other responsible for the same. The records clearly indicate their involvement.

20) It is true that arrest and detention may not be a recovery proceeding, however, the offence punishable under section 420 of Indian Penal Code is a non bailable offence which can be compounded by the parties concerned. In the present case, applicants are not prepared or have refuted to compound offence by returning the amount which was paid to the company by way of investment in order to receive good returns. Act of cheating is apparent on the face of record. By forming those companies, the cash amount has flowed from one company to another and ultimately to the pockets of the present applicant and other co-accused. Their denial of involvement needs to

be taken into consideration as well as their conduct can be considered under section 8 of Indian Evidence Act.

21) Section 3 of Maharashtra Protection of Interest of Depositors (In Financial Establishments) Act, 1999 contemplates as follows.

> "**3. Fraudulent default by Financial Establishment-** Any Financial Establishment, which fraudulently defaults any repayment of deposit on maturity along with any benefit in the form of interest, bonus, profit or in any other form as promised or fraudulently fails to render service as assured against the deposit, every person including the promoter partner, director, manager or any other person **<u>or an employee</u>** responsible for the management of or conducting of the business or affairs of such Financial Establishment shall, on conviction, be punished with imprisonment for a term which may extend to six years and with fine which may extend to one lac of rupees and such Financial Establishment also shall be liable for a fine which may extend to one lac of rupees."

22) Applicants are also being prosecuted under section 3 of MPID Act. It is in view of this, that the contention of the applicant in anticipatory bail application no. 475 of 2015 cannot be considered and applicant cannot be exonerated as an employee is also held responsible for the management of or conducting all business affairs of financial establishment. It is apparent that funds have been deployed by the accused which has caused heavy loss to investors who have invested

their hard earned money to get easy returns. Such cases are rampant and there is no deterrent factor against such up-shooting financial establishments who take advantage of group of people to earn easy money. However, the Court cannot be oblivious of the fact that hard earned money is invested for earning better returns and the people at large have fallen prey to the schemes floated by such financial establishments like the one in hand.

23) The element of cheating at the inception i.e. at the time of floating the scheme is writ large on face of the record. The modus-operandi of the accused is to first show themselves as investors, also show that they have been benefited and in this way they induce the people to invest in the scheme and later on close the scheme. There are multiple accused in such scams who pass on the buck to the other. A common plea is raised that "initiation of criminal prosecution is not a recovery proceeding and therefore, custodial interrogation is unwarranted." The time has come to take a deterrent view in the larger interest of the society.

24) For the reasons stated above, applications stand rejected.

ism

25) Since the applicants in criminal anticipatory bail application nos. 475 of 2015 & 519 of 2015 were granted interim relief by predecessor Bench, on the subsequent dates, this Court had extended interim relief. Present application i.e. anticipatory bail application no. 752 of 2015 was tagged along with other two applications. On 18/06/2015, inadvertently interim relief was shown to have been continued in anticipatory bail application no. 752 of 2015, although there is no interim relief granted in favour of applicant.

26) Interim relief granted in criminal anticipatory bail application nos. 475 of 2015 and 529 of 2015 stands vacated.

27) Intervention applications are heard, allowed and disposed of.

(SMT. SADHANA S. JADHAV, J.)