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

BAIL APPLICATION NO.634 OF 2015

Rajesh s/o Suresh Joshi
-vs-
The State of Maharashtra, Thr. Crime Br. (EOW), P.S.O. Dhantoli Police Stn. Nagpur.

Office notes, Office Memoranda of Coram, appearances, Court's orders or directions and Registrar's orders.	Court's or Judge's Orders.

Shri A.S. Manohar, Advocate for applicant.
Smt. R. Deshpande, APP for respondent/State.

CORAM : A.S.CHANDURKAR, J.
DATE : October 08, 2015

This application has filed under Section 439 of the Criminal Procedure Code seeking release of the applicant on bail.

The applicant has been arrested on 07/08/2014 with regard to Crime No.176 of 2014 registered at Police Station, Dhantoli for offence punishable under Sections 406, 409, 420 and 120B of the Indian Penal Code (for short, the Penal Code) along with Section 3 of the Maharashtra Protection of Interest of Depositors (In Financial Establishments) Act, 1999 (for short, the Act of 1999). His application for bail was rejected by the learned Special Judge by order dated 05/08/2015.

On the basis of First Information Report (FIR) dated 08/07/2014 initially offence under Sections 420, 406 and 120B of the Code was registered against the present applicant along with five others. As per said FIR the complainant on getting information from his neighbour about various investment schemes being operated by "Raviraj Investment and Strategies Company" and of giving attractive rates of interest had invested certain amounts with the said Company of which the applicant was a Director. The amount with interest was initially received by the complainant but after April 2014, no interest amount was received. On making enquiries, the office of the Company was found locked and hence said complaint was lodged. After further investigation, charge-sheet came to be filed on 30/09/2014 against the present applicant under Sections 406, 420 and 120B of the Penal Code. After further investigation, supplementary charge-sheet against present applicant and eight others was filed on 22/09/2015. In the supplementary charge-sheet, offence under Section 409 of the Penal Code alongwith offence under Section 3 of the Act of 1999 was added to the other offences already registered.

Shri A. Manohar, learned counsel for the applicant after taking me through various documents filed along with the charge-sheet as well as supplementary charge-sheet submitted that there were in all thirteen Companies which were being managed by Raviraj Group and from the material collected by the prosecution, the financial position of said Companies indicated that while some Companies were making profits, some Companies were running in losses. It was submitted that provisions of Section 409 of the Penal Code were not attracted in the present case. It was submitted that at the highest it could be said that the business activities undertaken by the Company of which the applicant was a Director had run in losses and no criminal offence was at all made out. It was submitted that the necessary ingredients of Section 409 of the Penal Code of the applicant having any dominion over property in the way of his business either as banker, merchant, factor, broker, attorney or agent were absent in the present case. It was submitted that applicant did not have any dishonest intention either at the inception when deposits were accepted or subsequent thereto. Relying upon the judgment of learned Single Judge in ***2014(1) Bom. C.R. (Cri) 132 Savada Merchant Co-op. Credit Society Ltd. & Ors. v. State of Maharashtra & anr.***, it was submitted that accepting deposits with a promise to repay the same with interest would not amount to entrustment of any property. Similarly by relying upon judgment of the Supreme Court in ***(2000) 4 SCC 168 Hridaya Ranjan Prasad Verma and Ors. v. State of Bihar and anr.***, it was submitted that no offence under Section 420 of the Penal Code was made out. Mere failure to honour a promise made earlier would not amount to having an intention to cheat at the inception.

It was then submitted that the applicant was under arrest and in jail for almost 14 months and there was no likelihood of the trial commencing in the near future. It was submitted that as per the charge-sheet, number of witnesses were to be examined by the prosecution and no purpose would be served in permitting continuance of the applicant in jail. It was also submitted that various properties belonging to the applicant or shown to be belonging to the applicant had already been seized. While an amount of about Rs.6,62,00,000/- was shown to be due and payable by the applicant on account of payments received by him, the properties seized were sufficient to ensure such repayments. Learned counsel placed reliance on the judgment of the Supreme Court in ***2012(1) SCC 40 Sanjay Chandra v. Central Bureau of Investigation***, and submitted that in respect of an economic offence, there was no rule that an accused could not be released on bail. It was therefore submitted that the charge-sheet as well as supplementary charge-sheet having been filed, there was no reason whatsoever to continue the detention of the applicant. Learned counsel also relied on the judgment of learned Single Judge in ***2003 All MR (Cri) 2212 Dr Suresh G. Motwani v. State of Maharashtra & anr***. in that regard. Reference was also made to the aspect that the applicant had lost a family member after his arrest and that his daughter was suffering from a serious ailment. It was therefore submitted that applicant was entitled to be released on bail.

Smt R. Deshpande, learned Assistant Public Prosecutor strongly opposed the prayer made by the applicant. It was submitted that about 90 complaints had been received by the Investigating Officer and many more complaints were expected to be received. Though the Company in question had been established in year 2011 and amount of interest on deposits accepted had been paid for some period of time, payment of interest had stopped since August 2014. It was submitted that since inception the applicant had an intention of defrauding the investors. Referring to documents filed along with the charge-sheet, it was submitted that promissory notes and document delivery receipts were being issued from time to time to the depositors. It was submitted that an offence under Section 409 of the Penal Code had been clearly made out. Relying upon judgment of the Supreme Court in ***AIR 1962 SC 1821 R. K. Dalmia v. Delhi Administration***, it was submitted that applicant in his capacity as agent had dominion over the property entrusted and hence said Section had been rightly applied by the Investigating Officer. The learned counsel also placed reliance on judgment of the Supreme Court in ***AIR 1980 SC 439 Shivnarayan Laxminarayan***

Joshi v. State of Maharashtra in that regard. It was then submitted that though charge-sheet against the present applicant had been filed, same was yet to be filed against other accused and there was likelihood of the applicant influencing the complainants or the prosecution witnesses. Reliance was also placed on the judgment of the Supreme court in ***(2013) 7 SCC 439 Y. S. Jagan Mohan Reddy v. Central Bureau of Investigation*** and order dated 22/12/2014 passed by learned Single Judge in ***Criminal Application No.665/2014 in Sameer Sudhir Joshi v. State of Maharashtra*** to urge that considering the nature of offence and severity of punishment, bail did not deserve to be granted.

I have considered the respective submissions and I have gone through the documents filed along with the charge-sheet as well as supplementary charge-sheet. Perusal of the supplementary charge-sheet indicates that the charge under Section 409 of the Penal Code was that the applicant made a claim of paying attractive rate of interest on amounts invested. On that basis, he compelled investors to invest in his Company. The applicant was not merely the Director or agent of the Company but was also a trustee. In that capacity he accepted deposits though he was not having source of paying high amounts of interest. Other charges are under Sections 406, 420, 120B of the Penal Code and Section 3 of the Act of 1999.

In the case of ***R.K. Dalmiya*** (supra), the accused therein who was a Director of the Company had acted as an agent of the Company and in that capacity entered into various transactions resulting in misappropriation of the funds of the Company. In that context it was observed by the Supreme Court that the requirement of Section 409 of the Penal Code was with regard to having dominion over the property that had been entrusted during the course of profession or trade. The offence in said case was qua the Company and its property had been misappropriated by the accused therein when he had dominion over the same. Ratio of aforesaid decision has been followed in ***Shivnarayan Joshi*** (supra).

In ***Savada Merchant Co-op. Credit Society Ltd.*** (supra) it was held by learned Single Judge that accepting investments with a promise to repay the same with interest would not amount to entrustment of money. It was further held that question of offence being made out under Section 409 of the Penal Code would not arise.

In the present case, investments have been accepted by the applicant through his Company with promise to pay attractive rates of interests. Whether the applicant had dominion over property in the way of his business as an agent or trustee is a matter to be decided at the trial. Suffice it to say that taking a prima facie view of the matter especially when the supplementary charge-sheet has also been filed and the case of the prosecution rests mainly on documentary evidence, a case for grant of bail has been made out.

At this stage, it would be necessary to refer to the observations made by the Supreme Court in ***Sanjay Chandra*** (supra). It has been observed therein that detention pending completion of trial is a cause of great hardship and the object of bail is to secure the appearance of the accused persons at the trial. Pre-conviction detention has been frowned upon. In ***Y.S. Jagan Mohan Reddy*** the facts indicate that the charge-sheet was yet to be filed as the investigation was not completed. In that backdrop, the Supreme Court found that release of the applicant at that stage was likely to hamper investigation and hence bail was not granted. The order in ***Sameer Joshi*** (supra) is based on facts of said case.

In the present case, the investigation in so far as present applicant is concerned has been completed. The apprehension that the applicant would either hamper the investigation in so far as other accused are concerned or would made attempts to tamper with the prosecution witnesses can be taken care of by imposing suitable conditions.

Thus taking overall view of the matter and the fact that the applicant has undergone pre-trial detention for almost 14 months, I am inclined to release the applicant on bail. Same would however be subject to conditions.

Accordingly following order is passed :

(i) Application is allowed.

(ii) The applicant Rajesh S. Joshi is directed to be released on bail with regard to Crime No.176 of 2014 on furnishing PR Bond of Rs.50,000/- (Rupees fifty thousand) with one surety in like amount.

(iii) The applicant shall surrender his passport with the Investigating Officer. He shall co-operate with the investigation and report to the Investigating Officer as and when directed.

(iv) He shall not take any steps to influence the complainants or witnesses sought to be examined by the prosecution.

(v) He shall not leave Nagpur city without informing the Investigating Officer.

(vi) The applicant shall give details of the properties owned by him within period of ten days of his release and he shall not alienate the same without due permission of the Special Court.

(vii) Order accordingly. Humdast granted.

JUDGE

Asmita