IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO.2073 OF 2015
WITH
CRIMINAL APPLICATION NO.1021 OF 2015

Kalpesh Jitendra Sachdev ... Applicant
vs.
The State of Maharashtra ... Respondent

Mr. A.H.H. Ponda a/w. Mr. Ashish Ragvanshi, for the Applicant.
Mrs. Rutuja Ambekar, APP for Respondent – State.
Mr. H.S. Lakhani, the intervener in person.

CORAM: **MRS.MRIDULA BHATKAR, J.**

DATE: **27th APRIL, 2016**

P.C.:

. The application is moved for bail. The applicant/accused is facing charges for the offences punishable under Sections 406 and 420 of the Indian Penal Code in C.R. No. 410 of 2014 registered with Mulund police station, Mumbai. The offence is registered at the instance of one Hiren Lakhani on 25th August, 2014. The applicant was arrested on 29th November, 2014 and since then he is in prison. Hence, this bail application.

2. It is the case of the complainant that in the year 2012 the applicant/accused phoned him and informed him that he is working

as a insurance adviser/investment consultant and LIC agent. He, thereafter again and again contacted him for the purpose of business and told that he has good acquaintance with the higher management of LIC officers and he knew some Board of Directors from some companies. He told the complainant that he has a pull account in LIC and the person who invest money in the said scheme in different plans of LIC, gets double the amount within a year. However, this scheme was not known to the public at large. Only few persons can invest in it because the returns given are more. The complainant trusted the applicant because of his representation and invested Rs. 3 lacs on 1st April, 2013 in the said scheme. He had entered into an agreement about the returns with the applicant/accused on 17th June, 2014. So also in May, 2013 he gave him another business proposal and therefore gave another cheque of Rs. 3 lacs and against which he received return of Rs. 1,50,000/-. So he trusted him and invested further. Thereafter, he again gave cheque of Rs. 5 lacs and pursuant to which executed an agreement on 22nd March, 2014. however, thereafter he did not receive any return of the same. Thus, he realized that he was cheated for Rs. 11 lacs. The complainant on inquiry found that the applicant/accused has cheated in the same manner nearly 31 persons and collected Crores of rupees from them. Hence, the offence was registered.

3. The learned counsel for the applicant/accused has submitted that the applicant/accused is arrested on 29th November, 2014 and since then he is in prison. He submitted that the applicant is innocent. He has repaid some amount to various persons as mentioned in para 5 of the application. He submitted that the applicant/accused is prosecuted under Section 406 and 420 of the Indian Penal Code for which punishment is provided upto 7 years. He submitted that it will take long time to start the trial in view of the pendency before the learned Magistrate. Considering the maximum period of punishment for which the applicant/accused is prosecuted and the actual period he had undergone in prison, he is to be granted bail. In support of his submission, he relied on ***"Sanjay Chandra vs. Central Bureau of Investigation, (2012)1 S.C.C.***

4. The learned prosecutor opposed the application. She submitted that the applicant/accused has cheated in all 31 persons and earned crores of rupees. He has not returned money of all the

persons. Therefore, his bail is to be denied. She submitted that in the case of "**Sanjay Chandra**" (supra) the applicant/accused was well known personality of whom whereabouts are available. In the present case, the applicant/accused does not have permanent residence and he is likely to abscond. She relied on the ratio laid down in the case of ***"Dr. Vinod Bhandari vs. State of M.P.,"*** *in* ***Criminal Appeal NO. 220 of 2015 (Arising out of SLP (CRL.) No. 7506 of 2014, Supreme Court of India*** and submitted that the Hon'ble Supreme Court has rejected the Appeal and the order of rejecting bail passed by the High Court was confirmed. She further relied on the case of ***"Central Bureau of Investigation vs. V. Vijay Sai Reddy, (2013) 7 Supreme Court Cases, 452"*** and submitted that in the said case the Hon'ble Supreme Court has rejected the bail on the ground that if there is genuine case against the accused and if the chances of conviction are higher, then bail is to be rejected.

5. Perused the first information report, other documents, and the statements of witnesses who were deceived by the applicant/ accused. *Prima facie* it appears that the applicant/accused has deceived 31 persons including the complainant and have collected

amounts approximately upto two Crores. However, he has returned some amounts to few persons which is a positive factor in his favour. In the cases of **Vinod Bhandari** and **Vijay Reddy** (supra) the applicant/accused were facing charges for the offences punishable under Sections 409, 420 and 468 of Indian Penal Code. In the present case the applicant/accused is prosecuted for the offence punishable under Sections 406 and 420 of Indian Penal Code where the punishment is less than 7 years imprisonment. Therefore, the case is covered by the ratio laid by the Hon'ble Supreme Court in the case of **Sanjay Chandra** (supra). The Hon'ble Supreme Court in the said case has observed as follows:

> *Para 21 : In bail applications, generally, it has been laid down from the earliest times that the object of bail is to secure the appearance of the accused person at his trial by reasonable amount of bail. The object of bail is neither punitive nor preventative. Deprivation of liberty must be considered a punishment, unless it is required to ensure that an accused person will stand his trial when called upon. The courts owe more than verbal respect to the principle that punishment begins after conviction, and that every man is deemed to be innocent until duly tried and duly found guilty.*

6. So also it is further held in the case of **Sanjay Chandra** (supra) that:

> *Para 39:* *"In the present case, the charge is that of cheating and dishonestly inducing delivery of property and forgery for the purpose of cheating using as genuine a forged document. The punishment for the offence is imprisonment for a term which may extend to seven years. It is, no doubt, true that the nature of the charge may be relevant, but at the same time, the punishment to which the party may be liable, if convicted, also bears upon the issue. Therefore, in determining whether to grant bail, both the seriousness of the charge and the severity of the punishment should be taken into consideration."*

7. In view of above, as seven years is the maximum punishment for the offence for which the accused is tried and considering the period undergone by the applicant/accused in the prison which is more than one and half year and so also the trial is not likely to commence in near future in Magistrate's Court, I am inclined to grant bail to the applicant as under:

a) The bail application is allowed.

b) The applicant/accused be enlarged on bail upon furnishing P.R. Bond in the sum of Rs. 1,00,000/- (One Lac) with one or two sureties in the like amount.

c) He shall not tamper with the evidence and shall not pressurize the witnesses.

d) He shall not indulge into any criminal activity, while on bail.

e) He shall make himself available and attend Mulund police station, Mumbai on every Monday between 11.00 am to 12.00 noon till conclusion of the trial.

f) He shall not abscond and furnish his permanent address to the police station along with address proof.

g) He shall not leave the State of Maharashtra without prior permission of the Court.

h) Violation of any of the conditions imposed shall amount to cancellation of bail forthwith.

8. Bail application as well as criminal application stand disposed of on the above terms.

(MRIDULA BHATKAR, J.)