IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL BAIL APPLICATION NO.402 OF 2017
WITH
CRIMINAL BAIL APPLICATION NO.414 OF 2017

Ismail Mohammad Khan .. Applicant
Vs.
State of Maharashtra .. Respondent

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Mr.Mubin Solkar i/b. Tahera Qureshi, Advocate for the Applicant.
Mr.R.M. Pethe, APP for the Respondent – State.
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CORAM : PRAKASH D. NAIK, J.

DATED : OCTOBER 11, 2018.

P.C. :

Applicant in both these application seeks bail. The applicant was arrested on 3rd January, 2016. Bail Application No.402 of 2017 pertains to C.R. No.I–343 of 2012, registered on 14th October, 2012, whereas, Bail Application No.414 of 2017, pertains to C.R.No.I–399 of 2013 dated 2nd October, 2013, registered with Mira Road Police Station, District - Thane.

2 The prosecution case is that the complainant in C.R.No.I–343 of 2012, had read one advertisement of company, namely, G.W.D. Soft Private Limited situated at Asmita Land Plaza, Narayannagar, Mira Road (West). The advertisement

indicated that the is company selling magical pen which could read Holy Quran. The complainant visited the address given in the said advertisement on 3rd October, 2012, and approached the manager of the company. He was informed that if he invest an amount of Rs.30,000/-, in G.W.D. Ajmera Farms Private Limited Company, he would get Rs.1,000/- on every Monday for 48 weeks and also remanded Rs.30,000/-, back. He was also informed that the among the investors a luck draw would be drawn and the winner will be sent for Haj Pilgrimage. The complainant informed about the same to his brother. Subsequently the brother of the complainant visited the office of the company and handed over cheque of Rs.30,000/-, towards that scheme and agreement was executed and given certification with respect to the share of the company duly signed by the applicant. It was also written in the said agreement that the company will be investing said amount in the business of of Goat at Deonar, Mumbai and profit will be shared among investors and company equally and rs.1000/- will be given weekly. The complainant allegedly suspected something wrong and he instructed his banker for stop payment of said cheque given by him. Complainant then met the applicant and told his security person that he is a media reporter and wanted to meet the applicant with respect to his brothers transaction with applicant company. The complainant made more inquiries with respect to the said company on Internet and learnt that since 1999, the said company is doing business of goats at Deonar Mumbai. The said company is registered in the name of the applicant and his brother. The complainant further learnt that the said company is not having permission of non banking finance and, thereafter, the complainant lodged FIR with Mira Road Police Station on 13th October, 2012, for the offences punishable under Sections 420 and 406 read with 34 of IPC.

3 Similarly, FIR was registered with the same police station by another complainant on 2nd October, 2013, and, the offences were registered vide C.R. No.I-399 of 2013, under Section 420 read with 34 of Indian Penal Code in the said complaint. It was alleged that the applicant is the director of G.W.D. Soft (Ghodwadi), Ajmera Firms Private Limited given an advertisement in Urdu Newspaper that by purchasing one share of the company for Rs.30,000/-, a person can earn Rs.1,000/-, every week for a period of one year. The complainant purchased one share and requisite documents were executed. He received Rs.1,000/- per week till October 2012. Realizing that he has received the amount, the complainant and his wife purchased

more shares of the company totaling 11 shares of Rs.3,30,000/- and till 22nd October, 2012, the said company were in business of selling shares of the said company, and, they were repaying the investors. However, thereafter, the office of the company was found closed. The complainant learnt that police action has been initiated against the company and the bank accounts of the company are seized by the police. The complainant gave names of other investors who had invested money in the company. According to the complainant the company had approximately sold 1806 shares amounting to Rs.5,41,80,000/-.

4 Police conducted investigation. Applicant was arrested. His brother was also arrested. On completing the investigation, charge–sheet in respect to both the cases was filed for the offences under Sections 420 and 406 read with 34 of IPC and Section 3 of MPID Act. Both the cases are pending before the competent Court having jurisdiction. The applicant's brother was granted bail by this Court.

5 Learned counsel for the applicant submitted that the complainant in C.R.No. I-343 of 2012, had not invested the amount in the company and he had given instructions to his

bankers to stop the payment in respect of the cheque which was issued by him. However, apparently, he had made inquiries, and, thereafter, lodged the FIR. It is submitted that the company was running smoothly, until police action is initiated against company, and, the bank account of the company was seized which has resulted in non-functioning of the company. It is further submitted that the applicant is in custody in both the cases from 3rd January, 2015, and he is in custody for almost a period of four years. It is submitted that trial has not started. Even, charge has not been framed against the applicant. Allegedly, there are several investors and in both the cases prosecution is relying on about 1273 witnesses, who are the investors in the company. It is submitted that it is not clear as to when the trial would began and come to an end. It is submitted that the matter involves voluminous documents and it would take a long time. Learned counsel adverted to Section 436 A of Cr.P.C. which relates to the provision regarding maximum period for which an under trial prisoner is to be detained. It is submitted that the offence under Section 420 of IPC is punishable with maximum sentence of seven years and offence under Section 406 of IPC is punishable at the most with imprisonment of three years. For the offence under Section 3 of the MPID, the punishment is upto six years. It is submitted that in view of the punishment provided for the said offences, which are invoked against the applicant and considering that the applicant is in custody from 3rd January, 2015, he is entitled for bail in accordance with the said provisions. It is further submitted that from remand report and the prosecution case, it is apparent that an amount of about 1,88,58,013/-, lying in his bank account was seized and cash amount of Rs.3,35,000/- was also seized from the possession of the applicant and Rs.4,22,400/- was recovered by selling goats. It is submitted that the seized amount can be distributed to the investors for which the applicant has no objection and he would file an undertaking in that regard in the trial Court after he is being released on bail. It is further submitted, on instructions, that in respect to cases registered against him in Telengana for the offence under Section 420 of IPC, applicant has been granted bail. Learned counsel also relied upon the order passed by this Court in Criminal Bail Application No.1780 of 2011, granting bail to accused, which also involved huge investments of money. It is submitted that the Court had taken into consideration the punishment provided for the offence for which the said accused was charged while granting bail. The charge–sheet has been filed and further detention is not necessary.

6 It is also submitted that the brother of the applicant was also the director of the company was granted bail by this Court vide order dated 28th April, 2016, vide Bail Application No.1354 of 2015 and 1355 of 2015. He was the co-accused in both this cases. Learned APP submitted that the applicant is involved in serious crime. There are about 1273 investors who were duped by the applicant and his brother. The amount involved in these transactions is to the tune of Rs.7,17,00,000/-. Applicant cannot claim parity on the basis of the orders granting bail passed in favour of his brother, as he was granted bail considering the role played by him in the transaction. It is also submitted that considering the magnitude of the crime and the manner in which the investors were duped in number and huge amount is involved in the transaction, bail may not be granted to him. It is submitted that while granting bail, the Court has to take into consideration the nature of crime committed by the accused and the interest of society is required to be protected from such persons.

7 Having heard both sides, I have also perused the documents on record. The facts are implicit from the narration made hereinabove. The company of which the applicant is the

Director had induced members of public to invest the money with an assurance that the investors would earn dividends. It is also apparent that the complainant in C.R.No.I-399 of 2013, has stated that he had invested the amount on being satisfied that he had received the returns, he invested more money, and, subsequently, it was found that the police has initiated an action, and, thereafter, the company was closed. During the course of investigation, the amount lying in the bank account of the company has been seized in accordance with Section 102 of Cr.P.C. As stated hereinabove some cash amount was also seized. The investigation is completed and the charge– sheet is filed. There are about 1273 investors. Trial has not yet started. Applicant is in custody in both the cases from 3rd January, 2015 i.e. almost for a period of 3 years and 10 months. Trial has commenced. It is also submitted by the counsel for the applicant that the applicant has been released on bail in other cases registered in Telangana. There is no indication as to when the trial would commence. Applicant is also willing to file an undertaking as stated above. The office of the company is attached under the provisions of MPID Act. Considering the aforesaid circumstances, bail can be granted to the applicant.

9 Hence, I pass the following order:

:: **O R D E R** ::

(i) Bail Application Nos.402 and 414 of 2017, are allowed;

(ii) Applicant is directed to be released on bail in connection with C.R. No.I–343 of 2012 and C.R.No.I–399 of 2013, registered with Mira Road Police Station, District–Thane, on his furnishing P.R. Bond in the sum of Rs.1,00,000/-, in each C.R. with one or two local solvent surety/sureties in the like amount;

(iii) Applicant shall not tamper with the evidence ;

(iv) Applicant shall not indulge any criminal activity while on bail;

(v) Applicant shall not leave the jurisdiction of this Court without prior permission of the trial Court;

(vi) Applicant shall attend the trial Court on the date of hearing, unless exempted by the Court for some reasons;

(vii) Applicant shall file an undertaking before trial Court that he has no objection for distribution of the seized amount from his bank account and other cash amount seized during the investigation to the investors;

(viii) Bail Application Nos.402 and 414 of 2017, stand disposed of.

(**PRAKASH D. NAIK, J.)**