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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

ANTICIPATORY BAIL APPLICATION NO.204 OF 2016
WITH
CRIMINAL APPLICATION NO.152 OF 2016
WITH
CRIMINAL APPLICATION NO.258 OF 2016

Mrs.Snehal Mangesh Kulkarni ..Applicant.
V/s.
State of Maharashtra ..Respondent.
AND
Mohan Paiugude and Ors. ..Intervenors.
AND
Dr. Prashant Hiralal Bhosale ..Intervenor.

ANTICIPATORY BAIL APPLICATION NO.278 OF 2016

Mrs.Deepa Mangesh Waikar ..Applicant.
V/s.
State of Maharashtra ..Respondent.

ANTICIPATORY BAIL APPLICATION NO.369 OF 2016

Sou. Manisha Deepak Agarwal ..Applicant.
V/s.
State of Maharashtra ..Respondent.

ANTICIPATORY BAIL APPLICATION NO.212 OF 2016

Eknath Prakash Ranawade ..Applicant.
V/s.
State of Maharashtra ..Respondent.

Mr.Niteen Pradhan, Senior Advocate with Ms.Ameeta Kuttikrishnan i/b. Subhada D.Khot for the applicant in ABA/204/2016 and ABA278/2016.

Mr.Jayesh Kotecha with Ms.Anjali Bhujbal for the applicant in ABA/212/2016.

Mr.Jaydeep Daundkar i/b. Shankar S. Deshmukh for the applicant in ABA/369/2016.

Mr. Niranjan Mundargi for the intervenor in APPP/258/2016.

Mr.S.S. Pednekar, APP for respondent-State.

CORAM : A.M.BADAR, J.

DATED : 27TH JULY, 2016

P.C. :-

1. Applicant / accused Snehal M.Kulkarni (ABA/204/ 2016, Deepa M.Waikar (ABA/278/2016), Manisha D.Agarwal (ABA/ 369/2016) and Eknath Ranawade (ABA/212/2016) who are accused in Crime No.392/2015 registered with Chaturshringhi Police Station, Pune for the offences punishable under section 406, 420 read with 34 of the Indian Penal Code and under sections 3 and 4 of the Maharashtra Protection of Interest of Depositors (In Financial Establishments) Act, 1999 (hereinafter referred to as 'MPID Act' for short) by these applications are praying for pre-arrest bail.

2. Heard the learned senior counsel appearing for applicants Snehal Kulkarni and applicant Deepa Waikar. By

drawing my attention to several documents placed on record, the learned senior counsel argued that both these applicants were in fact employees of the companies owned by accused No.1 Deepak Agarwal and both these applicants were in no way responsible for management of both Companies. The learned senior counsel further argued that both these applicants have not subscribed a single pie towards the capital of both Companies. It is argued that Dheer Kuries Limited is in fact a chit fund company to which the provisions of the MPID Act are not at all applicable. The said Company is registered under the Chit Fund Act,1982 and in view of the provisions of the said Act, appointed Foreman is responsible for investors in the said Company.

3. The learned counsel for applicant Eknath Ranawade argued that this applicant is also employee working as the Marketing Executive on salary with the Company owned by accused No.1 Deepak Agarwal.

On behalf of all these three applicants, it is argued that they are merely shown as Directors or additional Directors of the companies named as Dheer Kuries Ltd and Dheer Credit Services Ltd.

4. The learned counsel appearing for Manisha Agarwal argued that she was never appointed as Director of any Companies which has allegedly defrauded investors. It is argued that the provisions of sections 406 and 420 of the Indian Penal Code are not attracted so far as applicant Manisha Agarwal is concerned, so also the provisions of MPID Act are not attracted. It is submitted that this applicant is wife of accused No.1 Deepak Agarwal but she has severed her ties with the accused since last two years. She is residing separately and in support of this contention, a copy of the leave and licence agreement is pressed in service. It is argued that this applicant is not benefitted by any of the financial transactions of both Companies. My attention is also drawn to the list of cases allegedly filed by both Companies which is annexed to the application.

5. The learned APP opposed the applications by arguing that three applicants who are claiming to be employees are in fact Directors of both Companies who have defrauded investors of an amount of Rs.5.06 crores approximately. It is argued that these applicants were in fact managing the affairs of both Companies and inducing

investors to invest monies in Companies by promising rosy picture regarding returns. The learned APP further argued that statement of accounts of Snehal Kulkarni shows that on 23th June, 2015 and 14th September, 2015, she received Rs.25,000/- from the Company and on 10th August, 2015 applicant Deepa Waikar received Rs.15,000/- from the Company. It is pointed out that applicant Eknath Ranawade had received Rs.41,569/- on 17th March, 2015 from the Company. The learned APP has drawn my attention to the reply filed by the State opposing above applications.

6. So far as applicant Manisha Agarwal is concerned, the learned APP has drawn my attention to statements of witnesses and submitted that the entire collection used go in the hands of applicant Manisha Agarwal and her husband Deepak Agarwal. Attention of this Court is also drawn to the statement of accounts of Dheer Kuries Ltd. to show that substantial amount was transferred from the account of the Company to the account of applicant Manisha Agarwal. It is argued that amount of Rs.30 lakhs came to be transferred in the account of applicant Shenal Kulkarni and her husband from the account of Manisha Agarwal.

7. I have also heard the learned counsel appearing for the intervenor. In his submission, statement of bank account of applicant Deepa Waikar is showing cash deposits though she claims to be a employee of the Company. Those cash deposits are indicative of the fact that the amount collected from investors went in her share.

8. In reply, the learned senior counsel has drawn my attention to the pleadings and submitted that monies received is properly explained in the body of the application.

9. I have carefully considered the rival submissions and also perused the papers of investigation made available by the learned APP. In the case in hand, the F.I.R. came to be lodged by Dr.Prashant Hiralal Bhosale, one of the investor in two Companies named as Dheer Kuries Chit Fund Ltd. and Dheer Credit Services Ltd. According to the informant, these Companies were doing business of running chit funds and accused No.1 Deepak Agarwal was at the helm of the affairs of both these Companies. It is averred in the F.I.R., which is containing all necessary details that, Deepak Agarwal had

defaulted in making payments and despite repeated phone calls to him, he has always misguided the informant. The informant reported that accused Deepak Agarwal and other Directors of both the Companies had defrauded investors of an amount of Rs.2.86 crores. A mere glance at the F.I.R. lodged by the informant, who is an educated persons, goes to show that accused Deepak Agarwal was managing the affairs of both Companies and it was he who was inducing investors to deposit amounts with Companies. Record of investigation also goes to show that several investors have named Deepak Agarwal as the person who was giving information about investments.

10. It is not in dispute that Dheer Kuries Chit Fund Ltd. is a company registered under the Chit Funds Act, 1982. Section 2 of MIPD Act, 1999 excludes deposit in chit fund from the definition of the term deposit. Consequently, deposits with Dheer Kuries Chit Fund Ltd. would be governed by the provisions of Chit Funds Act, 1982. Section 7 of the said Act mandates filing of chit agreements with the Registrar. The learned APP has pointed out that out of 71 agreements only 26 agreements are registered with the Chit Fund

Commissioner. As per the provisions of section 25 of the said Act, it is the foreman, as defined by section 2(j) of the Chit Funds Act, 1982, who is liable to account to the subscribers for the amounts due to them. It is not in dispute that accused Deepak Agarwal is the person who has been appointed as foreman to manage the chit funds run by Dheer Kuries Chit Fund Ltd.

11. On this backdrop, let us ascertain whether applicants Shenal Kulkarni, Deepa Waikar and Eknath Ranawade, who were appointed as Directors but also shown as employees were responsible for the management of or conducting the business or affairs of Dheer Credit Societies Ltd. At the outset, it needs to be mentioned that the learned APP has not disputed the fact that none of these applicants have contributed a single pie towards capital of both these Companies. All these three applicants are not share-holders of both these Companies. It is thus seen that nomenclature of the posts held by them is of no consequence but what is relevant is the duty assigned to such post. So far as applicant Snehal Kulkarni is concerned, accused No.1 Deepak Agarwal who was principally managing the affairs of both Companies

had issued certificate on 21st January, 2015 which unequivocally points out that applicant Snehal Kulkarni was appointed as Director in both Companies only to look after the daily routine work. It is also certified that she is not liable to third party or private liability of both Companies. On 12th July, 2011 Dheer Credit Services Ltd. had issued certificate certifying that Snehal Kulkarni is working as Senior Accountant with a salary of Rs.20,000/-. I have carefully perused the statement of account of Snehal Kulkarni placed on record as well as one which is available with the record of investigation. It is seen that she was receiving salary from the Companies managed by accused Deepak Agarwal. There is entry of deposit of Rs.30 lakhs in her joint account with her husband. The learned APP has accepted the fact that within four days the entire amount was transferred to the account of Dheer Kurie Ltd. Two minor entries totalling Rs.50,000/- are also adequately explained to show that this was amount invested by her relatives in Companies which is refunded.

12. So far as applicant Deepa Waikar is concerned, her statement of bank accounts is perused by me. It is seen that periodically an amount of Rs.15,000/- used to be transferred

to the account from M/s.Dheer Credit Services Ltd. No doubt, there are some entries reflecting cash transactions in the statement of accounts, however, no tangible evidence was produced by the investigator to show that said entries were pertaining to the deposits of investors.

13. Similar is the case of applicant Eknath Ranawade. There is certificate from this Company to show that he was appointed as Marketing Executive on monthly salary of Rs.20,000/-.

14. On this factual backdrop, one will have to look into the evidence of appointment of all three applicants as Directors / Additional Directors of Companies. When it is not in dispute that all three applicants were being paid salaries and when the investigator is relying on statements of witnesses in order to show that the entire daily collection of both Companies used to be handed over to main accused Deepak Agarwal and his wife Manisha Agarwal, the fact that these applicants were appointed for some time as Directors pales into insignificance. Similarly, in the wake of two statements of employees of both these Companies relied by

the prosecutor showing that collection used to be entrusted to Deepak Agarwal and his wife, then the cash entries in the bank account of Deepa Waikar cannot be given over bearing importance.

15. In the result, looking into the employee - employer relationship of these applicants with the Companies as discussed supra, by no stretch of imagination, it can be said that these three applicants were responsible for management or conducting of business or affairs of both these Companies. Considering the accusations against them and the available evidence, their custodial interrogation is not at all warranted.

16. Now, let us examine whether applicant Manisha Agarwal is entitled to pre-arrest bail. She claims to be the wife of accused Deepak Agarwal without any nexus to the affairs of both Companies. My attention is drawn by the learned APP to the statement of two witnesses who are employees of Companies run by Deepak Agarwal. Both these employees in terms have stated before the investigator that the entire daily collection of both Companies used to be handed over either to accused Deepak Agarwal or his wife

Manisha Agarwal. Then, there is statement of account collected by the Investigator which shows that amount of Rs.90,000/- or more came to be transferred in the account of applicant Manisha Agarwal from the account of Dheer Kurie Ltd. There is evidence to show that amount of Rs.30 lakhs was paid by this applicant to one of these two Companies through applicant Snehal Kulkarni. In the wake of this evidence, it cannot be said that applicant Manisha is not concerned with the crime in question. To crown this all, the applicant herself has annexed a list of cases filed by these Companies against their Debtors in the Court of Law. If really she is not residing with her husband and has severed her ties from her husband, filing of such list becomes totally unacceptable conduct. Therefore, in order to trace out the monies and to effect recoveries, so also to get further clues in investigation, custodial interrogation of applicant Manisha Agarwal is essential.

17. In the result, the following order:-

(i) Anticipatory Bail Application No.369 of 2016 filed by Manisha Deepak Agarwal is rejected.

(ii) Anticipatory Bail Application No.204 of 2016 filed by Mrs. Snehal Mangesh Kulkarni, Anticipatory Bail Application No.278 of 2016 filed by Deepa Mangesh Waikar and Anticipatory Bail Application No.212 of 2016 filed by Eknath Prakash Ranawade are allowed.

(iii) In the event of arrest of the above three applicants / accused in Crime No.392/2015 registered with Chaturshringhi Police Station, Pune for the offences punishable under sections 406, 420 read with 34 of the Indian Penal Code and under sections 3 and 4 of the Maharashtra Protection of Interest of Depositors (In Financial Establishments) Act, 1999, they be released on bail on their executing P.R. bond in the sum of Rs.25,000/- each with one or more sureties in the like amount by each of them;

(iv) As a condition of this order, applicants / accused shall attend Chaturshringi Police Station, Pune on 7th , 14th and 21st August, 2016 between 11.00 a.m. to 1.00 p.m. and shall co-operate with the Investigating Officer;

(v) Applicants / accused shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of accusation against him so as to dissuade him / her from disclosing such facts either to the Court or to any police officer and that they shall not tamper with the evidence;

(vi) Applicants / accused shall not commit an offence similar to the offence of which he is accused or suspected of commission;

(vii) All applications are disposed of accordingly.

(viii) In view of the disposal of the main applications, Criminal Applications, if any, are disposed of accordingly.

18. At this stage, the learned counsel for applicant Manisha Deepak Agarwal submits that her mother has expired recently, the applicant wants to surrender herself within a period of one week from today. Time of one week is granted to Applicant Manisha Agarwal for surrendering before the Investigating Officer of the concerned police station.

(A.M.BADAR, J.)