IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
BAIL APPLICATION NO. 1604 OF 2016

Dinesh Brahmanand Jajodia .....Applicant
V/s.
The State of Maharashtra .....Respondent

ALONGWITH
CRIMINAL APPLICATION NO. 932 OF 2016
(FOR INTERVENTION)
IN
CRIMINAL BAIL APPLICATION NO. 1604 OF 2016

The Assistant Director,
Directorate of Enforcement, ...Applicant/
Intervenor

IN THE MATTER BETWEEN :-
Mr. Dinesh Bharmanand Jagodia .....Petitioner
V/s.
The State of Maharashtra .....Respondent

ALONGWITH
BAIL APPLICATION NO. 1517 OF 2016

Prashant Sharad Mulekar .....Applicant

V/s.

The State of Maharashtra & Anr. .....Respondents

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Mr. A.H. Ponda a/w. Mr. Pravin Badheka i/by. Mr. Vinod Kashid, *Advocate for the applicant in BA-1604-2016.*

Mr. Rajiv Patil, Senior Advocate i/by. Mr. Randhir Kale, *Advocate for the applicant in BA-1517-2016.*

Ms. Manisha Jagatap, *Advocate for the applicant in APPP-932-2016.*

Ms. Sharmila Kaushik, *APP for the State.*

Mr. Mandlekar, Assistant Director, E.D present.

PI, Chavan, D.V. EOW, Unit-5 present.

CORAM :- N.W. SAMBRE, J.

DATED : 21ST DECEMBER, 2016.

P.C. :-

1). The applicants are seeking regular bail in Crime No. 760 of 2015 registered with MIDC Police Station, Mumbai which is renumbered as EOW-CR-88 of 2015 for the offences punishable under Sections 409, 420, 477(8), 120(B) read with Section 34 Indian Penal Code.

2). The applicants were arrested on January 18, 2016 and already chargesheet in the Court of Additional Chief Metropolitan Magistrate vide C.C. No. 322/PW/2016.

3). The prosecution case as is reflected from the papers as are available on the record is M/s. Geodesic Ltd, a software and hardware manufacturing Company raised 125 million USD by way of unsecured Foreign Currency Convertible Bonds (FCCB's) with an intention to invest in foreign subsidiaries of the said Company and for acquisition of new overseas companies for which City Bank N.A. London acted as a Trustee. The said FCCBs were listed on the Singapore Stock Exchange and the Bombay Stock Exchange of which maturity was in January, 2013 of value of 165 million USD. The Company, M/s. Geodesic Ltd. defaulted as a consequence of which the said Bank Trustees honoured the commitment, however, initiated proceedings for winding up for which provisional order, I am informed, to have been passed in addition to a decree for recovery of the said amount.

4). The applicant Prashant Mulekar, Executive Director and Chief Finance Officer (CFO), whereas, another applicant, Dinesh Jajodia, is a Tax Consultant of M/s. Geodesic Ltd. It is claimed that the amount raised through FCCB's was not used for the purpose (Referred : supra) and the said amount was diverted by hatching a criminal conspiracy by causing criminal breach of trust and applicants appointed Companies like Yvette Investment & Trade Corp, Lasdun Ventures S.A. and Sharp Long Consultant as Collection agents. In these Companies, who acted as Collection

Agents, applicant Dinesh Jajodia i.e. Tax Consultant was either a Director or Shareholder or authorised signatory and has signed as an Agent of these Collection Agent Companies on the agreements, whereas, applicant Prashant had signed as Collection Agent on Agreements, on behalf of foreign subsidiaries of M/s. Geodesic Ltd. According to prosecution, in above referred manner, the funds raised to foreign currency bonds were siphoned off and the amount accordingly was parked in Tax haven countries like Uruguay, Mauritius, British Virgin Isles, Panama Singapore, Switzerland, Hongkong.

5). The learned Counsel appearing for both the applicants, would strenuously urge that the further detention of the applicants is not necessary as the investigation in the matter is already over as the chargesheet is filed. According to him, apart from present offences, there are no criminal antecedents. The applicants are highly qualified and have deep roots in the Society as they enjoy goodwill. It is then claimed that, the other two accused who were Directors namely, Kiran Kulkarni and Pankaj Shrivastava are similarly placed, are already released on bail. As such, the applicants case needs to be considered at parity. Another submission is, the applicants have already co-operated with the investigation and the fact remains that the funds as are claimed to have been mismanaged or misappropriated are very much available and can be used for satisfying the debt provided some time is granted. It is also sought to be alleged that, there is no cause of action for registration of crime in India, particularly in the matter of Dinesh Jajodia who is a just Tax Consultant without any financial interest in M/s. Geodesic Company.

6). It is also claimed that, City Bank since held decree of 165 million USD . The same can be satisfied. It is claimed that, no amount was transferred to the Accounts of the applicants.

7). Per-contra, the learned APP appearing for the Economic Offence Wing and other Counsel for the Directorate of Revenue Intelligence opposes the application on the ground that the applicants case cannot be tried at parity with the other two Directors who are already released. It is claimed that, in a calculated manner of the applicants including accused, Dinesh has practised fraud so as to defraud Foreign and Indian investors thereby bringing disrepute at the international level of the Indian Companies. She has also claimed that the investigation is still going on. The trail of the funds is followed and it almost at the verge of detection of the flow of the amount. It is then claimed that the applicants are involved in serious economic offence. As such, the application needs to be rejected.

8). Having considered rival submissions, what could be inferred from the material available on the record is the amount involved in the present crime is to the tune of Rs. 1062 crores. Both the applicants appear to be the mastermind behind practising fraud by misutilising their professional knowledge for siphoning off funds. The applicants intentionally have entered into complex transactions which need thorough and in-depth investigation. The investigating agency has already taken recourse to the provisions of Section 166A of Criminal Procedure Code by proposing the issuance of Letter Rogatory for seeking help of the foreign agencies for investigation purpose. The entire offence requires verification of several accounts of groups, the withdrawal and tracing the route of transactions. It is also brought to my notice that the huge amount of Inter Corporate Deposits (ICD's) given to various entities were return off in the books of accounts. No *bonafide* efforts are made for recovery of such ICD's.

9). In Company Petition No. 161 of 2013 connected with other Company Petitions and applications, the Bombay High Court on 22nd December, 2015 and thereafter in Appeal No. 396 of 2016 decided on 28th June, 2016 has taken note of the serious misconduct of the applicants in the matter of management of funds raised through Foreign Currency Bonds. The Division Bench, while deciding the appeal, the present applicants were not honest to the Court and also observed that the Economic Offence Wing has found prima-facie material as the applicant and Directors of the Company qua their involvement in the crime.

10). Apart from above, on 14th July, 2016 in Company Petition No. 161 and 514 of 2013 the Company Court has noted that the Directors have undertaken to provide necessary relevant documents. However, the said Undertaking was breached by the present applicants which demonstrates that the applicants are not co-operating in the investigation. In my opinion, the observations by the Company Court in all the above referred orders are worth referring to and reading in the present order which could also be formed as the basis for rejecting the application of the present applicants.

11). Looking to the nature of offence, in my opinion, the law down by the Apex Court in the matter of **Nimmagadda Prasad Vs. Central Bureau of Investigation, reported in (2013) 7 Supreme Court Cases page 466** is worth referring to. In the said judgment, the Hon'ble Apex Court has observed as under :-

> "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." (emphasis supplied).

12). In view of above, in my opinion, no case for bail is made out. The Bail Applications as such fail. The same are rejected.

13). In view of disposal of the Bail Applications, Criminal Application No.932 of 2016 for intervention does not survive, the same is accordingly disposed off.

(N.W. SAMBRE, J)