IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL BAIL APPLICATION NO. 1750 OF 2019

Mahesh Kisan Motewar ...Applicant
Vs.
State of Maharashtra ...Respondent

- Mr. Suresh Tripathy I/b Mr. Mayank Sharma, Advocate for the Applicant.
- Ms. S. S. Kaushik, APP for the State.
- Mr. Anil Tanpure, PI, Vishrambaug Police Station, Sangli.

CORAM : SARANG V. KOTWAL, J.
DATE : 23rd AUGUST, 2019

P.C. :

1. The applicant is seeking his release on bail in connection with CR No.186/17 registered at Vishram Baug Police Station, Sangli, for the offences punishable under Sections 409 and 420 read with Section 34 of the IPC and under Section 3 of the MPID Act.

2. The investigation is over and chargesheet is filed. The applicant is arrested on 19th December 2018 in this connection and chargesheet is filed on 19th January 2019. Before the applicant was arrested in connection with this crime, he was already in custody

in connection with other offences registered at other police stations in West Bengal, Odisha and Maharashtra. The applicant was first arrested on 16th December 2015 and since then he is in custody in connection with one offence or the other. Thus, since December 2015 he is continuously in custody.

3. The story in the charge-sheet is that the applicant in collusion with accused no. 2, Shailesh Khoptikar formed a society by the name Samrudh Jeevan Multistate Multipurpose Co-operative Society (Hereinafter referred to as 'the said society'). They represented to the investors that they would give interest at a higher rate than any bank i.e. to the extent of 10% to 12 %. p.a. They represented that their society had 400 branches in Maharashtra, Gujarat and other states. The complainant Bholasaheb Desai lodged his complaint on 10th July 2017. He had deposited around Rupees Seven Lakhs Fifty Seven Thousand alongwith his family members. The investment was to mature on 29th May 2016. However, the investment and the promised returns were not given back to him and therefore, he registered his FIR. It

is further mentioned in the charge-sheet that the applicant had misappropriated not only his amount, but amount of many other investors and thereby committed this offence.

4. Heard, Mr. Suresh Tripathy, learned counsel for the applicant and Ms.Kaushik, learned APP for the State.

5. Mr. Tripathy submitted that, at this stage, he was not making any submissions in respect of the merits of the matter. He was making submissions only on the basis of the orders passed by the Hon'ble Supreme Court in the previous proceedings. He invited my attention to the order dated 9th May 2014 passed by the Hon'ble Supreme Court in Writ Petition (Civil) No. 401/2013 and companion petitions. In paragraph 34 of the said order it was mentioned that ;

> *“**34.** In the circumstances, we are inclined to allow all these petitions and direct transfer of the following cases registered in different police stations in the State of West Bengal and Odisha from the State Police Agency to the Central Bureau of Investigation (CBI)”.*

Clause B of paragraph 34 reads thus:-

*"**34. B**. State of Odisha: All cases registered against 44 companies mentioned in our order dated 26th March, 2014 passed in Writ Petition (C) No. 413 of 2013. The CBI is also permitted to conduct further investigations into all such cases in which charge-sheets have already been filed".*

*"**35.** We reserve liberty for the Joint Director CBI, Incharge of the States of West Bengal and Odisha to seek further directions in relation to transfer of any other case or cases that may require to be transferred for investigation to CBI for a full and effective investigation into the scam."*

6. Mr. Suresh Tripathy submitted that these directions cover the applicant's company Samrudh Jeevan Food India Limited as it was one amongst the forty four companies mentioned in paragraph 34.

7. Learned APP is not in a position to concur with this submission. However, in the companion matter i.e. ABA No. 1734/19, learned SPP appearing in that matter had not disputed this fact.

8. Mr. Suresh Tripathy further submitted that pursuant to these directions issued by the Hon'ble Supreme Court, CBI took over the investigation and filed their charge-sheet on 23rd August 2016. This chargesheet was pertaining to FIR No. RC 34/S/2014-CBH/KOL.

9. Accused no. 2 in the said charge-sheet was mentioned as M/s Samrudha Jeevan Food India Limited. The company was incorporated as Gurukrupa Dairy Private Limited. Applicant was the chairman-cum managing director. The applicant was the accused no. 1 and his company was shown as accused no. 2 in the said charge-sheet. The said charge-sheet at paragraph 16.7 mentions thus :-

> *"16.7-The above company claimed that it had kept, maintained and undertaken the breeding of live-stocks in the agricultural lands situated at 16 places spreading across different states of Maharashtra, Orissa, Rajasthan, Punjab, Bihar and Karnataka. The company termed those places as 'Projects'".*

10. In paragraph 16.11 again there was reference to the company and the said society i.e. Samrudha Jeevan Multi State Multi Purpose Co-operative Society. There is a reference to having more than 300 branches all over India including in Maharashtra for raising public deposits in the guise of livestock business. It was alleged that the investigation revealed that the applicant and his family members had established and expanded the business in the activities of construction, publication, media, hospitality, resorts, software development etc. and the applicant was the key person behind managing the business affairs of this company.

11. Paragraph 16.17 of the said charge-sheet mentions that the report submitted by the Deputy Director of the Income Tax (Inv.), Unit-II92), Pune, Maharashtra dated 19th March 2015 shows that during 2008 to 2014 the applicant's company had mobilized deposits to the Quantum of Rs.1116.12 Crores approx from 47.76 Lakhs depositors.

12. Mr. Tripathy, therefore, submitted that the subject matter of the present offence registered at Vishrambaugh Police Station clearly pertains to the investigation conducted by the CBI. He submitted that the second FIR on the same set of allegation was not permissible. He invited my attention to the order passed by the Hon'ble Supreme Court in Special Leave to Appeal (Crl.) No.(s) 7563/18 and in SLP (Cri.) No.7818/18, which were in respect of investigation carried out by the CBI referred to herein above and the local police at Odisha respectively. Vide order dated 26th October 2018, the Hon'ble Supreme Court observed thus :-

"The petitioner has been arrested on 16.12.2015 and

> *has been in jail. The chargesheet has since been filed on 23.08.2016. However, the charges have not yet been framed.*
>
> *Given the fact that the petitioner has been incarcerated for a period of almost three years, we enlarge him on bail to satisfaction of the trial court.*
>
> *The Special Leave Petitions stand disposed of".*

13. Mr. Suresh Tripathy, therefore, submitted that the Hon'ble Supreme Court has considered the allegations against the present applicant, which are reflected in the charge-sheet mentioned herein above and has granted bail to the present applicant. He submitted that in the present case the allegations are overlapping and therefore, even in this case, the applicant should be granted bail.

14. Mr. Suresh Tripathy further invited my attention to the order passed by the Hon'ble Supreme Court in Special Leave to Appeal (Crl.) No. 1564/19 and in SLP (Crl.) No. 1596/19. Again these

two SLPs pertain to the investigation of the CBI in respect of Samrudha Jeevan Multistate Multipurpose Co-operative Society and the investigation carried out by the local police, Odisha. Even in that case, the applicant is granted bail. He, therefore, submitted that in the present case also the applicant deserves to be released on bail.

15. Learned APP Smt. Kaushik contended that the offence is serious. There are large number of investors who are cheated. She submitted that the offence under Section 409 of the IPC provides the punishment of life imprisonment. She submitted that the applicant in this case is in custody since 19/12/2018. She submitted that considering the maximum punishment, the applicant should not be released on bail. She further, submitted that though the charge-sheet is filed, the investigation is still continued. She submitted that if the applicant is released on bail, since he is financially strong, he will pressurize the witnesses and will tamper with the investigation. She further submitted that the family of the applicant is in the process of the disposing off the

properties and therefore, the investigation is adversely affected. She, therefore, opposed the grant of bail to the applicant.

16. I have considered all these submissions. Whether Section 409 of the IPC is attracted in the present case or not is a debatable issue. The learned APP submitted that not only the investors, but the shareholders of the company have suffered losses and therefore, the applicant being an agent of the company and shareholders, section 409 of the IPC is attracted.

17. It is important to note that no minimum punishment is provided under Section 409 of the IPC though maximum punishment that can be awarded is of life imprisonment. At the same time, the fact remains that the investigation is over and charge-sheet is already filed. The applicant is in custody since 19/12/2018. The Hon'ble Supreme court in granting bail to the applicants in the cases registered in West Bengal and Odisha have clearly observed that the applicant was in custody for a long period and therefore, he deserved to be released on bail. Even in those

cases, section 409 of the IPC was applied. Therefore, following the orders passed by the Hon'ble Supreme Court, I am also inclined to take into account the fact that the applicant is in custody since a long time, which would be an important consideration for grant of bail to the present applicant.

18. Learned APP submitted that in the case before the Hon'ble Supreme Court, the applicant was in custody since the year 2016 and in the present case, the applicant is in custody only from 19th December 2018. Therefore, the orders passed by the Hon'ble Supreme Court cannot be applied in this case.

19. The applicant was arrested first in December 2015 and since then his custody was transferred in connection with the investigation of other offences. Thus, the fact remains that he is in custody from December 2016. This cannot be ignored, though he is shown to be arrested in 2018. The applicant is in jail since past more than three years.

20. As rightly pointed out by Mr. Tripathy that the Hon'ble Supreme Court had noted that the matters concerning 44 companies were to be transferred to the CBI for investigation. The applicant's company Samrudha Jeevan Foods India Limited was undisputedly amongst one of those 44 companies and therefore, CBI was investigating into the allegations of such investments and misappropriation.

21. In this background, the FIR registered at Vishrambaug Police Station will have to be considered. As discussed earlier, the charge-sheet filed by the CBI shows the investigation carried out by them. CBI has taken into consideration that the applicant's company's branches were in Maharashtra and the investments were collected from Maharashtra. The reference to the Returns filed with the Income Tax authorities show that the balance sheet of the company during the year 2014 was taken into consideration and infact, till filing of the chargesheet in the year 2016, financial affairs of the company was investigated into by the CBI. Therefore, CBI had already investigated into the allegations made by the first

informant in this case. The new offence is registered on the basis of these allegations. The Hon'ble Supreme court has already granted bail to the present applicant. I am respectfully taking the same view. Taking into consideration the order passed by the Hon'ble Supreme Court, granting bail to the present applicant, I am inclined to grant bail to the present applicant. Hence, following order is passed:-

ORDER

(i) The Applicant is directed to be released on bail in connection with C.R. No.186/17 registered at Vishram Baug Police Station, Sangli, on his furnishing PR bond in the sum of Rs. 1,00,000/- (Rupees One Lakh Only) with one or two sureties in the like amount.

(ii) The Applicant shall not influence the witnesses and shall not interfere with the investigation.

(iii) Application stands disposed of accordingly.

(SARANG V. KOTWAL, J.)