NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Order Reserved on 23/03/2018

Order Delivered on 06/04/2018

M.Cr.C. No. 1470 of 2018

1. Mohd. Junaid S/o Mohd. Umar Memon Aged About 33 Years R/o- 171-A, Vaishali Nagar, Cement Road, Nagpur, P.S. Panchpaoli, Nagar (M.S.), District : Nagpur, Maharashtra
2. Mohd. Khalid S/o Mohd. Umar Memon Aged About 38 Years R/o- 171-A, Vaishali Nagar, Cement Road, Nagpur, P.S. Panchpaoli, Nagar (M.S.), District : Nagpur, Maharashtra

---- Applicants

Versus

1. State Of Chhattisgarh Through- Police Station Officer, Kotwali, Kanker District- North Bastar, Chhattisgarh., District : Kanker, Chhattisgar.

---- Respondent

For the Applicants	:	Shri Sachin R. Gupta with Shri Sunil Verma Advocates.
For the Respondent/State	:	Shri Anil S. Pandey, GA.

Hon'ble Shri Justice Rajendra Chandra Singh Samant

CAV Order

1. This is the first bail application filed under Section 439 of the Code of Criminal Procedure for grant of regular bail to the applicants, who have been arrested in connection with Crime No.124/2017 registered at Police

Station – Kotwali, Kanker, District – North Bastar, (C.G), for the offences under Section 420 read with Section 34 of the Indian Penal and Sections 6 and 10 of the C.G. Protection of Depositors' Interest Act 2005.

2. Learned counsel for the applicants submits that the applicants have been falsely implicated in this case and they are in jail since 14.07.2017. After completion of investigation the charge-sheet has been filed and the case is pending before JMFC and the trial is likely to take some time for its conclusion. The applicants are ready to abide by all the conditions which may be imposed while granting bail to the applicants, hence, it is prayed that the applicants may be released on bail.

3. It is further submitted that no case is made out against the applicants, it is not denied that the applicants are the Directors of Anmol India Agro-Herbal Farming and Dairies Care Company, Ltd, which is registered under the Companies Act. The applicants had invited investments from the investors of the area. On coming to know that further sanction of law is required for inviting investments and also subsequent to the interim order of the Securities and Exchange Board of India (i.e., SEBI) passed on 09.03.2015, the company has stopped all the activities of taking investments and deposits and it was by interim order itself, the company had restrained from the disposing off it's assets, because of which the refund to the investors could not be made in time. SEBI vide its final order dated 19.05.216 has allowed the company and its Directors to sell out all its assets and refund the amount of its customers/investors. Against the order of SEBI an appeal was preferred before the Securities Tribunal, Mumbai, and the Tribunal remanded the matter back to SEBI for taking decision afresh. The SEBI therefater vide order dated 04.12.2017 extended time for repayment. No action has been taken by

the District authority of Kanker, against the company or its Directors under the provisions of the C.G. Protection of Depositors Interest Act, 2005.

4. It is further submitted that out of total collected Rs. 141,44,50,000 / - (Rupees One Hundred Forty One Crore Forty Four Lakhs and Fifty Thousand), the company has refunded Rs. 97, 34, 70, 000 /- (Rupees Ninety Seven Crores Thirty Four Lakhs and Seventy Thousand) to its customers / investors, which comes to about 68.8%. The complaint has been made by the complainant, in which he submitted that three cheques issued for refund were dishonoured by the Bank, for which separate remedy is available for the complainant. Company is ready and willing to repay the amount of deposits to of the customers / investors. One co-accused has been granted bail by this Court, hence, for this reason the applicants are also entitled for grant of bail.

5. It is submitted that the current value of all immovable properties owned by the company is about Rs. 105,71,00,618 /- (Rupees One Hundred and Five Crores Seventy One Lakhs Six Hundred and Eighteen) and the amount which is to be refunded is only Rs. 38,32,29,733 /- (Rupees Thirty Eight Crores Thirty Two lakhs Twenty Nine Thousand Seven Hundred and Thirty Three).

6. It is also submitted that applicant No.2 -(Mohd. Khalid S/o Mohd. Umar Memon) is suffering from brain tumor, during the period of the custody he has been required to be hospitalized on number of occasions, hence, it is prayed that he may be released on bail.

7. Learned counsel for the State opposes the bail application and submits the intention of the company was to cheat the innocent investors of the area from the very beginning, as the company had no authorization to

take investments and deposits either from RBI or SEBI, even then huge amount has been collected by the said company from the numbers of depositors of this area. He further submits that the office of the said company was closed before the date of maturity of the bond issued by the company, hence, looking to the magnitude of the offences committed by the applicants being the Directors and policy maker of the said company, they are the responsible persons and they have committed the offence of cheating of huge scale, therefore, no case is made out for grant of bail.

8. In reply counsel for the applicants submits that according to the contents of charge-sheet filed against the applicants, the case itself appears to be of a civil nature. Even though the applicants are in jail and have fulfilled their commitments towards the customers / investors by making refund of the deposits made by the said customers / investors. Reliance is placed on the judgments of **Sanjay Chandra** Versus **C.B.I** reported in **(2012) 1 SCC 40,** Sharad Kumar and Ors **Versus** C.B.I reported in **(2012) 1 SCC 65,** Suresh G. Motwani (Dr) and Anr. **Versus** State of Maharastra and Anr., reported in **2004 (Supp.) Bom. C.R. 521,** State of Kerala **Versus** Raneef **reported in { (2011 (2) } Mh. L.J. (Cri.) 12,** Siddharam Satlingappa Mhetre **Versus** State of Maharashtra and Ors., reported in **{ (2011 (2) } Mh. L.J. (Cri.) 16,** wherein the principles regarding grant of bail have been laid down**.** Thus, it is again prayed that the applicants be granted bail.

9. Heard counsel for both the parties and perused the case diary.

10. It is alleged that the applicants being Directors of the said company floated the schemes of short term and long term deposits through the local agents and invited investments with a promise of attractive returns.

Though the company had not obtained authorization by the RBI and SEBI to accept investments. Being induced, numerous investors made deposits in the various schemes and when the maturity amount was to be paid to the investors, at that time, the offices of the company were closed in the area concerned and their staff and agents went in hiding. On complaint being made by one of the investors, the case has been inquired and investigated and the charge-sheet has been filed against the applicants.

11. The interim order of SEBI is also the part of charge-sheet, according to which, after issuing various other directions one of the directions of the SEBI was regarding registration of criminal complaint for the offences of fraud, cheating, criminal breach of trust and mis-appropriation of public money. The issuance of direction by SEBI for making arrangement to refund the amount to the investors of the area cannot absolve the applicants from their criminal liability at this stage. The bona fides of the applicants in inviting the investments due to ignorance of law is yet to be established in their defence, till then the case is prima facie against them.

12. The offence that has been committed is of huge magnitude and has affected the economically weaker section of the society. Statements about the refunds to the investors of the area is yet to be examined are verified and similarly the statement that 68.8% of the investments has been refunded to the concerned also needs examination, because this statement has not been admitted by the respondent's side. The judgments cited on behalf of the applicants are also of no help because every case has to be decided on the basis of its own facts and scenario. The applicants are residence of other State, they are economically well

off and are capable to influence the witnesses of this case. Apart from that the offences committed has affected numerous persons, of huge magnitude because of which I do no find that the applicants are entitled for grant of bail in this case.

13. As regards the submission regarding illness of applicant No.2, the documents filed in support of aforesaid contention are perused applicant No.2 had been suffering from Pituitary Adenoma which was operated in the year 2012, it has appeared again in the year 2015 but has not been operated till the date he was arrested. According to the documents filed regarding the investigation and the treatment, it appears that applicant No. 1-(Mohd. Junaid) has been provided with medical treatment, during his period of detention in jail, hence, I am not inclined to grant bail to the applicants.

14. Accordingly, the bail application of the applicants is dismissed.

Sd /-

(Rajendra Chandra Singh Samant)

Judge

Jamal