

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL BAIL APPLICATION NO.909 OF 2020

Markas Yohan Thorat
An Indian Inhabitant, Aged 66 years,
A Senior Citizen, Occ : Business.
R/at. Nagacha Khadak, Near Petrol Pump,
Murbad, Thane, 421 401. ... Applicant

Versus

The State of Maharashtra ... Respondent

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Mr. I. S. Thakur i/b Mr. Arjun Singh Thakur i/b M/s Global Juris
Consults, Advocates for the Applicant.
Ms. A. A. Takalkar, APP for the Respondent – State.
Ms. Shetye, W.P.I. EOW, Unit-7, Mumbai, Present.

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CORAM : PRAKASH D. NAIK, J.
DATE : 16th DECEMBER, 2020.

PER COURT:

1. This is an application for bail in connection with C.R.
No. 11 of 2017, registered with Bhoiwada Police Station, Mumbai,
for offences punishable under Sections 409, 420, 120B of Indian
Penal Code (hereinafter referred to as “IPC” for short) and Sections 3
and 4 of Maharashtra Protection of Interest of Depositors (in
Financial Establishments) Act (hereinafter referred to as “MPID Act”
for short) read with Sections 3, 4 & 5 of Prize Chits and Money

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Circulation Scheme (Banning) Act, 1978. The First Information Report (hereinafter referred to as “FIR” for short) was registered on 16th January, 2017. The investigation was taken over by EOW, Mumbai, vide C.R. No.08 of 2017.

2. The prosecution case is that, the informant has alleged that accused Temple Rose Real Estate Private Limited, its Directors and others had accepted deposits from investors by floating buyback, Guaranteed Double Income, Income Growth Plan, etc. Schemes. They induced investors by making promise of more profits on the investments and after maturity failed to return the assured benefits. The informant was duped for an amount of Rs. 37,38,775/- other investors were cheated for crores. The applicant was arrested on 5th August, 2017 in another case and in the present case he was arrested on 5th February, 2018. On completing investigation, charge-sheet is filed. Case is numbered as MPID Special Case No.12 of 2018.

3. The applicant had preferred Criminal Bail Application No.2990 of 2018 before this Court which was rejected by order dated 26th February, 2019. Subsequently, he preferred another application for bail before this Court which has been rejected by order dated 3rd February, 2020. However, the trial Court was requested to conclude the trial within a period of Six months and liberty was granted to

applicant to prefer fresh application for bail in the event trial is not concluded within a period of Six Months.

4. Learned advocate for the applicant submitted that the applicant is in custody in this case from 5th February, 2018, for a period of about Two years and Ten months. There is no progress in trial. Charge is not yet framed. The applicant is senior citizen aged about 66 years. It is not clear as to when the trial would commence and concluded. The prosecution is relying upon list of fifty witnesses. He further submitted that total earning out of the salary and other benefits of applicant were to the tune of Rs.2,16,00,000/-. Except the applicant and co-accused Keshav Ibdya, all other accused are on bail. The properties of the company were attached. He relied on the Notification issued by the Government under the provisions of MPID Act. The family members of the applicant has filed undertaking before this Court stating that, the properties i.e. plot of land bearing Survey No.385, Mauze Kadam Vasti, Lone Haveli, Dist. Pune and Row house bearing No.38, Amar Nagar, on a part of land bearing No.261/26/2 at Solapur Road, Hadapsar, Pune are owned by them and they have no objection for auction proceedings to be undertaken under the provisions of MPID Act. Learned counsel for the applicant tendered the valuation report in respect to the properties. The value

of the row house in 2018 was Rs.1,08,62,253/- and the value of the plot referred to above is Rs.19,64,020/-. The said valuation report is given by Sub-registrar, Haveli, Pune City. The said document is taken on record and marked as "A" for identification. It is submitted that the properties of the company are also attached under the provisions of MPID Act. While rejecting previous application by order dated 26th February, 2019 it was observed that, properties were purchased in the name of accused and relatives and no Notification was issued regarding properties of company and its Directors. However, Notification has been issued and properties were attached. The applicant is ailing and he was admitted Sasoon hospital and was discharged. While rejecting subsequent application by order dated 3rd February, 2020 this Court had also taken into consideration that applicant had earned Rs.2,16,64,472/- and properties were purchased by him out of funds of investment. The properties are under attachment. The amount earned is secured. The applicant has not delayed trial. He relied on Roznama of trial Court proceedings. The co-accused Devidas Sajnani was granted temporary bail on medical ground by this Court in C.R. No.275 of 2017 registered with Chatushrungi Police Station, Pune. The cash vouchers were signed by applicant along with chairman of company Mr. Devidas Sajnani and the amount withdrawn was exclusively used for purchasing various

properties, obtaining permissions etc. The witnessess have not referred to inducement by applicant. The applicant cannot be detained in custody for indefinite period. In support of his submissions he relied on the decisions of the Supreme Court in the case of *Sharad T. Kabra V/s. Union of India*, 2017(4) Crimes (SC) 448, wherein it was observed that the accused was in custody for more than two years facing charges for offences under Sections 420, 467, 468, 471, & 120B of IPC, the trial has not commenced. Even the charges have not been framed against the accused. It is submitted that punishment for offence under Section 467 is imprisonment for life or up to Ten years. Reliance is also placed on the decision of the Supreme Court in the case of *Pravat Kumar Dash V/s. Vs. Central Bureau of Investigation* 2017(8) SCC 453, in that case the accused was prosecuted for offences under Section 420, 467, 468, 471, 406, 417, 418, 422, 120(B) of IPC. The accused was directed to be released on bail. It was observed that, despite several extensions of time for completion of remaining part of investigation, the investigation was not completed. Learned counsel also relied upon the decision in the Case of *Mehmood Mohammed Sayeed V/s. State of Maharashtra* AIR 2002 (SC) 482. The accused was prosecuted for offences under Sections 463, 467, 461, 419 & 120 of IPC. Bail was granted as it was not certain as to how long trial will take

considering conditions of trial Court particularly in Maharashtra. Reliance is also placed on the decision of the Apex Court in the Case of *Vivek Kumar V/s. State of U.P.* AIR 2000, (SC) 3406, the accused was prosecuted for offence under Sections 394 & 395 r/w Section 149 of IPC. The accused was in jail for a long period and the trial had not commenced. It is submitted that punishment for offence under Sections 394 & 395 of IPC is life imprisonment or up to Ten years. He also relied upon several orders passed by this Court, granting bail to the accused.

5. Learned APP submitted that the previous applications of the applicant were rejected. On instructions it is submitted that, further investigation is still in progress and hence final charge-sheet could not be filed. Hence trial had not commenced. In the charge-sheet which is filed against the applicant, the prosecution has listed about 50 witnesses. Learned APP tendered the report of the Investigating Officer wherein it is mentioned that the investigation revealed that the applicant had earned the amount of Rs.2,16,64,472/- towards commission, salary, interest & dividend etc. The report also mentions that the properties were purchased in the name of applicant and his family members. The properties situated at Murbad Road, Nagcha Khadak House No. 1179, valued at about

Rs.20,00,000/-. Row house No.38 at Solapur Road, Hadapsar Pune is having valued of Rs.35,00,000/-. Plot on mouje Kadam Vasti, Loni, Haveli, is valued Rs. 7,00,000/-. Property bearing S.No. 510, Mouje Ambegaon, Tal. Murbad, Dist. Thane is valued of Rs.7,00,000/- and property bearing S.No.111, Mouje Aantroli, Taluka Velhe, Dist.Pune is valued Rs.50,00,000/-. The total value of properties is One Crore Nineteen Lakhs. Learned APP on instructions submitted that this was tentative valuation. All these properties are attached. The report is taken on record and marked as 'X' for identification.

6. It is noted that, the applicant is in custody for a period of about Two years and Ten months. While rejecting the previous application, trial was expedited and liberty was granted to prefer fresh application for bail. Trial has not commenced. As stated by learned APP further investigation is still in progress and further charge-sheet is yet to be filed. Several other accused are already on bail. The applicant is senior citizen. It is not clear as to when the trial would commence. The applicant has not delayed the trial. The Notification issued by the government under Section 4(1), 5 & 8 of MPID Act has been placed on record by learned advocate for applicant. The Notification mentions that the properties specified in the schedule are alleged to have been acquired by the financial

establishments and their chairman/directors from and out of deposits collected by establishment. The list of immovable properties attached is provided. The properties are in the name of company and the accused including applicant. There are several properties divided into parts situated at Sogaon, Shahapur, Thane, Pimloli, Karjat, Raigad, Parhe, Murbad, Thane, Umroli, Mahad, Pune, Satara, Kerala, Tamilnadu etc. The Notification also contains list of bank accounts attached. Taking into consideration the aforesaid circumstances, bail can be granted to the applicant. Hence, I pass the following order.

ORDER

- (i) Bail Application No.909 of 2020, is allowed;
- (ii) The applicant is directed to be released on bail in connection with C.R. No. 11 of 2017, registered with Bhoiwada Police Station, Mumbai,, investigated by EOW vide C.R. No.8 of 2017 on executing P.R. Bond in the sum of Rs.1,00,000/-, with one or more sureties in the like amount;
- (iii) The applicant shall report E.O.W. Unit -7, Mumbai once in a month on first Saturday of the month between 11:00 a.m. to 1:00 p.m. till further order;
- (iv) The applicant shall give an undertaking that he has no objection for sale of the attached properties except the

property which is ancestral house at Murbad Road, Nagcha Khadak house No.1179, Murbad, Dist. Thane.

(v) Relatives of the applicant Snehal Markas Thorat, Vishwas Markas Thorat, Rebecca Markas Thorat and Sagar Markas Thorat shall file a fresh undertaking in respect to the properties viz. Plot of land bearing Survey No.385, Mauze Kadam Vasti Loni, Haveli, Dist. Pune, Row house bearing No.38, Amar Nagar, on plot No.261/26/2, Solapur Road, Hadapsar, Pune, stating that they have no objection to auction proceedings to be undertaken under the provisions of MPID for sale of properties.

(vi) Both undertakings shall be filed before trial Court while executing bail bond.

(vii) Application stands disposed of accordingly.

7. This order will be digitally signed by the Private Secretary/Personal Assistant of this Court. All concerned will act on production by fax or email of a digitally signed copy of this order.

(PRAKASH D. NAIK, J.)