IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

ANTICIPATORY BAIL APPLICATION NO.269 OF 2018

Shirish Deepak Kulkarni .... Applicant
Age : 32 years, Occ.: Business,
DSK House, 1187/60,
Jangli Maharaj Road,
Shivaji Nagar, Pune - 5

Vs.

The State of Maharashtra .... Respondent
Through E.O.W. And Cyber,
Crime Branch, Pune.

Mr. Niranjan S. Mundargi for the Applicant.

Mr. Pravin Chavan, Special P.P. with Mr. S.H. Yadav, APP for the State of Maharashtra.

Mr. Nilesh H. More, ACP, Economic Offence Wing & Cyber, Pune City.

Coram ***: Smt. Sadhana S. Jadhav***, J.
Date : 8th June 2018

P.C.:

1 Heard.

2 This is an application under Section 438 Code of Criminal Procedure, 1973. The applicant herein apprehends his arrest in

Crime No.347 of 2017, registered at Shivaji Nagar Police Station, Pune, for the offences punishable under Sections 406, 420 read with 34 of Indian Penal Code and Sections 3 and 4 of Maharashtra Protection of Interest of Depositors Act, 1999 ("MPID Act"). The said offence was registered under the report filed by one Jitendra Narayan Mulekar and has been investigated by Economic Offence Wing, Pune. The present applicant happens to be the son of Deepak Sakharam Kulkarni and Hemanti Kulkarni (who are already in custody).

3 The applicant herein is protected since 13th February 2018 by way of ad-interim relief. On the last date, this Court after considering the merits of the matter had opined that this Court was not inclined to grant pre-arrest bail looking at the magnitude and gravity of the offence. Today, the learned counsel for the applicant has submitted that the matter be heard on merits.

4 It is the case of the prosecution that the family of Deepak Sakharam Kulkarni, applicant no.1 in ABA No.1953 of 2017 had

amassed huge amounts by misleading several investors and has siphoned of Crores of Rupees from the money that was invested by the consumers for purchasing of flats. Several amounts were received by way of fixed deposits by assuring that the depositors would get lucrative returns from the said deposits. A Public Limited Company, DSKDL was formed. The Company had deposited and had floated several companies such as DSK Toyata, DSK Motowheels Private Limited, DSK Shivajians Football Club Private Limited, DSK Auto Private Limited, DSK Mototrucks Private Limited, DSK Studios Private Limited etc. The present applicant happens to be the partners in all these firms, which were floated by siphoning of the funds of the depositors without giving them returns. The depositors had not even received the basic amounts, which were paid by them. It is further pertinent to note that the Company proceeded to mortgage one property after another to the nationalised banks as well as private banks and have not repayed the loans. Today all the properties are mortgaged.

5 It is further the case of the prosecution that upon maturity, the depositors had prayed for refund of their amounts. False plan of plots in the name of Hiblish of mortgaged land to debentures was prepared and the plots were allotted to 119 people, who were the depositors by projecting that in lieu of deposit, plot is allotted. The applicant happens to be the beneficiary of the funds that were siphoned/diverted by DSKDL Company. It was his responsibility also to repay the said funds and hence, he has been arraigned as an accused.

6 On 16th February 2018, the Anticipatory Bail Application No. 1953 of 2017 filed by the parents of the present applicant was rejected. This Court had recorded that in the course of the investigation, it was revealed that the properties which were offered for attachment by the investigating agency after registration of the crime were in fact mortgaged with one or the other bank and they were not freehold properties. This Court was constrained to observe that the applicant therein have not only made all the attempts to

mislead the investors, depositors and purchasers of flats, but they left no stone unturned even to mislead the court. This court had also observed that the applicants have no fear of law but at the same time they should learn a lesson that they cannot take the court for granted as they can do it with gullible and vulnerable members of the society, who have shown faith and trust and have invested their hard earned money.

7 Learned counsel for the applicants vehemently submits that during the period when he was protected by way of ad-interim relief, he has fully co-operated with the investigating agency and had disclosed the trail of amounts, which he had received from his mother, Hemanti Kulkarni, who happens to be the Director of the principal firm. It is true that it cannot be denied that he happens to be the beneficiary of the amount and continues to be a beneficiary.

8 Learned Special Public Prosecutor, Mr. Chavan on the basis of instructions and the papers of investigation submits that the

Company had borrowed the loan from India Bulls for the purpose of floating a Project for the investors. A loan was of Rs.85.00 Crores. Out of which, more than 25% of the said loan was siphoned in favour of the present applicant and he has used it for his personal purpose.

9 The investigation papers would show that the present applicant had purchased huge chunk of land at Takve by utilising funds of D.S. Kulkarni Developers Private Limited where there were several investors. The funds were transferred initially in the personal account of Hemanti Kulkarni and thereafter she had transferred Rs.3420.00 Lacs to the present applicant in his account maintained with the Bank of Maharashtra, Bajirao Road, Pune.

10 Today in the course of the arguments, the learned Special Prosecutor has given a chart of the amount, which was received by the present applicant through various partnership firms from D.S. Kulkarni. It is also submitted that in the course of investigation, the

investigating agency has arrested five accused persons besides D.S. Kulkarni and his wife Hemanti Kulkarni. One of the relative, who is in custody has disclosed the modus operandi of the Firm in siphoning of the investment money to their own benefit. It is also disclosed that the present applicant happens to be one of the directors of the DSKDL Company and he used to manage the day-to-day affair of the said Company. It was also disclosed that more than 50 to 55 companies were floated by DSKDL Private Limited. The applicant continued to be the Director of DSK Global Education and Research Limited, Tricone Intracon Limited, Chandra Deep Promotors and Developers Private Limited, Holy Land Agro Forestry Pvt. Ltd., Growrich Agro Forestry Pvt. Ltd., DSK Digital Technology Pvt. Ltd., Vastu Visharad Promoters and Developers Pvt. Ltd. etc. It is apparent that the investors were lured to deposit in one firm or the other as they were made to believe that they would get lucrative returns. The total amount of mis-appropriation would be more than Rs.2,043/- Crores. Learned Special Prosecutor submits that it is not possible to recover the amount since all the properties are mortgaged with the banks who would have the first lien on the said properties. It is also submitted that the custodial interrogation is imperative in the present case, since it would throw light upon the modus operandi of the Firm in siphoning of the funds and other material could be extracted from the present applicant.

11 Learned Special Prosecutor has also stated upon instructions, that separate offences are registered against the present applicant at various places such as Mumbai, Kolhapur, Solapur and Pune and his custody would therefore be imperative in the interest of justice.

12 This is an economic offence where thousands of investors have been duped. These are typical white collared crimes wherein people trust the brand name as in the present case, the brand name was/is DS Kulkarni, who were mainly the builders and promoters of housing schemes and subsequently they had floated several companies and duped the people at large. There is breach of trust.

Most of the investors are senior citizens, who have invested their pensions for the benefit of the second generation. Some of the investors had started investing at an early stage to see that the returns would add to their pensionary benefits.

13 The Hon'ble Apex Court in the case of State of Bihar and Another Vs. Amit Kumar Alias Bachcha Rai, reported in (2017) 13 Supreme Court Cases, page 751 has held that "socio economic offences constitute a class apart and need to be visited with different approach in matter of bail since socio-economic offences have deep-rooted conspiracies affecting moral fibre of society and causing irreparable harm. Moreover, investigating agency was in process of filing additional charge-sheet and hence, respondent's custody may be necessary for further investigation".

14 Taking into consideration the papers of investigation, the submissions advanced across the bar and the observations of the Hon'ble Apex Court, this Court is of the opinion that the applicant

does not deserve the relief of pre-arrest bail under Section 438 of Cr.PC.

15 At this stage, the learned counsel for the applicant submits that the applicant was granted ad-interim relief since February 2018 and therefore the same be extended for a period of one week in order to enable the applicant to approach the Hon'ble Highest Court. This Court is of the opinion that the order passed in Anticipatory Bail Application No. 1953 of 2017 dated 16th February 2018 to be read with the present order. Hence, the order.

O r d e r

1 The application is rejected.

2 The applicant stands protected till 5.00 pm. of 18th June, 2018 till then the applicant shall report to the Office of Economic Offence Wing, Pune everyday between 10.30 am. to 1.00 pm. and mark his presence.

(Smt. Sadhana S. Jadhav, J.)