IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL BAIL APPLICATION NO.2269 OF 2018

Rajubhai Rambhai Bhamar (Ahir), Age 36 years,
R/o.Village Baroda, Tal.Talaja,
District Bhavnagar, Gujarat State.
(Presently in judicial custody at sub-jail
Navsari, Gujarat). Applicant
versus
The State of Maharashtra Respondent

Mr.H.H.Ponda with Mr.Modi, Arun Mehta and Vinit I/by Akshar Laws for applicant.
Mr.S.R.Agarkar, APP, for State.
Mr.S.J.Kadak, PSI, Boisar Police Station, present.

CORAM : PRAKASH D. NAIK, J.

DATE : 11th December 2018

PC :

1. This is an application for bail in CR No.I-267 of 2017 registered with Boisar Police Station, District Palghar for offences under Sections 420, 406, 467, 468, 471, 120B r/w 34 of Indian Penal Code and under Section 3 of Maharashtra Protection of Interest of Depositors Act, 1999. The FIR was lodged on 27th December 2017.

2. The applicant was arrested on 17th April 2018. The prosecution case is that one Umeshbhai Bharvad had lodged FIR alleging that in the year 2015 he learnt about Gayatri Marketing Scheme in Gujarat. Therefore he deposited Rs.8,500/-. He received a gift of LCD TV and once again in January-2016 he became member

of the scheme and deposited the amount at Boisar and got himself registered as member of the lottery scheme. He further alleged that the complainant had deposited Rs.13,250/- in 20 months. The first informant further alleged that draw of lottery was declared every month and 50 members were getting prizes. The last draw of the lottery was held in September-2017. The person who did not receive any prize was given the prize so claimed. The complainant deposited amounts in Gayatri Marketing Scheme at Boisar on several occasions. Subsequently he noticed that the office of said Gayatri Marketing Scheme was closed. The case of prosecution is that agents of the said scheme had collected huge amount from the members and misappropriated the amounts. According to the prosecution, the applicant was also involved in the said scheme. It is apparent from the prospects issued by the said scheme.

3. During the course of investigation documents were collected. Some of the accused were arrested including the applicant. As far as applicant is concerned, on completing the investigation, charge sheet has been filed. Learned counsel for applicant submitted that he has no concern with Gayatri Marketing Scheme purportedly conducted at Boisar. There is no evidence to show that the applicant was instrumental in floating the said scheme. There are no documents to show his involvement in the scheme. There are no statements of the witnesses to indicate participation of the applicant in this scheme. The applicant's name has been misused by one of the persons who is concerned with the scheme, who is acquainted with the applicant, which was floated at Bhavnagar. The scheme which is running at Bhavnagar has not come under scanner of any authority. The applicant was implicated in another case which was registered at

Vapi in which for lack of evidence showing his involvement the applicant has been granted bail. It is further submitted that the investigation itself shows that persons related to the scheme had collected amounts and the same were deposited with the persons who are conducting the scheme namely Harshad Bari and others. The prosecution relying on the list of 50 such agents and chart which forms part of the charge sheet indicate that no amount is either collected or deposited to the applicant. It is submitted that there are three different partnership firms having business activities at different places viz Gayatri Marketing Scheme Baroda having three partners namely Rajubhai (applicant), Altaf Yusuf Sorathia and Mohammed Chaudhari. The said business is being conducted at Bordi Road, Next to Krishna Mobile Shop, Plot area, Borda Taluka Talaja, District Bhavnagar. The nature of business is that the agent purchases and sales all types of two wheelers, electronic items, FMCG items and household items.

4. The second partnership firm which is also named as Gayatri Marketing, conducts its business at Vapi and and has two partners namely Dilipbhai Varia and Altaf Sorathia. Altaf Sorathia has expired. The case was registered against firm conducting its business at Vapi alleging that the applicant was also involved in the said scheme. Learned counsel for applicant drew my attention to the order granting bail in relation to the offfence registered in connection with Gayatri Marketing, Vapi. It is contended that in the said case also similar allegations were made, however, there was no material/evidence to show that the applicant was either partner of the said scheme or has participated in any manner in the said scheme. It is submitted that even in the present case, except

prospects/brochure, which bears the name of applicant, there is nothing to show that the applicant was concerned with present scheme. It is submitted that this scheme is unregistered and there is no document to show as to who are the persons conducting the said business. However, investigation conducted by the prosecution itself shows that the scheme is being conducted by other persons and the amounts are being collected and deposited in the accounts of other persons and not the applicant. It is submitted that there is no partnership firm in the name of Gayatri Marketing Scheme, Boisar although some persons are conducting the said scheme. The prosecution has not been able to produce any document in that regard. The brochure shows nine persons carrying on business in the name of Gayatri Marketing at Boisar at Shop No.126, E-Market, Oswal Empire, Opp.ST Depot, Tarapur Road, Boisar. It is apparent that Altaf Sorathia was a partner in the Gayatri Marketing conducted at Bhavnagar and he was also concerned with the Gayatri Marketing at Vapi and according to the applicant, the name of applicant has been dragged at the instance of persons acquainted with him in a similar manner as it was involved in the case registered in respect to Gayatri Marketing Scheme, at Vapi. Learned counsel for applicant pointed out the chart relied upon by prosecution, which contains names of about 50 agents with their addresses and the amounts collected by them. It is submitted that the said document does not indicate that the applicant was concerned with collection of any amount. His name is apparently appearing on the brochure does not mean that applicant has participated in the conduct of said scheme. In the entire charge sheet filed against the applicant, there is not a single statement to show that the applicant was present at the office of said firm at Boisar or at had made any representations to any person or induced any person to become member of the said scheme. It is therefore submitted that the applicant may be granted bail.

5. Learned APP submitted that investigation is still in progress. Although charge sheet has been filed, the investigation is going on. The members who had invested money, are coming forward. The name of applicant is appearing on the prospectus/brochure with his telephone number. He also pointed out that the photograph of the applicant is also appearing on the said brochure. Learned counsel for applicant, however, pointed out that the said photographs were collected in relation to the events which had occurred at another place and not at Boisar and there is no photograph indicating involvement of the applicant in the scheme which is conducted at Boisar. Learned APP submitted that the modus operandi adopted in the present scheme was identical with the schemes which have been conducted at other places like Bhavnagar and Vapi. It is submitted that Altaf was partner and conducting the business at Boisar. It is submitted that in August-2018 the investigating officer has recorded some statements which indicate that at the time of meeting, the applicant and others used to remain present. However, it is pertinent to note that in the charge sheet which is filed against the applicant, there are no statements showing involvement of the applicant by any customers/members. The prosecution is yet to file supplementary charge sheet. In any case, the statements are recorded after about 10 months from the date of registration of FIR. It can also be seen that the prosecution is relying on the chart containing names of 50 agents who had collected the amounts. The said chart does not indicate that the applicant has collected amount or the amounts were deposited in his account. Surprisingly the

statements of persons who are named in the chart are also not recorded.

6. The scheme which is conducted at Boisar is unregistered. There is no document on record to show as to who is conducting the said scheme. It is necessary to note that in the same name, another scheme was conducted at Vapi wherein on the basis of similar allegations the applicant's involvement was alleged. However, in the absence of any document to show that the applicant is partner in the said scheme which is conducted at Vapi or that he had conducted the transactions, the applicant was granted bail. It is also noted that Altaf was related to the scheme which was conducted at Bhavnagar and he is allegedly a partner at the schemes at Vapi and Boisar. The contention of the applicant is therefore that there is every possibility that the said person who was acquainted with the applicant, has used his name in the brochure. In the absence of any concrete evidence to establish the connection of applicant, he cannot be subjected to further detention. The applicant has been arrested on 17^{th} April 2018. The FIR was lodged on 27^{th} December 2017. The co-accused were also arrested and some of them are released on bail. The evidence indicate that substantial amount which was collected was handed over to Harshad Bari, Ravi Bari and Rajesh Vaze. It is also pertinent to note that bank accounts which forms part of the charge sheet indicate that the amount is credited in the accounts of said persons and not the applicant.

7. Taking into consideration totality of circumstances, case for grant of bail is made out. Hence, I pass following order :

ORDER

(i) Criminal Bail Application No.2269 of 2018 is allowed and disposed off;

(ii) The applicant is directed to be released on bail in connection with CR No.I-267 of 2017 registered with Boisar Police Station, Palghar, on furnishing PR bond in the sum of Rs.50,000/- with one or more sureties;

(iii) The applicant shall attend Boisar Police Station once in a month on every first Saturday between 11 am to 1 pm till further orders;

(iv) The applicant is permitted to furnish cash security in the sum of Rs.50,000/- for a period of four weeks;

(v) The applicant shall not tamper with the evidence and shall attend hearing regularly before the Trial Court, unless exempted by the Trial Court for some reason;

(vi) It is clarified that the observations made in this order are for considering present application and the Trial Court shall not be influenced by the same at the time of trial.

(PRAKASH D. NAIK, J.)

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