IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL BAIL APPLICATION NO. 1943 OF 2018

Vijay Manikram Gautam .... Applicant

Versus

The State of Maharashtra .... Respondent

Mr. Subhash Jha a/w. Mr. Harekrishna Mishra i/b. Law Global Advocates for Applicant.
Smt. A. A. Takalkar, APP for the State/Respondent.
Mr. V. S. Londhe, PSI, Ambad Police station, present.

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

P.C. :

1. The Applicant is seeking his release on bail in connection with C.R.No. 324 of 2015 registered with Ambad Police Station, Nasik. At present, the applicant is facing the allegations of commission of offences punishable under sections 420, 406 and 120B r/w. 34 of the Indian Penal Code and under sections 3 and 4 of the Maharashtra Protection of Interest of Depositors (in

Financial Establishments) Act, 1999 (For short 'MPID Act'). The applicant was arrested on 09/01/2018 and since then he is in custody. The investigation is over and the chargesheet is filed. The Assistant Police Inspector Shri. Sanjay Vitthal Bedwal has filed an affidavit in this court opposing grant of bail to the applicant. The prosecution case, as well as, the case in the FIR is set out in the affidavit, as follows.

2. The FIR is result of the order passed U/s.156(3) of the Cr.p.c. by the Ld. J.M.F.C. The FIR and the complaint was lodged by one Amit Savargaonkar. The FIR is lodged on 03/10/2015. The affidavit shows that the complainant had made allegations that the applicant was one of the Directors of M/s. Phoenix Infra Estate International Ltd. The company was in the business of real estate. The applicant approached complainant and gave information about the company's business. He informed that the company was having project by name Archid Park in the property bearing No.1170/2 & 1170/3 and 1226 situated at village Devpur Shivar, Tal. Sinnar, Dist. Nasik and the company wanted to sale the said

plots in the said project. It was represented to the complainant that even if the transaction could not be completed, the complainant would get 100% growth in the amount. The complainant showed interest in the scheme and agreed to purchase a plot for Rs.2,56,721/- and agreement for sale was executed. The complainant paid Rs.2,21,000/- to the company, but subsequently, sale deed was not executed and accused company and it's agents and Directors avoided to take further steps. The complainant was again told that he would get double the amount which he had deposited, but nothing was paid to him. A cheque issued in his name was dishonoured, for which, a separate case was filed by the complainant under the Negotiable Instrument Act. There was a correspondence between the complainant and the accused company. The complainant came to know that there was others like him who had invested in the company, but were not paid the promissed return. On this basis, the complainant filed his complaint before the learned J.M.F.C., Nasik, who based directed investigation U/s.156(3) of the Cr.p.c. Pursuant to that order the FIR was lodged.

3. During the course of investigation it was revealed that, total number of investors of the said company, which was situated at village Devpur, were quite high and in the present case, misappropriation of the amount was to the tune of Rs.3,58,80,469/-. Considering the nature of transactions, provisions of MPID Act were applied.

4. Heard Mr. Subhash Jha, learned counsel for the applicant and Smt. A. A. Takalkar, learned APP for the State.

5. Learned counsel for the applicant submitted that the business of the company was that the company used to purchase small pieces of lands and amalgamate them into a large piece. Thereafter that land was divided into different plots and those plots after initial levelling and other allied activities were sold to prospective purchasers who were interested in investing in the land. Shri. Jha submitted that the company was incorporated in the year 2006 and it's business was spread in other states viz. Gujarat and Madhya Pradesh. The allegations in the present case

are that the land transactions with about 60 people fell in trouble because of subsequent events which had occurred after execution of these agreements. He submitted that there are two civil suits pending against the applicant company and about 15 to 20 disputes before the Consumer Court are also pending. He has submitted that the company has tried to satisfy the debts of the most of the land owners and at present, about 51 customers are yet to be paid. Learned APP has relied on the affidavit filed by the investigating agency. She submitted that the chargesheet consists of statements of similar victims and the agreements for sale entered into by the company with these victims.

6. I have considered their submissions. I have perused one sample of agreement for sale entered into on behalf of the applicant's company. One of the important clause in that agreement was that, "That the said plot is free from encumbrances of all kinds whatsoever and also free from Gram Panchayat Taxes etc. defect if any shall be satisfied by the vendor to the satisfaction of the purchaser." Shri. Jha submitted that this clause was

incorporated showing that the applicant's company genuinely believed that they had proper title on the land and only because of subsequent developments like cancelling mutation entry etc., the title became defective and even in that event this clause has taken care, so that, victims would be compensated. He, therefore, submitted that, there was no dishonest intention requisite for the offence U/s.420 of IPC. He submitted that the applicant is in jail for more than one and half year and, therefore, there was impediment in fulfilling other obligations in respect of other victims.

7. Learned counsel for the applicant relied on the order passed by the High Court of Madhya Pradesh in MCRC No.17231/2018, 17235/2018 and 17247/2018. These are the orders by which the applicant was granted bail in the offences registered in Madhya Pradesh. Shri. Jha submitted that the allegations in all these offences are very similar to the allegations made against the applicant in the present case.

8. Whether the intention was dishonest right from the inception, will have to be decided during the trial after the evidence is led by the prosecution. As on today, the fact remains that there are purchasers whose money was accepted by the applicant's company. The purchasers had lost their money. The purchasers, ofcourse, have an option of approaching civil court by filing suit for specific performance and for damages. The interest of these people can also be taken care by taking suitable proceeding U/s.4 of the MPID Act. This can go on simultaneously. Today, only question before me is, whether the applicant's continued detention in custody is warranted. The maximum punishment awarded in this case is seven years U/s.420 of the IPC. The applicant is already in custody for more than one and half year. He was arrested on 09/01/2018. Learned APP stated that after his arrest he was not remanded to police custody, therefore, it is obvious that the investigating agency did not want him for custodial interrogation. The investigation is over and the chargesheet is already filed. In my considered view, no purpose will be served by keeping the applicant in custody during the

entire period of trial.

09. Hence, the following order :

ORDER

(i) In connection with C.R. No. 324 of 2015 registered with Ambad Police Station, Nashik, the applicant is directed to be released on bail 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 attend the concerned police station once every month for a period of one year.

(iii) Application stands disposed of accordingly.

(SARANG V. KOTWAL, J.)