IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

901 CRIMINAL APPLICATION NO. 4511 OF 2016

VARSHA Wd/O MADHUSUDAN SATPALKAR

VERSUS

THE STATE OF MAHARASHTRA

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Mr. V.D.Sapkal h/f Mr. S.S.Rathi,
Advocate for Applicant.
Mr. S.B.Yawalkar, A.P.P. for Resp. – State.

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CORAM : A.M.BADAR, J.
DATE : 21st SEPTEMBER, 2016

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PER COURT :

1. The applicant/accused in Crime No. 322/2016 registered at Nanalpeth police station, Parbhani, Dist. Parbhani for the offences punishable U/ss 420,406,465,468, 471 read with 34 of the Indian Penal Code and u/s 3 of the Maharashtra Protection of Interest of Depositors (in Financial Establishments) Act, 1999 [for short, 'MPID Act'], by this application is seeking pre-arrest bail.

2. Heard the learned counsel for the applicant/accused. He argued that similar offence was registered against the present applicant at Sakarwada police station, Nashik, district Nashik vide Crime No. 34/2016. The learned counsel further argued that the applicant is the Chairman-cum-Managing Director of Maitreya Group of Companies.

3. According to the learned counsel, the applicant had moved an application for grant of bail before the Special Court under MPID Act at Nashik. During the pendency of that application, joint pursis came to be filed by the applicant as well as the Investigating Officer. It is submitted that the applicant had shown readiness to deposit half of the amount involved in the crime in the Court to show her bonafides. The learned counsel further submitted that the Investigating Officer in that crime also filed report after deposit of some amount by the applicant in the Court at Nasik for allowing him to repay the amount to the investors. The learned counsel submitted that the account named “Escro Account” was opened. The learned Special Court appointed a Committee to deal with that amount. According to the learned counsel, the

applicant had shown her 'no objection' to repay the amount to the investors. That is how, according to the learned counsel, the Special Court at Nashik is taking care of the matter and the amount of the investors is being returned. The learned counsel further argued that a message was given by the police at Nashik to all police stations intimating registration of the crime. It was informed that all records concerning the alleged fraud have been seized by Sakarwada police station, Nashik. It was informed by police at Nashik that Nashik city police will prepare list of investors, due dates, etc. under the territorial jurisdiction of all the police stations. The learned counsel, therefore, argued that as the entire record has been seized by Sakarwada police station at Nashik, custodial interrogation of the present applicant is not warranted.

4. The learned counsel for the applicant argued that the applicant/accused is selling the property of Maitreya Group of Companies and depositing in the 'Escro Account'. The Committee appointed by the Special Court is disbursing that amount. My attention is drawn to two ad-interim orders passed by this High Court at Nagpur Bench by granting pre-arrest bail to the applicant. The learned counsel for the

applicant further drew my attention to the chart and submitted that the investors at Parbhani and Aurangabad are also being paid by the Committee appointed by the Special Court from out of the amount deposited by the applicant. The Website is created by the Company and that is being operated by the police and the committee. The investors, who are applying on-line, will get refund of their amount through the Committee via Website created by Maitreya Group of companies. Therefore, according to the learned counsel for the applicant, custodial interrogation of the present applicant is not at all warranted.

5. The learned A.P.P. opposed the application by contending that so far as the crime in question registered at Nashik is concerned, there are 559 investors, who invested at 4 Companies of the Maitreya Group of Companies, of which the present applicant is the Chairman-cum-Managing Director. He submitted that in all amount of ₹ 95 Lakh is involved in the crime in question. The learned A.P.P. drew my attention to the Order dated 30/08/2013 of the Security and Exchange Board of India [for short, 'SEBI'] and particularly to para Nos. 8.6,9.11 and 9.12. The learned A.P.P. further drew my

attention to the statement of Janardhan Paruvekar and argued that though the SEBI has restrained Maitreya Group of Companies from collecting further amount from the investors, the said Order was circumvented by creating 2 Companies viz. Maitreya Realities and Structures Pvt. Ltd. as well as Maitri Suvarnasidhi Pvt. Ltd. at Bengalore by getting expert advise of the Chartered Accountant. The learned A.P.P., therefore, argued that custodial interrogation of the present applicant in this economic offence is warranted.

6. The applicant is an accused in the crime to which Sections 3 and 4 of the MPID Act are applied. The statement of object and reasons of this Act reads thus,

> " *There is a mushroom growth of Financial Establishments in the State of Maharashtra in this recent past. The sole object of these Establishments is of grabbing money received as deposits from public, mostly middle class and poor on the promises of unprecedented high attractive rates of interest or rewards and without any obligation to refund the deposit to the investors on maturity or without any provision for ensuring rendering of the*

services in kind in return, as assured. Many of these Financial Establishments have defaulted to return the deposits on maturity or to pay interest or render services in kind, in return, as assured to the public. As such deposits run into crores of rupees it has resulted in great public resentment and uproar, creating law and order problem in the State of Maharashtra, specially in the city like Mumbai which is treated as the financial capital of India. It is, therefore, expedient to make a suitable legislation in the public interest to curb the unscrupulous activities of such Financial Establishments in the State of Maharashtra.

As both the Houses of the State Legislature are not in Session and the Governor of Maharashtra is satisfied that the circumstances exist which render it necessary for him to take immediate action to make a Law for the purposes aforesaid, this Ordinance is promulgated. "

Bare perusal of the statement of object and reasons of this Act as such goes to show that the same is enacted in the public interest to curb the unscrupulous activities of such financial establishments with sole object of grabbing money received from the depositors, who are mostly from middle class and poor strata of the society.

7. The M.P.I.D. Act is a complete Code in itself. Section 2 of this Act defines competent authority, designated Court, Financial Establishments, etc. Section 3 of this Act creates an offence. If financial establishment fraudulently defaults in repayment of the deposits on maturity along with ancillary benefits, then every person responsible for such financial establishment is liable for the consequences provided in that Section. The penal liability under the MPID Act and the consequences thereof are serious in nature. They attracts attachment and sell of property of defaulters under relevant rules framed under the MPID Act. By Section 4 of the said Act, the Government is empowered, in order to protect the interest of the depositors in such financial establishments to attach the money and other properties believed to have been acquired by financial establishment either in their own name or in the name of other persons from out of the funds of the depositors if it is satisfied that such financial establishment is acting in calculating manner with an intention to defraud them. The Act also provides for mechanism of receiving

complaints of investors. The District Collector is empowered to receive complaints from depositors.

8. Section 5 of the MPID Act provides for appointment of the competent authority. It is the job of the Government to appoint any of its Officer not below the rank of the Dy. Collector, as the competent authority to exercise the control over the monies and properties attached by the Government u/s 4 of the M.P.I.D. Act. The said Act further provides that the competent authority is duty bound to apply to the Designated Court within 30 days for such further orders as are necessary in the matter of attached monies and properties. Powers of the Designated Court regarding attachment are stated in Section 7 of the said Act. The Designated Court is required to issue a show cause notice to the Financial Establishment asking it to show cause as to why the attachment should not be made absolute. The Special Court is empowered to issue such directions as may be necessary for realization of the assets attached and for equitable distribution amongst the depositors of the money realized from out of the property attached.

9. With this brief resume of the provisions of the MPID Act, it needs to be stated that when the law gives powers to do a certain thing in a certain way, the thing must be done in that way or not at all. The intention of the Legislature in enacting Section 4 of the M.P.I.D. Act is to empower the Government to protect the interest of the depositors by attaching the money or other properties believed to be acquired by Financial Establishments by defrauding investors rather than allowing them to sale out properties themselves. Keeping this position in mind, let us examine the order of the Special Court relied by the present applicant ensuring her liberty. Perusal of the order passed by the Special Court at Nashik releasing the applicant on bail in Crime No. 34/2016 goes to show that the provisions of the MPID Act were breached in impunity while releasing the applicant on bail. Upon being asked, the learned A.P.P. is unable to state whether the State Govt. has challenged this order any further or not.

10. Be that as it may, perusal of the order passed by the learned Special Court at Nashik goes to show that during pendency of her bail application, the applicant showed her

readiness to deposit half of the amount involved in that crime. The applicant/accused, as seen from that order, has deposited total amount of about ₹ 6.40 Crores in the Special Court at Nashik. It appears that the Investigating Officer filed a report at Exh. 27 in that bail proceedings at Nashik to allow him to repay the amount to the investors from the amount deposited by the present applicant before the Special Court at Nashik.

11. The order of the Special Court at Nashik shows that the applicant/accused had shown her readiness to sell the properties with the permission of the SEBI for depositing the amount in the account which the trial Court named as 'Escro Account'. It appears that the learned Special Court at Nashik in that crime has appointed a Committee for repayment of the amount deposited in the said Escro Account by the present applicant/accused. That Committee appointed by the learned Special Court is stated to be comprising of Mrs.Ahirrao, the Tahsildar, Nashik, Dr. S.S.Kolhe, Investigating Officer and Senior police inspector of Sakarwada police station, Nashik, one representative of Maitreya Plotters and Structures Pvt. Ltd. and one representative of investors namely Mr. S.P.Kapure. This

Committee is seen to have been appointed on the basis of the proposal submitted by the parties before the Special Court. It appears that during the pendency of that bail application at Nashik, the Investigating Officer and the District Government Pleader at Nashik, as seen from the order of the learned Special Court, informed the Special Court at Nashik that they intends to repay the amount credited to the Escro Account by the present applicant. The present applicant/accused had shown her 'no objection'. The learned Special Court then proceeded to observe that by constituting the Committee, as proposed by the parties, it would be just and proper to direct the Committee to monitor the payment to the investors in legal and proper manner. The learned Special Court at Nashik directed that the Committee should give preference in repayment of amount to all the investors, who are living within the jurisdiction of Nashik district. All this exercise conducted by the learned Special Court at Nashik is obvious contrary to the provisions of the MPID Act. The MPID Act provides for attachment of property and money of the Financial Establishment under the order of the Government This is obviously so because any scrupulous financial establishment may sell out properties at minimal price and then can submit to the Special Court that they are ready and willing to deposit that the sale prices in the Special Court. This appears to have been actually happened in this case by order of the learned Special Judge at Nashik, which empowered the applicant/accused herself to sell out the properties of the defaulting Financial Establishment and then to deposit the money in the account which is named as Escro Account. The Officer not below the rank of the Dy. Collector can only be appointed as Competent Authority. Here in the case at Nashik, the Special Court has appointed Committee comprising of the Tahsildar, Police Officer, representative of the applicant/accused as well as representative of the investors. Without there being provision in the law, the learned Special Judge has directed that priority should be given for repayment of the amount to the investors residing in Nashik district. The learned Special Court at Nashik has not taken care to see that properties of the financial establishment, which are acquired through the monies invested by the several investors are sold at proper price or at least at the market price. The entire discretion appears to be left with the applicant/accused who can sale out the property at the rate of her choice. For all these reasons, I am not inclined to tow the line of the learned Special Court at Nashik while dealing with this matter in some other crime. By adopting such course of action in the matter, the learned Special Court at Nashik literally prohibited the Government to exercise its power of attachment of properties of Financial Institutions of the applicant/accused as provided in Section 4 of the M.P.I.D. Act.

12. As stated by the learned A.P.P., in the crime in question, 559 investors are involved. They had invested their hard earned monies in 4 companies of Maitreya Group of Companies, of which the applicant/accused is Chairman-cum-Managing Director. In all about ₹ 95 Lakh are involved in the crime in question. My attention is drawn to the order of SEBI, whereby the SEBI has reached to the conclusion that an amount of ₹ 773 Crores was collected by this financial establishment towards booking amount in the scheme towards booking or purchase of plots of lands. However, the SEBI reported that there is no corresponding increase in fixed assets. The fixed assets remained at ₹ 34 Crores only. By noting several irregularities and mis-appropriation, the SEBI on 30/08/2013 restrained the applicant from collecting any

money from the investors and had also restrained the applicant from starting any new scheme and from diverting any funds raised from the public at large. On this back-drop, papers of investigation shows that this direction of SEBI was flouted by taking Expert's advise of the Chartered Accountant. Two companies having synonymous name were established at Bangalore and again monies were collected from the investors. While dealing with similar case, this Court in the matter of ***Mr. Abhay R. Sinha Vs. State of Maharashtra & Ors. reported in 1999 All MR [Cri.] - 458*** has held that when the applicant there in was *prima facie* found involved in a fraud of 20 Crores involving several investors, when investigation was pending, the bail application needs to be rejected.

13. In the case of ***Mohd. Rafioddin Rehan Siddiqui Vs. The State of Maharashtra & Anr. reported in 2012 ALL MR [Cri.] - 1540,*** it is held that the classes of offences turning graver from the grave and heinous from the graver are seen growing in the zone occupied by men with white caller. Small depositors have invested the money earned by them with hard toil, in bank with an ardent faith and trust. It

is further observed that pains of small investors are far severe even for loss of a small amount in comparison with those who earn in trillions and lose in millions. Present is a case of loss to a small man whose paltry sum defrauded. When a small man looses all his savings of hard boiled days and years, it does colossal injury to him.

14. In the matter of ***Nimmagadda Prasad Vs. Central Bureau of Investigation - reported in 2013 (7) SCC – 466***, the Supreme Court had an occasion to deal with such type of offences. Para Nos. 23 and 25 of that ruling are required to be quoted which reads thus,

> " *23. Unfortunately, in the last few years, the country has been seeing an alarming rise in white-collar crimes, which has affected the fibre of the country's economic structure. Incontrovertibly, economic offences have serious repercussions on the development of the country as a whole. In State of Gujrat Vs. Mohanlal Jitamalji Porwal this Court, while considering a request of the prosecution for adducing additional evidence, inter alia, observed as under : (SCC p. 371, para 5).*

5.... 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. A disregard for the interest of the community can be manifested only at the cost of forfeiting the trust and faith of the community in the system to administer justice in an even-handed manner without fear of criticism from the quarters which view white-collar crimes with an permissive eye unmindful of the damage done to the national economy and national interest.

25. Economic offences constitute a class apart and need to be visited with a different approach in the matter of bail. The economic offence having deep-rooted conspiracies and involving huge loss of public funds needs to be viewed seriously and considered as a grave offence affecting the economy of the country as a whole and thereby posing serious threat to the *financial health of the country.*

The learned counsel for applicant placed reliance also on the case reported as AIR 1985 Supreme Court – 969 [Pokar Ram Vs. State of Rajasthan & Ors.]. In this case, the power of Apex Court under Article 136 of Constitution of India is discussed. . ”

15. Even if under the directions of the Special Court at Nashik, the committee which is formed in breach of the provisions of the MPID Act is taking steps for refunding the amount of depositors, such exercise can be of some use only while imposing sentence on the accused, if any,at the conclusion of the trial. At this stage, it appears that the applicant/accused herself is selling out the properties at the cost fixed by her in her own interest. One may not know whether those properties are sold at market price or by some other mode for siphoning the funds. Thus, very object of the M.P.I.D. Act is frustrated by such course of action. Therefore, order of Designated Court at Nashik is of no assistance to the applicant.

16. In this view of the matter, no case for

anticipatory bail is made out. Custodial interrogation of the applicant to trace out all properties and for taking further actions as per the scheme of the M.P.I.D. Act is must. Ultimately properties are required to be attached and sold out for getting maximum price in the interest of defrauded investors. Hence, the following order.

(i) The Criminal Application stands rejected.

(ii) Copy of this order be sent to the Director General of Police, Maharashtra State, Mumbai for necessary action in the matter.

[A.M.BADAR, J.]