IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

ANTICIPATORY BAIL APPLICATION NO. 708 OF 2020

Harish Narayan Shetty .... Applicant
Versus
The State of Maharashtra & Ors. .... Respondents

WITH
INTERIM APPLICATIO (ST) NO. 2390 OF 2020

Sukumar Raghu Shetty …. Intervenor

WITH
INTERIM APPLICATION (ST) NO. 3281 OF 2020

Himani Vijay Hiran …. Intervenor

IN THE MATTER BETWEEN:

Harish Narayan Shetty .... Applicant
Versus
The State of Maharashtra & Ors. .... Respondents

WITH
ANTICIPATORY BAIL APPLICATION NO. 677 OF 2020

Jayant S. Shetty .... Applicant
Versus
The State of Maharashtra .... Respondent

WITH
INTERIM APPLICATIO (ST) NO. 2389 OF 2020

Sukumar Raghu Shetty …. Intervenor

WITH
INTERIM APPLICATION (ST) NO. 3283 OF 2020

Himani Vijay Hiran …. Intervenor

IN THE MATTER BETWEEN:

Jayant S. Shetty .... Applicant
Versus
The State of Maharashtra .... Respondent

Mr. Shirish Gupte, Sr. Advocate and Mr. Pandit Kasar a/w. Harish Khedkar, Nihar Thacheray, Neha Sonawane and Mr. Vikram Jakhadi i/b. VIS Legis Law Practice for Applicant in ABA/708/2020.

Mr. A. P. Mundargi, Sr. Advocate i/b. Prasad Borkar, for applicant in ABA No.677 of 2020.

Mr. Archit Sakhalkar, for Intervenor in IA/ST/2390/2020 & IA/ST/2389/2020.

Mr. Jatin Shah a/w. Dipen Furia and Snehankita Munj for Intervenor in IA/ST/3281/2020 & IA/ST/3283/2020.

Ms. P. N. Dabholkar, APP for State/Respondent.

Dr. Samarth Karmarkar a/w. Ms. Supriyanka Maurya i/b. Karmarkar and Associates, for Respondent No.1A/First informant in ABA/708/2020 and ABA/677/2020.

CORAM : SARANG V. KOTWAL, J.
DATE : 23rd OCTOBER, 2020

P.C. :

1. Both these applications are decided by this common order because they arise out of the same offence.

2. The Applicants are seeking anticipatory bail in connection with C.R.No.02 of 2020 registered with E.O.W. Unit-7. Originally the FIR was lodged with Malad police station vide C.R.No.05 of 2020 on 06/01/2020, under sections 420, 406, 409 and 120B of the Indian Penal Code and under sections 3 and 4 of the Maharashtra Protection of Interests of Depositors (In Financial Establishments) Act, 1999 (for short 'MPID Act').

3. Heard Shri. Mundargi, learned senior counsel in ABA No.677 of 2020, Shri. Shirish Gupte, learned senior counsel in ABA No.708 of 2020 and Ms. Dabholkar, learned APP for the State.

4. The FIR is lodged on 06/01/2020 by one Sunil Nagpal. He has stated that, he was a resident of Malad. In that area, agents of M/s. Shree Ramanjaneya Leasing and Finance Pvt. Ltd. (for short 'company') were active. Through them in the year 2012 he came to know about the business of the company. The informant was told that the company was in the business of financing.

Investments were accepted and higher interest rates were given. In September, 2012, he went to the company's office at Malad. There he met one Ganesh Shetty. He told the informant that company was formed in the year 1994. Ganesh himself, applicants Jayant Shetty and Harish Shetty were the Directors of the company. The informant was told that the company was accepting investment of minimum Rs.1 lakh. The collected money was further given by way of loan to others. The company had different investment schemes which gave interest rates ranging between 1% to 1.25%p.m. for deposit for a year. If the deposits were invested for five years, double amount was returned. Apart from that, daily collection scheme was also in operation. Based on such representation, the informant invested his amount. The FIR mentions that, between 2013 to 2017 he invested about Rs.40 lakhs. Some of the deposits were renewed from time to time. He was regularly paid interest every month till November, 2017 but after that he stopped receiving interest amount. He met Ganesh Shetty and both the applicants and asked for his interest amount. They told the informant to wait for some time. However, the same situation continued in the year 2018. The informant came to know that there were other victims like him. They pursued the matter with the applicant Jayant. On 26/10/2019, applicant Jayant arranged a meeting at Fidalgo Group of Hotels, Malad (W), Mumbai, but no concrete promise was given. The informant realized that he was cheated and money was misappropriated. He named other four victims in the F.I.R. The F.I.R. also mentions that the company had accepted the investments from about 500 people and the misappropriation was of about Rs.400 crores. On this basis the FIR is lodged.

5. Shri. Mundargi submitted that the company was in existence since the year 1994 and there was no allegations against the company for number of years. It is only because of difficult financial situation the company was not in a position to make payments to their investors. Shri. Mundargi submitted that, acceptance of the investment was not denied and the applicant Jayant Shetty was ready to repay the investor's deposits and interest, however, because of the financial crunch, it was not immediately possible. He submitted that, the company has

considerable property which can be sold to make the payment. He submitted that the act of the applicant does not fall within the meaning of 'fraudulent default' as envisaged under MPID Act. He submitted that, by arresting the applicant the investors were not going to get their money but if he was granted some time, some arrangement for repayment could be made by him.

6. Shri. Gupte, learned senior counsel appearing for the applicant Harish Shetty submitted that, the F.I.R. does not show that the applicant had made any misrepresentation and, therefore, core ingredient of section 415 of the IPC for inducement is missing. He submitted that, applicant Harish has not misappropriated any amount and, therefore, there is no question of invoking section 406 and 409 of IPC against him. He submitted that, the investigation will show that money has not gone in the the company's account. The applicant was one of the Directors and, therefore, in any case the company and the applicant in his capacity as a Director of that company cannot be said to have committed the offence. The allegations mention that the offence is committed individually by other accused. He submitted that share

holding of the company shows that the applicant Harish was owning only 3.12% of share and he was not involved in decision making process of the company. He submitted that, the applicant Harish became Director of the company in the year 1994 and he had resigned on 19/12/2019. The resignation was accepted and the documents were tendered before Registrar of Companies for registration of his resignation. Shri. Gupte submitted that there are only general statements and allegations against the applicant Harish in the FIR. He submitted that only on two occasions in the year 2015 the applicant had taken money from co-accused Jayant for applicant's personal use as his son was to go abroad and he wanted to maintain certain balance in the account. He submitted that, on 09/01/2015 Rs.10 lakhs were taken and were repaid on 20/04/2015. On 12/06/2015 Rs.18 lakhs were taken and were repaid on 22/06/2015. Shri. Gupte submitted that, no money from the company came in his personal account and, therefore, he has not committed any offence.

7. On the other hand, learned A.P.P. has filed an affidavit of the Investigating Officer pointing out the material against both

the Applicants. She submitted that the F.I.R. itself clearly mentions the role of Applicants Jayant and Harish. The first informant is not the only victim and as of today the investigation reveals that at least 475 investors have lost their money and the total amount of misappropriation is to the tune of Rs.64,14,64,410/-. The affidavit mentions that the Applicant – Jayant has threatened some of the investors. She submitted that the applicant Jayesh's intentions for repayment of dues are not bonafide. The money is already misappropriated. She submitted that the investigation has revealed that, in the year 2014 itself Rs.50 Lakhs were given to the Applicant Harish by Jayant and Rs.50 Lakhs were given by accused Ganesh Shetty to the Applicant Harish. This is reflected in the bank transaction in the account held with the Axis Bank. The parties are referred by their names and their HUF. She, therefore, submitted that there is direct connection between the Applicant Harish and the Company because some money which is collected from the investors is paid to the Applicant Harish.

8. She invited my attention to the statement of one Sukumar Shetty recorded on 14/09/2020. He was also one of the

investors whose money was lost. His statement shows that he had repeatedly met not only the Applicant Jayant but the Applicant Harish and co-accused Pritibha Shetty, as well. This witness had demanded his money and interest from both the Applicants. But, they did not pay him. Therefore, she submitted that even the Applicant Harish is involved in the offence.

9. I have considered all these submissions. The statements of the first informant as well as witness Sukumar Shetty show that both the Applicants were involved in accepting the deposits from the investors. Huge amount is misappropriated. Shri Mundargi tried to submit that the offence did not fall within the definition of Section 3 of the MPID Act. Section 3 reads thus :

> **3. Fraudulent default by Financial Establishment.-** Any Financial Establishment, which fraudulently defaults any repayment of deposit on maturity along with any benefit in the form of interest, bonus, profit or in any other form as promised or fraudulently fails to render service as assured against the deposit, every person including the promoter partner, director, manager or any other person or an employee responsible for the management of or conducting of the business or affairs of such Financial Establishment shall, on conviction, be punished with imprisonment for a term

which may extend to six years and with fine which may extend to one lac of rupees and such Financial Establishment also shall be liable for a fine which may extend to one lac of rupees.

Explanation. - For the purpose of this Section, a Financial Establishment, which commits defaults in repayment of such deposit with such benefits in the form of interest, bonus, profit or any other form as promised or fails to render any specified service promised against such deposit, or fails to render any specific service agreed against the deposit with an intention of causing wrongful gain to one person or wrongful loss to another person or commits such default due to its inability arising out of impracticable or commercially not viable promises made while accepting such deposit or arising out of deployment of money or assets acquired out of deposits in such a manner as it involves inherent risk in recovering the same when needed shall, be deemed to have committed a default or failed to render the specific service, fraudulently.

10. Shri Mundargi submitted that the dishonest intention is applicable to every category mentioned in the explanation. However, I am unable to agree with the submissions of Shri Mundargi. The acts alleged against both the Applicants clearly fall within the meaning of Section 3 of the MPID Act. The Applicant's

Company also falls within the definition of "financial establishment". The intention of the accused to dupe the investors is clear from the facts of the case.

11. Though, it is claimed by the Applicant Harish that he has resigned on 19.12.2019, this was done much after the money was appropriated, therefore, this resignation will not help him in any manner.

12. The Applicants have not taken any steps to make the repayment. Shri Mundargi's contention that the Applicant Jayant is in the process of selling his property is not supported by any cogent material. In any case, it has been a long time since the investors were trying to recover their money and the Applicants have not repaid even a reasonable amount. Therefore, I am not impressed by such submission.

13. The Applicant Harish's involvement is also clearly made out in the affidavit filed by the learned A.P.P., as mentioned earlier. At least, an amount of Rs.1 Crore is shown to have been transferred in the account of the Applicant – Harish. Therefore, he cannot claim ignorance of activities of the company. At this stage,

there is sufficient material to show involvement of both the Applicants. The misappropriation is of huge amount. Many investors are duped. The affidavit mentions that, so far the investigating agency has secured ten immovable properties of the accused. Their valuation is not sufficient to cover the outstanding amount. The valuation shown is inflated and those properties were already mortgaged. Therefore, it is difficult to recover the amount.

14. No case is made out for grant of anticipatory bail. Custodial interrogation is absolutely necessary. It is necessary to find the money trail. Hence, both the anticipatory bail applications stand rejected. All Interim Applications stand disposed of accordingly.

15. At this stage, Shri Mundargi prayed for protection of the Applicants for some time. However, the order dated 24.9.2020 records that adjournment was sought on behalf of the Applicants. It was made clear to them that interim relief could not be granted without considering the merits of the case and at that time the learned Senior Counsel for the Applicants had agreed to that and

had still sought adjournment for four weeks. Thus, it was made clear in the order dated 21.9.2020 that there was no interim relief running in their favour. Thus, I see no reason to protect them after rejection of their anticipatory bail applications for any period. Therefore, this request is also rejected.

(SARANG V. KOTWAL, J.)