

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE SIDE JURISDICTION
CRIMINAL BAIL APPLICATION NO. 2447 OF 2016

Smt. Priyanka Vinod Patil

.....Applicant

V/s.

The State of Maharashtra

....Respondent

WITH
CRIMINAL APPLICATION NO. 1043 OF 2016
IN
CRIMINAL BAIL APPLICATION NO. 2447 OF 2016

Eknath S. Nagare

....Intervener

IN THE MATTER BETWEEN

Smt. Priyanka Vinod Patil

.....Applicant

V/s.

The State of Maharashtra

....Respondent

Mr. Ghanshyam Upadhyay i/b Law Juris Advocate for Applicant.

Mr. Amardeep Bhattacharya i/b Ms. Manjula Biswas for Intervener.

Mr. R. M. Pethe APP for the State.

CORAM : SMT. SADHANA S. JADHAV, J.

DATED : 15th DECEMBER, 2016.

PC :

- 1) Heard. This is an application under section 439 of the Code of Criminal Procedure, 1973. Applicant herein is arrested on 14/11/2016 in crime no. I-161 of 2016 registered at Gangapur Police Station on **22/08/2016** for offences punishable under Sections 406, 409, 420, 468, 471, 120 (B) and Section 3 of the Maharashtra Protection of Interest of Depositors Act (MPID Act), Sections 36, 73, 74, 75 r/w 447 of the Companies Act, 2013, Sections 17/23 of Securities and Contract Act, Sections 12/24 of Securities and Exchange Board of India Act, 1992 and Sections 3, 11 r/w 14 of the Maharashtra Ownership Flat Act, 1963. (MOFA Act).
- 2) Heard the learned counsel at length. Perused the papers of investigation. While passing an order in this matter, it would be necessary to consider the application in two parts. Firstly, the merits of the matter, secondly the contemptuous demeanor of the Advocate representing the applicant.
- 3) It is the case of the prosecution that on 20/08/2016, Ganesh Desai lodged a report at the police station alleging therein that he was informed by his friends that the applicant and her husband are running a Firm namely

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'House of Investment' and that the amount invested in the said Firm would be further re-invested in gold and silver trading, mutual funds and contradictions. That the returns would be lucrative. The complainant had seen the agreements of the Director of the Company with other investors and not only had invested his own earnings but also the earnings of his relatives. An agreement was executed on 100/- Rs. Non-Judicial Stamp. Since March, 2016, neither he nor his relatives had received any returns. He had issued a legal notice to the Director of the Company. He had also persuaded the husband of the applicant telephonically, however, there was no response. He had finally realized that the Firm 'House of Investment' was floated with an intention to cheat people and to make personal benefits at the cost of investors. The memorandum of understanding was executed with an intention that it would never be acted upon. Hence, the F.I.R.

4) The conduct of the applicant needs to be considered at the threshold. At the outset, it shall be noted that the first information report was lodged on 22/08/2016, applicant herein had not filed any application under section 438 of the Code of Criminal Procedure, 1973 seeking pre-arrest bail and whereabouts of the applicant were not known till 14/11/2016. This is a

relevant factor for the reason that during this period, applicant has caused disappearance of material evidence. Moreover, the husband of the applicant Mr. Vinod Patil who is proprietor of the Firm M/s House Investment Company Private Ltd is absconding prior to the registration of the offence. The investigation is in progress. It is the case of the prosecution that 3464 persons have been duped by the applicant and her husband. Till today the Investigating Officer has recorded the statements of 253 investors. The total amount of the money involved, rather gulped by the applicant and her husband is about Rs. 30 Crores.

5) The learned APP has submitted that the applicant has been in custody for hardly 30 days and investigation is in progress and that her husband is absconding and therefore, she does not deserve bail at this stage.

6) The learned counsel for the applicant had expressed his annoyance at the said submission. This Court had inquired with the learned counsel for the applicant, in respect of the whereabouts of the husband of the applicant and had also expressed an opinion that the application could be considered after Mr. Vinod Patil surrenders. The counsel was once again enraged and had submitted that they are two different individuals and the Law does not permit

the detention of one accused for securing the presence of co-accused. Principally speaking it may be an appropriate submission, but it would not be applicable in the present case as papers of investigation had revealed that the husband was the proprietor of the said Firm but it was the present applicant who was inducing people to invest in the said Firm, assuring them of lucrative returns. She had not only stopped at that but had even caused disappearance of evidence. The applicant was running a Fitness Centre in the same building as that of House of investment. When the investors had started demanding returns, applicant had kept all the documents, laptop and other material in the Fitness Centre. She had caused disappearance of evidence of records. Investigating agency has placed on record the Whats App chat of the husband of the applicant with Sandhya Joshi who was also an investor and the husband of the applicant had chatted as follows:

“Husband of the Applicant: *I have made all workouts.*
: *Now it seems difficult to pay a penny also.*
: *My divorce is got finalized.*

: *After this things, again divorce case will
got filed”.*

It therefore appears that applicant and her husband are likely to sever their relationships only to see that the investors are not reimbursed.

7) The counsel for the applicant had started intimidating the Court. The first submission of the counsel was an attack on the Sessions Court which had rejected the application seeking bail. The learned counsel for the applicant is seeking bail on the ground of parity. According to the counsel, some of the Directors of the said Firm have been enlarged on bail by the same Court whereas the application of the present applicant was rejected. The counsel submits that he was engaged as a counsel before the Court of Sessions at Nashik. He had reached the Court when the Advocate on record was arguing the matter at the time of hearing. The counsel had intended to pass an application across the Bar, but was directed by the Sessions Court to file the same in the Registry and that the matter would be heard only after the application is registered. Counsel had then got application registered. It appears that the applicant had filed a writ petition in this Court seeking direction to the learned Trial Court to decide the application of the applicant along with the bail applications of the co-accused on 30/11/2016 and hence, application was heard by the learned Sessions Judge on 30/11/2016 and was rejected. According to the counsel, there has been discrimination by the learned Sessions Judge which amounts to Judicial impropriety. This Court had

cautioned the counsel for the applicant that an application under section 439 of the Code of Criminal Procedure, 1973 before the High Court is not an appeal against the order by the Sessions Court, but it is under concurrent jurisdiction and therefore, the counsel should restrict himself to the merits of the matter. The counsel was annoyed with the same and was of the opinion that there is interference in his arguments by the Court. The counsel made every attempt to intimidate the Court.

8) This Court had reminded him of the incident wherein he had earlier also, had acted in a similar contemptuous manner and had hampered with the administration of justice. It is observed by this Court in the order dated 29/06/2015 in Criminal Anticipatory Bail Application No. 704 of 2015 as follows:

*“Conduct of the learned counsel was such which is not worth mentioning in detail. He has not maintained the decorum of the Court. Suffice it to say that the learned counsel had conducted himself in a contemptuous manner. This Court has, as usual, maintained the balance and has refrained itself from issuing a Contempt Notice. It is for the **Bar Council of Maharashtra and Goa** to take cognizance of the same”.*

It is further observed that:

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“20 It is noticed that the learned Counsel for the applicant is intimidating the court and was browbeating only on the ground that he has not been given proper audience. An attempt is being made to see that the court should recuse from hearing the learned Counsel with an ulterior motive to benefit from such order. However, this court would not get intimidated and pass an order of “not before me”.

21 The learned Counsel for the applicant has also insisted upon this Court to record that when the learned Counsel wanted to point out certain portion from the FIR, this Court was of the opinion that the Court has gone through the FIR and it is not necessary to reiterate the same. The Court was only trying to stop repetition of arguments as this Court had perused the report and the records. The learned Counsel has also made an attempt to intimidate the Court by telling this Court that he wants to place the affidavit on record stating therein that the Court had refused to read the FIR running into four pages alongwith the Counsel although the submissions were heard as patiently as possible for almost 30 minutes. The conduct and demeanor of the learned Counsel for the applicant in the course of hearing of this application is not worth mentioning, suffice it to say that it is contemptuous”.

9) The said matter was taken to the Hon'ble Apex Court and the said petition was dismissed. At this, the counsel informed the Court that he is willing to file a petition seeking recall of the said order before the Apex

Court. Be that as it may, it is permissible for any counsel to approach the Higher Court and the same cannot be objected but the manner in which it was informed was only to threaten the court and the said expression was contemptuous. The counsel was of the opinion that in the present case, applicant is not involved, rather the applicant is not concerned with the act of her husband and therefore, she deserves to be enlarged on bail forthwith.

10) Upon perusal of papers of investigation it is clear that the act of the applicant is clearly spelt out and that she is equally responsible for causing loss to the vulnerable public at large. It is an economic offence and therefore, this Court was of the opinion that the prayer could be considered after filing of the charge-sheet.

11) The counsel for the applicant has then placed reliance upon various Judgments of the Hon'ble Apex Court and has emphasised the Judgment of the Hon'ble Apex Court in the case of **Bhagirathsinh S/o Mahipat Singh Judeja V/s. State of Gujarat [1984 SCC 284]** and has placed implicit reliance upon the observations:

“Even where a prima facie case is established, the approach of the court in the matter of bail is not that the accused should be detained by way of punishment but whether the presence of the accused would be

readily available for trial or that he is likely to abuse the discretion grained in his favour by tampering with evidence”.

12) The counsel has then placed reliance upon the Judgment of this Court (Coram : Abhay M. Thipsay, J.) in the case of of **Jignesh Prakash Shah Versus The State of Maharashtra [Cri. Bail Application No. 1263 of 2014]** and has placed reliance upon the observations :

“24 All said and done, there is no change in the legal principle that pretrial detention can never be authorized as and by way of infliction of punishment”.

13) Implicit reliance is also placed on other orders of this Court as well as in the case of **Suresh Kalmadi Versus CBI** and has emphasized the ratio decidendi:

“Person shall be entitled for grant of bail if allegations made against him has not been proved”.

14) According to the counsel, the Sessions Court ought to have granted bail to the applicant as the role attributed to her was less than the role attributed to other Directors. The counsel has come heavily upon Sessions Court and expected this Court to take action against the Sessions Court. In fact, this would not fall within the powers of a Court while considering the application

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under section 439 of the Code of Criminal Procedure, 1973. The order of the Sessions Court does not appear to be perverse. **The grant or denial of relief under section 438 & 439 of Code of Criminal Procedure, 1973 are discretionary reliefs to be granted or denied on the basis of the material collected in the course of investigation in the facts of the each case.** According to the counsel, if the Courts express different opinions on the identical set of facts, it would lead to Judicial anarchy.

15) All said and done, the conduct of the counsel representing the applicant was contemptuous but it appears that no matter what action any Court would take against him, he would not change his attitude and continue to browbeat the Court as if an assurance is given to the client that with particular demeanor, he would be able to get the expected relief. It is not expected of a member of the Bar to browbeat the Court by making irrelevant submissions and secure the expected order. The Court also has to be conscious of the signal that would be given to the society by granting bail in such cases like the present one, especially when investigation is in progress and a deliberate design is chalked out to secure the liberty of the absconding accused. The courts would fail in dispensation of Justice, if the Court would succumb to

such demeanors. The Court in order to save judicial time had pronounced the operative order. Even thereafter, the counsel chose to address the court and read some more judgments emphasising the right of the applicant to be enlarged on bail. The winter vacation is ensuing and yet this Court had heard the counsel for 45 minutes. The counsel was still of the opinion that he is not heard sufficiently.

16) In the case of **Nimmagadda Prasad Vs. Central Bureau of Investigation [2013 (7) SCC 466]** the Hon'ble Apex Court has observed thus:

“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 grave offences affecting the economy of the country as a whole and thereby posing serious threat to the financial health of the country”.

17) This Court cannot be oblivious of the fact that the offence alleged against the applicant is an economic offence where several people have been cheated. The interest of the community shall always outweigh the right of personal liberty of the individual concerned. It is a matter of record that the

applicant and her husband had floated/published advertisements and induced people to invest in the scheme floated by them by giving false promises. The duo have amassed money and properties at the cost of hard earned money of the investors. The papers of investigation would reveal that some of the investors had sold their properties and invested in the scheme floated by the applicant. Today, they have lost their property and the money also.

18) This Court is of the opinion that while granting bail, it is incumbent upon the Court to keep the Judicial principles in mind, mainly gravity of offence and implications thereof. Moreover, it would become a common practice to intimidate the Court and secure bail.

19) It would not be fair to part with the order without referring to the observation of the Hon'ble Apex Court in the case of **Subrata Roy Sahara v/s. Union of India & ors. reported in (2014) 8 SCC 420.**

The Hon'ble Apex Court has held thus :

“Judge not to recuse himself from the matter unless he/she should not be hearing it for reasons of direct or indirect involvement, benchmark that justice must not only be done but should also appear to be done, has to be preserved at all costs, even in the face of calculated psychological offensives and mind games as adopted by counsel in the present case, oath of office of Judge, to decide every case without fear

or favour, Fearlessness and resoluteness with equanimity has to be maintained. Benchhunting or benchhopping or benchavoiding should strongly repulsed.”

It is observed that :

“It is most unbefitting for an advocate to make imputations against the Judge only because he does not get the expected result, which according to him is the fair and reasonable result available to him. Judges cannot be intimidated to seek favourable orders. No system of justice can tolerate such unbridled licence on the part of a person, be he a lawyer, to permit himself the liberty of scandalising a Court by casting unwarranted, uncalled for and unjustified aspersions on the integrity, ability, impartiality or fairness of a Judge in the discharge of his judicial functions as it amounts to an interference with the due course of administration of justice.”

This Court is following the obiter dictum given by the Hon'ble Apex Court in situation like the present case.

20) The Hon'ble Apex Court further observed that :

“We therefore also commend to all Courts, to similarly repulse all baseless and unfounded insinuations, unless of course, they should not be hearing a particular matter, for reasons of their direct or indirect involvement. The benchmark, that justice must not only be done but

should also appear to be done, has to be preserved at all costs.”

21) The counsel has reiterated that the applicant is not involved in the Firm and that her husband is the proprietor.

22) The High Court of Orissa, Cuttack in the case of **Preeti Bhatia Vs. Republic of India on 16 March, 2015** had observed thus:

“9. Let us have a bird's eye view as to why investigations of Chit Fund Scam cases were transferred from the State Agencies to CBI. The Hon'ble Supreme Court in the cases of Subrata Chatteraj Vs. Union of India and Ors. reported in (2014) 58 Orissa Criminal Reports (SC) 905 held as follows:

“18. More importantly, the question is whether this scam was confined only to those who actively managed and participated in the affairs of the companies or the same flourished on account of the support and patronage of others is an issue that has bothered us all through the hearing of this case.....

19.....All that we need to point out is that investigation into the scam is not confined to those directly involved in the affairs of companies but may extend to several others who need to be questioned about their role in the sequence and unfolding of events that has caused ripples on several fronts.

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22..... Suffice it to say, that the scam of this magnitude is going on for years unnoticed and unchecked, is suggestive of a deep-rooted apathy if not criminal neglect on the part of the regulators who ought to do everything necessary to prevent such fraud and public loot. Depending upon whether the investigation reveals any criminal conspiracy among those promoting the companies that flourished at the cost of the common man and those who were supposed to prevent such fraud calls for a comprehensive investigation not only to bring those who were responsible to book but also to prevent recurrence of such scams in future”.

23) In the case of **Sanjay Chandra v/s. CBI decided on 23rd November, 2011**, the Hon'ble Apex Court has observed thus:

“The grant or refusal to grant bail lies within the discretion of the Court. The grant or denial is regulated, to a large extent, by the facts and circumstances of each particular case.”

24) Economic offence is a well planned act only for gaining personal profits at the cost of the vulnerable factions of the society. White colour crimes cannot be viewed with permissive, lenient and sympathetic vision. Damage to faction of society is damage to national economy too. Position and

status of the accused with reference to the victim and witness is also an overriding consideration while granting bail. Bail is a matter of procedural privilege and not right which accrues upon an individual. Applicant appears to be motivator in the commission of the offence. Papers of investigation and statements of investors, documents establish the fraudulent character and hence, applicant does not deserve to be enlarged on bail.

25) Application, being sans merits, stands rejected. Intervention application is heard, allowed and disposed of.

26) Last but not the least, Office to send this order to Bar Council of Maharashtra and Goa to take appropriate action against Advocate Shri. Ghanshyam Upadhyay who conducts the matters in cantankerous manner and consumes judicial time.

(SMT. SADHANA S. JADHAV, J.)