ISM

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL BAIL APPLICATION NO. 96 OF 2019

Dhananjay Rajabhau Pachpor .....Applicant

V/s.

The State of Maharashtra .....Respondent

Mr. Manoj Mohite i/b Mr. Sidheshwar N. Biradar for the applicant
Mr. Pravin Chavan, Special PP a/w Smt. Rutuja Ambekar APP for the State

CORAM : NITIN W. SAMBRE, J.

DATE : FEBRUARY 6, 2019.

P.C.

In Crime No. 347/2017 registered with Shivaji Nagar Police Station, Pune for offence punishable under sections 406, 420 r/w 34 of the Indian Penal Code and section 3 & 4 of the Maharashtra Protection of Interests of Depositors (in Financial Establishments) Act, 1999, applicant is seeking regular bail having been arrested on 16/05/2018. The prosecution case against the present applicant as can be summarised as under:

(I) DSK Developers and its sister concern appears to be in the business of development of land with whom the applicant came to be appointed as Public Relation Officer on 01/07/2006 and was promoted as Assistant Manager on 01/11/2006. On 01/11/2007, applicant was promoted as Manager and on 01/04/2008 as Deputy General Manager. Applicant became Vice President (HR & PR) on 01/01/2010 and became COO i.e. Chief Operating Officer on 01/04/2011 till he claimed to have resigned on 01/07/2017.

(II) The case of the prosecution as is apparent from the contents of the F.I.R. and the investigation carried out, particularly the contents of charge-sheet is, the applicant, a very close friend of co-accused Kedar Vanjpe was a close aid of main accused Deepak Kulkarni and Hemanti Kulkarni and as such, was in a short span granted accelerated promotion on higher post. It is claimed that applicant was all and all for DSK Company and was looking after the acceptance of deposit in DSK and other sister concerns and was also controlling other companies of the said lead company DSK. Said

Company i.e. DSK and its sister concerns accepted huge amounts from depositors/investors with an assurance of higher returns or plots/flats etc and has not honoured the same. The amount which was accepted from depositors like the complainant and the intending buyers was though deposited in the company, was diverted to the account of other directors, who are family members in the form of loan. Out of said amount the properties were purchased by the said directors in their individual name and the same property was in turn transferred to the companies at much higher raters, at times double the market price, in a short span.

(III) The properties against which the amount was accepted from prospective buyers by accepting booking or from depositors with high returns, the director of the company has also taken loan by mortgaging the same.

(IV) Since neither amounts were repaid nor the commitment made to depositors or buyers was honoured, as such, offence in question.

(V) Pursuant to complaint dated 28/10/2017, after the aforesaid offence was registered, charge-sheet came to be filed against accused persons and further investigation is still in progress.

2 In the aforesaid background, Shri. Mohite, the learned counsel for the applicant would urge that applicant has neither purchased, sold or benefited from the company in the form of undeserving income. He submits that only an amount of Rs. 49 Lakhs was taken by applicant on loan from the company out of which the applicant has already repaid the amount of Rs. 24 Lakhs within 6 months and undertakes to repay balance amount of Rs. 25 Lakhs within a short period after his release. He submits that being Chief Operating Officer, applicant was required to deal with depositors, investors. A claim is made that ingredients of Section 420, 409 and provisions of MPID are not satisfied. Shri. Mohite then would urge other similarly placed accused being Sunil Madhukar Ghatpande, a Chartered Accountant by profession who has carried out statutory audit for 2007-2008 to 2016 is already ordered to be released, so also co-accused Rajiv Nevaskar, the Chief Engineer of parent Company

DSKDL was ordered to be released in Bail Application No. 2525/2018 passed on 30/07/2018.

3 The learned Special PP while opposing the claim put forth by the applicant submits that the Statutory Auditor of the company of which applicant was an employee colluded with the top management including applicant and falsely inflated profit was shown though the company was in losses.

4 According to him, hard earned money to the extent of 1083 Crores of the depositors of whom many are senior citizens, in a calculated manner are misappropriated. In the commission of offence, active participation of the applicant can be inferred based on the investigation. He would then submit that the investigation in the matter is still going on and having noticed that the applicant is involved in the crime in question with an active participation, applicant's prayer for grant of bail is liable to be rejected.

5 Having appreciated submissions it is noticed that applicant

was initially appointed as Assistant Manager and on the date of his resignation was working as Chief Operating Officer.

6 From the investigation, it reflects that amongst other, the duties which are executed by the applicant were that of executing the decision taken by the Board of Directors of the company and to manage the day to day business affairs such as liason work, legal matters etc. The applicant *prima facie* appears to have been involved in deal of land of Fursungi. Apart from above, the statement of investors demonstrates that it was applicant who induced them for investing in the various projects of the company land in which was already mortgaged to State Bank of India. The modus operandi as could be inferred from the investigation is to get loan sanction on the land from the bank, against which already the amount from the investors was accepted in the form of investment, deposits or booking. The said amount was misappropriate through the sister companies and family members by purchasing the land at much higher value than the prevailing market rates. The directors, their family members, friends and employees like applicant have illegally

drawn undeserving benefits. Amongst other, the benefit drawn by the applicant to the tune of Rs. 49.40 Lakhs out of the loan amount of Rs. 96.54 Lakhs obtained from ICICI Housing Finance Limited is worth relying upon. Apart from above, the applicant who was manning the post of Chief Operating Officer, was in fact in the driving seat of the company. The statement of the employees of the company such as Gauri Vithal Patil, Chaitrali Dharmadhikari and such other employees in categorical terms have stated about the active role played by the applicant in the crime in question. One can read between the lines and infer about the criminal intention of the applicant in the crime in question. It is applicant who has taken most of the financial decision of the company to its logical end. His close proximity with two directors, he having been granted accelerated promotion etc in voluminous terms speak of his criminal intention and active participation. The modus adopted by the directors and its high ranking official like applicant of encashing goodwill of the company by accepting deposits, investments etc with promise of high returns and diverting the said funds for personal gain in voluminous terms speak intention and involvement of the applicant in the crime in question.

7 As such, from the record it can be easily inferred that the applicant is *prima facie* involved with an active role in the crime in question. The investigation is still in progress. As such, no case for bail is made out. Application stands rejected.

[NITIN W. SAMBRE, J.]