IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL BAIL APPLICATION NO.1734 OF 2019

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

- Mr. Suresh Tripathy I/b Mr. Mayank Sharma, Advocate for the Applicant.
- Mr. Pravin Chavan, Special PP, alongwith Ms. S. S. Kaushik, APP for the State.
- Ms. Vanita Dhumal, PI, EOW, CID.

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.384/14 registered at Chatursrhungi Police Station, Pune, for the offences punishable under Sections 406, 409, 420 and 120-B of the IPC, under Section 3 of the MPID Act, Sections 3, 4, 5 and 6 of Prize Chits and Money Circulation Schemes (Banning) Act, 1987 and under Sections 58(b) and 58(c) of Indian Reserve Bank Act, 1934.

2. The applicant was arrested on 31st March 2016 in this

connection and since then he is in custody. The charge-sheet is already filed on 27th June 2016 in this case.

3. The story in the charge-sheet is that a complaint was lodged by one Sunita Dhanve in the court of Judicial Magistrate (F.C.), Pune vide MA No. 7349/14. The court directed investigation under Section 156(3) of the Cr. P. C. Accordingly, CR No. 384/14 was registered at Chaturshrungi Police Station. It was mentioned in her complaint that the applicant and his associates represented that they were accepting investments through their company Samrudha Jeevan Foods India Limited. The company was in the business of dealing in live stock. The business of the company was to purchase cattle and through this business they would earn profits.

4. The first informant had invested Rupees Five Thousand Eight Hundred on 23rd June 2009 and for next four years Rupees Five Thousand Eight Hundred were to be invested per annum. It was represented to her that she would get Rupees Ninety Five Thousand Seven Hundred in the year 2019. Subsequently, the

informant came to know that the company had violated regulations of SEBI and therefore, the amount was not returned to the informant and others. Thus, she was cheated and was deprived of her amount. The informant came to know that the company had similarly cheated many such investors through out the country. Therefore the FIR was lodged.

5. The investigation was carried out. The investigation reveals that similar to the first informant many other investors were cheated and through out India there were 21 lakhs such investors. There is case in the charge-sheet that between the year 2003 to 2006 the applicant and others hatched conspiracy to attract the investors. They conducted seminars, advertised their schemes, held work shops and appointed agents to attract investors. It is alleged that the money which was received by the applicant and others was not used for the purpose for which purportedly it was accepted, but was used for personal expenses, luxury articles and to purchase properties. To conceal their illegal activities they prepared forged documents, false and forged balance sheets to file

them with their Income Tax Returns and thereby committed this offence.

6. It was also further revealed that a society in the name of Samrudh Jeevan Multistate Multipurpose Co-operative Society was registered. The accused misappropriated amount of Rupees Three Thousand Five Hundred Crores. It is mentioned in the charge-sheet that the present applicant and his associates have committed this offence.

7. Heard, Mr. Suresh Tripathy, learned counsel for the applicant as well as Mr. Pravin Chavan, Special PP alongwith Ms. S. S. Kaushik, learned APP for the State.

8. 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"

9. 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.

10. This statement is not disputed by the learned special PP Mr. Chavan.

11. 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.

12. 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'".*

13. 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.

14. 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.

15. Mr. Tripathy, therefore, submitted that the subject matter of the present offence registered at Vishram Baugh Police Station clearly pertains to the investigation conducted by the CBI. He submitted that the second FIR on the same set of allegations 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".*

16. 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.

17. 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.

18. Special PP Mr.Chavan 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. He submitted that the applicant in this case is in custody since 31st March 2016. He submitted that considering the maximum punishment, the

applicant should not be released on bail. He 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. He 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. He, therefore, opposed the grant of bail to the applicant.

19. 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 SPP 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.

20. 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.

21. 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.

22. In this background, the FIR registered at Vishram Baug 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 shows 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.384/14 registered at Chatushrungi Police Station, Pune, 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.)