

FARAD CONTINUATION SHEET

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH : NAGPUR.**

Criminal Application (ba) No. 598 of 2014

Sameer Sudhir Joshi

v.

St. of Maharashtra, thr. P.S. Rajapeth, Amravati

Office Notes, Office Memoranda of Coram
appearances, Court's orders or directions
and Registrar's orders.

Court's or Judge's orders

Mr. Firdos Mirza Advocate for the applicant.
Mr. A.H. Laddhad, APP, for respondent.

...

Coram : S.B. Shukre, J.

Date : 22nd December, 2014.

COURT'S ORDER :

Heard learned counsel for the applicants and learned APP.

2. This is an application filed under Section 439(1) of Code of Criminal Procedure for grant of bail.

3. On the basis of the complaint lodged by some of the investors of the company of the applicant, namely Shrisurya Investment (HUF) Company that police station Rajapeth, Amravati, has registered offences punishable under Sections 406, 409, 420, 465, 467, 468, 471 and 120B read with Section 34 of Indian Penal Code, under Section 3 of

Maharashtra Protection of Interest of Depositors in Financial Establishments Act (for short MPID ACT), 1999, under Section 58B (5A) of Reserve Bank of India Act and under Section 71 of Information & Technology Act, 2000.

4. It is alleged that the applicant together with co-accused established a company, Shrisurya Investment (HUF) Company, and made a false representation to various investors that if amounts were invested in this company, the company would utilize the deposits of the investors for earning some profits through other businesses and, in turn, would give attractive returns on investment to its various investors. The returns that were promised by this applicant and his co-accused were in the nature of payments of interest accrued on the deposits at the rates ranging from 40% to 100%. It has been further alleged that all these representations and promises were false to the knowledge of the applicant and his associates and on the pretext that various companies established by the applicant and his associates by utilizing these deposits ran into losses, the applicant and the co-accused created an illusion that they could not fulfill the promise. They attempted to create an impression that there was no dishonest intention on their part since from beginning of the transaction, although it was not so. The reason being that the companies in which these funds were invested by the applicant and his associates were set up after accepting of the deposits from the investors and not before that and as no new company can earn profit from the very first year, the promise of 40% to 100% rise on deposits was deceptive to the knowledge of the applicant. It is further alleged, the applicant and his associates by holding various seminars, business meets etc. and created a rosy but false picture of their investment company and allured innocent depositors to lodge their hard earned money into the said investment company of the applicant only to deceive them.

5. Learned counsel for the applicant submits that no offence relating to commission of any act of forgery can be said to be prima facie committed by the applicant for the reason that there is not a single document or record which has been alleged to be forged by the applicant or his associates in inviting the investors into depositing of their money in the company of the applicant. He also submits that even offence relating to criminal breach of trust by banker or merchant, factor, broker punishable under Section 409 of Indian Penal Code is also not prima facie made out, as admittedly the company of the applicant is not a banker as contemplated under Section 409, there being no licence obtained by it for carrying on the business of banking. He also submits that the company of the applicant is not a banking company as defined in the Banking Regulation Act of R.B.I., 1934, nor the applicant could be considered to be an agent within the meaning of Section 409 of Indian Penal Code. He submits that if these offences are not prima facie made out, for which punishment ranges from 7 or 10 years to life imprisonment, what would remain would only be the offences relating to cheating, simple criminal breach of trust, offence punishable under Section 3 of the MPID Act and also carrying on the business of banking without obtaining any licence from Reserve Bank of India, and for these offences maximum punishment prescribed is either for a term of 7 years or less than that. He also submits that now more than a year has gone by since the applicant is in custody and charge-sheet has also been filed and, as such, having regard to the nature of the offences alleged against the applicant, no useful purpose would be served by keeping the applicant in jail. He also submits that there is no possibility of the applicant not being available for the trial or tampering with the prosecution witnesses. He further submits, relying on the case of **Sanjay Chandra v. C.B.I.** reported in **(2012) 1 SCC 40**, that the purpose of bail is not to impose pre-trial punishment as every accused is

presumed to be innocent till he is found guilty. He, therefore, strenuously urges that the applicant be now released on bail.

6. Learned APP has submitted that there is sufficient material indicating that the offences, which are registered against the applicant, are prima facie constituted against him and all these offences affecting the health of economy of the State are serious and, therefore, no bail should be granted to the applicant. He further submits that the applicant being a Director of Shrisurya Investment Company, acted as an agent of the company and in that capacity he misappropriated the funds belonging to various investors of the company and, therefore, offence under Section 409 of Indian Penal Code is also prima facie made out. He further submits that even otherwise the funds have been accepted by making a representation that they would be returned with interest payable periodically and in instalments and, therefore, the activity of the applicant would fall within the broad concept of "Banker" as is understood ordinarily. He submits that the company of the applicant may not be a banking company as defined under the provisions of Banking Regulation Act, but the activity carried on by him fell within the ordinary definition of the term "Banker" and, therefore, it could not have been carried on without obtaining a licence from R.B.I. He submits that thus the applicant has prima facie committed not only breach of the provisions of Banking laws but also by giving a false representation to innocent investors, has prima facie committed offences punishable under Sections 420 and 409 of Indian Penal Code and other related offences. He, therefore, urges that bail should not be granted to the applicant.

7. So far as the offences relating to commission of forgery by the applicant are concerned, I could not come across any material in the case diary suggesting that any false documents or false electronic records have been made by the applicant with an intention to cause

damage or injury. The learned A.P.P. also could not point out to me any particular document which has been alleged to be forged or falsely prepared by the applicant. Same appears to be applicable to an offence under Section 71 of Information Technology Act, 2000. Therefore, at this stage, it is doubtful if the offences relating to forgery, which fall in Chapter XVIII of I.P.C., and misrepresentation punishable under Section 71 of the Information and Technology Act, 2000, and which have been registered against the applicant, would be prima facie made out.

8. A perusal of the case diary, however, prima facie discloses that there is sufficient material, as rightly submitted by learned APP, that other offences, such as offences under Sections 406, 420 and 409 of Indian Penal Code as well as under Section 3 of MPID Act and Section 58 of Reserve Bank of India Act 1934 are prima facie made out against the applicant. The applicant had made representation to the investors that if they invested their money in the company of the applicant, same would be utilized by the company of the applicant in making investments in other companies and by earning substantial profits in the other companies, attractive returns on the investments made would be given to the depositors. These companies, when the representations were made, had not been set up and the investors were not properly informed about the same. The companies for carrying on the business of dairy, packaged drinking water, cold drinks, edible oil etc. though were later on set up, were not likely to yield profits immediately on their inception and, therefore, making of a promise that the money lodged by the investors into Shrisurya Company would be repaid with interest ranging from 40% to 100% itself was elusive to the knowledge of the applicant and it was here that the dishonest intention since inception of the transaction can be attributed to the applicant. This would make it clear to us that offence punishable under Section 420 of Indian Penal Code is prima facie made out against the applicant.

9. As regards the offence under Section 409 of Indian Penal Code, I find that this very material, as discussed earlier, would be enough to prima facie implicate the applicant in this offence. It may be that company of the applicant, as held in the case of **K.K. Bhaskaran v. State** reported in **(2011) 3 SCC 793**, (para 23), may not be within the meaning of the term “Banking” as defined in the Banking Regulation Act, 1949 or Reserve Bank of India Act 1934. But, today it is not clear as to whether or not the provisions of Bankers Books Evidence Act, 1891 were made applicable to an investment company like that of the applicant. If the provision of Bankers Books Evidence Act have been made applicable to the company of the applicant, his company or the activities carried out by the applicant would fall within the definition of “Banker” as defined in Section 2(B) of Bankers Books Evidence Act. Under Section 2(B) a Banker means a partnership or individual to whom the provisions of this Act are extended and the power to extend the provisions of this Act is conferred upon the State Government under Section 3 of the Act. This fact can be made known only at the time of the trial. Be that as it may. Even if it is prima facie found that the activities carried on by the applicant were not that of a banker, still his activities would not be falling out of the purview of Section 409 of Indian Penal Code, for the reason that the applicant being a Director of the Company was in a position of a trustee to the assets which have come into his hands and thus had a dominion and control over the same as held in the cases of **Shivnarayan Laxminarayan Joshi v. State of Maharashtra** reported in **1980 AIR (SC) 439** and even in the case of **R.K. Dalmiya v. Delhi Administration** – **AIR 1962 SC 1821**, and, therefore, in accepting the deposits he acted like an agent of the company.

10. Learned counsel for the applicant, placing heavy reliance upon the observations of the Hon'ble Apex Court in the case of Sanjay Chandra,

submits that although the applicant is charged with commission of economic offences of large magnitude and although there is an allegation that the offence prima facie committed by the applicant has affected the health of the economic system, this Court cannot be oblivious to the fact that the investigating agency has already completed the investigation with charge-sheet having been filed and, therefore, the applicant is entitled to be released on bail keeping in view the primary purposes of bail in a criminal case which are – to relieve the accused of imprisonment, to relieve the State of the burden of keeping him in jail, pending the trial, and at the same time, to keep the accused constructively in the custody of the Court, whether before or after conviction, to assure that he will submit to the jurisdiction of the Court and be in attendance before the Court whenever his presence is required. He points out that in this case the applicant is in jail for more than an year and the trial of the applicant is not likely to be concluded within a short period of time. He, therefore, submits that this is a fit case wherein this Court should exercise its discretion by releasing the applicant on bail and for ensuring the presence before the Court, stringent conditions can be imposed upon him. He also submits that so far as the offence punishable under Section 3 of MPID Act is concerned, as held by the Division Bench of this Court in the case of **Prabhakar Dattatraya Gune v. Vishnukant Bapurao Urankar** reported in **2014(1) Bom.C.R. (Cri) 262** attachment of the deposits accepted from the investors and realising the dues of the investors being the main purpose of provisions of MPID Act, keeping the accused in custody during pendency of the case against him, may not be proper.

11. I have already found that the material present on record, at this stage, indicates that the offences of cheating and misappropriation punishable under Sections 420 and 409 read with Section 406 of Indian Penal Code are prima facie made out. This material also discloses that

even the offence punishable under Section 3 of MPID Act is prima facie made out against the applicant. The applicant has, by making a promise, which he knew to be false, or of such a nature as was not capable of being fulfilled by him, allured the investors to make investments by lodging their deposits in his company and then on the pretext of incurring of losses by some other companies established by the applicant and his associates by using the funds of the depositors, failed to give the promised returns on deposits to the investors. The applicant has prima facie collected huge amounts of deposits and betrayed the faith of the depositors in him. The magnitude of the offences prima facie committed by the applicant is enormous which makes them as very serious. The applicant by holding various workshops and seminars had prima facie kept the depositors under an illusion that their deposits were safe. The material present on record shows that the applicant has prima facie attempted to create a rosy but false picture of the financial health of his company. It is this material which, in my considered opinion, would impel this Court to prima facie conclude that if released on bail, the applicant may once again renew his effort to influence the minds of the investors or depositors in such a way as to have an adverse impact on the prosecution case, thereby affecting the fair trial of the case against him. Therefore, I am of the view that this is not a case where there is only a question of securing presence of the applicant before the Court and is a case where there is a reasonable possibility of the applicant influencing the prosecution evidence and also adversely affecting the fair trial of the case against him. That apart, seriousness of the crime alleged against the applicant would also make the possibility of the applicant fleeing from justice if released on bail as reasonable.

12. In the case of Sanjay Chandra, the Hon'ble Apex Court has held that while granting bail, 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, behaviour, means and standing of the accused, circumstances which are peculiar to the accused, reasonable possibility of securing presence of the accused at the trial, reasonable apprehension of the witnesses being tampered with, larger interest of public or State, and similar other considerations as mentioned in paragraph 37 of its judgment. Hon'ble Apex Court, in particular, approved the practice of the Court in considering the likelihood of the applicant interfering with the witnesses for the prosecution or otherwise polluting the process of justice by calling it as not only traditional but rational as well. These observations of the Hon'ble Apex Court have a binding effect on this case and following them only that I am of the view that the applicant, having regard to the likelihood of his indulging in acts which may affect the fair trial of the case against him and possibility of his being not available for trial, is not entitled to be released on bail.

13. No doubt, as held in the case of Prabhakar, *supra*, the main purpose of MPID Act is attachment of deposits and realising of dues of the depositors and, therefore, no purpose would be served by keeping the person, who is accused of committing an offence under Section 3 of MPID Act behind the bar during pendency of the trial. In the instant case, the applicant is not facing trial exclusively for an offence punishable under Section 3 of MPID Act. As stated earlier, there are other serious offences, especially those under Sections 420 and 409 of Indian Penal Code, which have been found to be *prima facie* made out against him. It has also been found that there is a reasonable apprehension of the applicant polluting the process of justice if released on bail. Therefore, I do not find any substance in the argument of learned counsel for the applicant that there is no need for the applicant to be kept in custody during pendency of the trial of the case against

him. On the contrary, I find substance in the submission of learned APP who, relying upon the case of **Y.S. Jagan Mohan Reddy v. C.B.I.** reported in **2013(7) SCC 439**, has argued that this is a case wherein the cause of the community deserves equal treatment at the hands of the Court in the discharge of its judicial functions and the cause of the community could be better served, for the reasons stated earlier, by disentitling the applicant to his release on bail.

14. In the circumstances, the application cannot be allowed and its stands rejected.

Judge

/TA/