IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO. 3125 OF 2017

Gautam s/o Vishwanath Puri Age 47 Years, Occu: Agriculturist, R/o Kamal Apartment, Near MIT College, Latur Dist. Latur	... .	**Applicant**

VERSUS

The State of Maharashtra Through Shivaji Nagar Police Station, Latur Dist. Latur	... .	**Respondent**

Mr. Shirish Gupte, Senior Advocate i/by Mr. Abhaykumar, D. Ostawal, Advocate for the applicant
Mr. A. B. Girase, PP for the State.

WITH

CRIMINAL APPLICATION NO. 2954 OF 2017

Kiran s/o Suresh Giri Age 35 ears, Occu: Business & Service , R/o Shivaji Nagar, Murud,K Dist. Latur	... .	**Applicant**

VERSUS

The State of Maharashtra Through Shivaji Nagar Police Station, Latur Dist. Latur	... .	**Respondent**

Mr. Abhaykumar, D. Ostawal, Advocate for the applicant
Mr. A. B. Girase, PP for the State.

CORAM : K. L. WADANE, J.

RESERVED ON : 24th July, 2017

PRONOUNCED ON 27th July, 2017

ORDER:

1. Heard Mr. Shirish Gupte, learned Senior

Counsel for the applicant in Criminal Application No.3125/2017, Mr. Abhaykumar Ostwal, learned counsel for the applicant in Criminal Application No.2954/2017 and Mr. A. B. Girase, learned Public Prosecutor for the State in both the applications.

2. Present Criminal Applications are filed under section 439 of the Code of Criminal Procedure for grant of bail in connection with Crime No. 427/2017, registered with Shivaji Nagar Police Station, District Latur for the offences punishable under sections 109, 406, 420, 409 read with section 34 of the Indian Penal Code.

3. One Sultan Kalusab Shaikh r/o Murud Dist. Latur lodged complaint to the Police alleging that accused No.2 Kiran Giri i.e. applicant in Criminal Application No. 2954/2017 informed him that his brother in-law i.e. the accused No.1- Gutam Puri i.e. applicant in Criminal Application No. 3125/2017 is agent in B.N. Gold Real Estate & Allied Ltd., New Delhi and this company gives highest rate of interest on fixed deposits and the amount of fixed deposit gets doubled in six years as against other banks which give such benefits after a period 7/8

years. He further informed that if the amount is deposited in monthly interest scheme, then the Company gives 12% interest which is not given by any other Companies. It is further alleged that accused No.1 Kiran Giri persuaded the complainant to invest his retirement funds in the fixed deposit scheme or the monthly interest scheme. Believing the assurance of accused No.2 Kirin Giri, the complainant deposited an amount of Rs.2 lakhs in the name of his son Ashpak Shaikh through Goutam Puri in Plan No. LIP/5. Thereafter complainant deposited an amount of Rs.3 lakhs in his name and amount of Rs.1 lakh in the name of his wife Rajiya. The complainant also deposited an amount of Rs. 1 lakh in the name of his brother's wife Jakiya. The complainant further alleged that this amount was deposited in the office of the Company at Barure Complex, Latur. The applicants Gautam Puri as well as Kiran Giri, both of them have informed him that he would get the amount mentioned in the bond after the due date. Initially, for some days, the complainant, his son, and sister-in-law have received the amount of interest through cheque but thereafter it was stopped.

4. It is further alleged that one investor namely Shivaji Sagar has also deposited an amount of Rs. 1 lakh as per suggestion of accused No.2 Kiran Giri and as per the commitment given by accused No.1 Gautam Puri several investors have deposited their amount in lakhs with the aforesaid company. It is further alleged that Accused Nos. 1 and 2 i.e. the present applicants have induced the investors to deposit huge amount by assuring multiplication of their deposits and higher rate of interest and therefore, the accused, Directors of the company, have deceived the complainant and other investors by not paying their amount invested in fixed deposit and interest thereon and thereby the accused have cheated them of Rs.64,85,400/-. After registration of the crime, both the applicants were arrested and presently, they are in M.C.R.

5. After investigation, the Investigation Officer has submitted the charge-sheet.

6. Mr. Gupte, the learned Senior Counsel appearing for the applicants, during the course of argument, submitted that the applicant Gautam Giri was agent of B.N. Gold Real Estate & Allied Ltd.

He was not Director or the Chairman of the said company. The applicant himself invested certain amount in the said Company and therefore the applicant is one of the sufferer due to the closure of the said company. The applicant Gautam had lodged complaint to the Police Station, however, its cognizance was not taken and therefore he filed writ petition and in that writ petition, notices were issued to the Superintendent of Police, Latur, and immediately on the next date, the applicant was arrested. The applicant is having landed property and there is no possibility of absconding of the applicant.

7. In support of his argument, Mr. Gupte, learned Senior counsel relied on the observation in the case Sanjay Chandra Vs. Central Bureau of Investigation, reported in (2012) 1 Supreme Court Cases 40.

8. As against this, Mr. Girase, the learned Public Prosecutor, by referring statements of witnesses, pointed out that the applicants are not Agents but in fact they are Directors of the aforesaid Company and other companies and they

posed themselves to be the Directors of the aforesaid company and in that capacity, they have induced certain depositors. Mr. Girase further argued that various depositors have invested their hard earn money. Some of them have invested the amount of their retirement benefits, some have deposited by disposing of their immovable properties. During the investigation, it was revealed that such investment of various depositors was to the tune of Rs.16,43,,85,385/-. Mr. Girase, the learned Public Prosecutor further submitted that this is an anti social economic offence and the present applicants have cheated various investors in lakhs and therefore they are not entitled to be released on bail.

9. I have perused the papers of investigation. From the statements of witnesses, it reveals that the applicants have posed themselves to be the office bearers of B.N. Gold Real Estate & Allied Ltd. and they are not merely agents of the said company. From the statement of one Vishwanath Makude, it appears that accused Kiran Giri approached him in the year 2013 and said that his

brother-in-law Gautam Puri is having company namely B.N. Gold Real Estate & Allied Ltd. and its office is at Barure Comdex, Latur. He further represented that the said company is giving more interest than the other Banks and the amount of investors will be doubled within a period of five years and the investors would get interest @ 14.4%. As per the assurance and representation, as aforesaid, this witness has invested the amount in the aforesaid company. He has paid total amount Rs.35,27,000/- to the applicants Gautam Puri and Kiran Giri.

10. From the statement of another witness Daji Makude it appears that in the year 2011, one Dadu Dalve had taken this witness to the house of applicant Kiran Giri, where the accused Gautam Puri was also present. They explained him various scheme and its benefits. Relying upon the representation made by the applicants, this witness has sold his immovable property and invested an amount of Rs.48,20,500/- in his name as well as in the name of his wife, two daughter in-laws. Statement of another witness are same on the line. Thus, considering the statements of above witnesses, it

is crystal clear that the applicants were instrumental in accepting huge amount of investors under the false promise and they were directly indulged in such activities and therefore, it can not be accepted that the applicants were merely agent.

11. Looking to the circumstances as referred above, I am of the opinion that the investors have been cheated by applicants by not paying their hard earn money deposited under various schemes, after the maturity date. Therefore, it is necessary to refer the statement of object and reasons of the Maharashtra Protection of Interest of Depositors (in Financial Establishments) Act, 1999, which 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 objection 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 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 purpose of aforesaid, this Ordinance is promulgated."

12. Bare perusal of the statement of object and reasons of the MPID Act goes to show that same is enacted in the public interest to curb the unscrupulous activities of financial institutions, established with sole object of garbing the money

received from the depositors, who are mostly from middle class and poor strata of the society.

13. Considering the seriousness of the offence, its gravity and the amount involved in the offence, I am of the opinion that the applicants are not entitled for bail. Hence the criminal applications are rejected.

(K. L. WADANE, J.)

JPC