IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.612/2019

RAJU BAJIRAO BUCHADE
Age adult,Occupation-business
r/a Marunji, Tal-Mulshi,Pune. ..... **APPLICANT.**

VERSUS

THE STATE OF MAHARASHTRA
Through Senior Inspector
E.O.W.,Crime Branch, Pune
in MPID Case no.16/2017 ... **RESPONDENTS.**

WITH
APPLICATION NO.538/2019

1.MRS.SUREKHA RAMDAS SHIVALE
Age 38 years, Occupation-service
residing at Sanskar Group,Sr.no.80,
Vadmukhwadi, Alandi Pune road,
Charoli bank, Pune-412 105.

2.MR.ABHISHEKH KRUSHNAKANT GHARE
Age 25 years, Occupation-service
residing at Dabhade Vasti, near
Datta Mandir, Charholi bank, Alandi(D)
PUNE- 412 105. ... **APPLICANTS.**

VERSUS
THE STATE OF MAHARASHTRA
Through Sr.Inspector, E.O.W.
Crime Branch, Pune. ...**RESPONDENTS.**

Mr.Sachin K. Hande, for applicant in Criminal Application No.612/2019.

Mr.Chandansingh Shekhawat i/b Parinam Law Associates for applicant in Application no.5382019.

Mr.R.M.Pethe, APP for the State.

CORAM : A. M. BADAR, J.

DATE : 14TH JANUARY 2020.

ORAL JUDGMENT:

1. Criminal Application No.612/2019 is filed by accused Raju Buchade whereas Criminal Application No.538/2019 is filed by accused Surekha Ramdas Shivale and Abhishekh Krushnakant Ghare. Crime No.1 of 2017 is registered against them with Police Station Dighi, Pune initially for offence under Section 420, 406 r/w 34 of the Indian Penal Code on the basis of the report lodged by Pramila Sunil Darekar on 03.01.2017. Immediately on registration of crime against them, they had applied for grant of anticipatory bail and the learned Additional Sessions Judge, Pune. Within 22 days of

registration of crime against them, learned Additional Sessions Judge was pleased to release them on bail in the event of their arrest for offences punishable under Section 420, 406 r/w 34 of the Indian Penal Code.

2. Subsequently investigation of the subject crime was transferred to the Economic Offence Wing of Crime Branch of the Police department at Pune. Further investigation of subject crime resulted in adding offences punishable under Sections 409, 467, 468, and 201 r/w 34 of the Indian Penal Code as well as Section 3 and 4 of Maharashtra Protection of Interest of Depositors (In Financial Establishments), 1999 Act to the case diary to the crime in question. Consequently, State has applied for cancellation of bail of these accused persons. By the impugned order dated 20/04/2019 the learned Additional Sessions Judge, Pune was pleased to cancel the bail granted to the applicants in these cases.

3. Heard. Rule. Rule is made returnable forthwith.

4. The learned counsel appearing for the applicants in both these cases have drawn my attention to the order dated 25.1.2017 passed by the learned Additional Sessions Judge Pune, protecting them from arrest in crime No.1/2017 for offences punishable under Section 420, 406 r/w 34 of the Indian Penal Code and contended that subsequent to this order, one Mina Choudhary had prayed for cancellation of anticipatory bail granted to applicants, but the same was rejected on 19.9.2017 by the learned Additional Sessions Judge, Pune. It is further argued that after lapse of one year from grant of anticipatory bail, without making any efforts for formal arrest of applicants, the State has moved an application for cancellation of anticipatory bail by contending that few more penal provisions are invoked against the applicants. Learned counsel argued that by such addition of sections, anticipatory bail granted, can not be cancelled. There is no averment regarding breach of conditions. Despite granting anticipatory bail, no formal arrest was effected.

Property involved in the crime is already seized and even the first informant is an agent involved in the subject crime. To buttress this contention, reliance is placed on the judgment of the ***Hon'ble Apex Court in the matter of i) Omar Usman Chamadia, (2004)13 Supreme Court Cases 234 and ii) Savitri Agarwal and others versus State of Maharashtra and another, (2009)8 Supreme Court Cases 325***. By relying on second authority it is urged that, the impugned order must disclose sufficient reasons leading to passing of order and anticipatory bail operates from the arrest of the accused.

5. As against this, the learned APP argued that, initially anticipatory bail was granted when offence was at the very initial stage of investigation. Ramifications of financial offence were not surfaced on record at that point of time. The learned APP further argued that the anticipatory bail was sought and granted on the premise that applicant Raju Buchade was not an employees and applicant Surekha Shivale

was Human Resource Manager on a salary of Rs.15,000/- per month whereas, Abhishek Ghare was an employee earning Rs.5,000/- per month as salary from the financial institution. However, with passage of time, investigation revealed that these accused persons were having active role in mis-appropriating the deposits of investors and it is further found that this financial offence has affected 43 Bachat Gats apart from 401 individual depositors. As per bank transactions, it is revealed that magnitude of this financial scam is amounting to Rs.19 Crores and as yet deposits by way of cash collected by the financial establishment are not assessed.

6. I have considered the submissions so advanced and also perused the material placed before me by the learned APP.

7. Bare perusal of order granting pre-arrest bail to all these applicants shows that the learned Additional Sessions Judge preceded on the premise that applicant

Surekha Shivale was working as Human Resource Manager, receiving Rs.15,000/- salary per month, applicant Abhishek Ghare was an employee earning Rs.5,000/- per month whereas Raju Buchade is neither an employee nor holding any post in the financial establishment. The averments made in the F.I.R. were considered to note that an amount of misappropriation is of Rs.29,10,556/-. With this, the learned Additional Sessions Judge categorically noted that the role of present applicants is that of an employee in the financial establishment and they are not related to the fraudulent default or misappropriation of amount of the investors.

8. From the record produced before me, I am of the considered view that the order granting anticipatory bail is per-se, perverse and illegal. It transpired during investigation that applicant Surekha Shivale who claimed to be Human Resource Manager has received an amount of Rs.57,79,040/- from the financial establishment, applicant Abhishek who claims to be an employee working on a salary of Rs.5000/-

per month has received an amount of Rs.26,76,250/- from the financial establishment whereas, applicant Raju Buchade has claimed to be not concerned with the establishment has received an amount of Rs.5 lakhs within a short span of time. Statement of Akhshay shows that Raju instigated him as well as his father to invest an amount of Rs.10 lakhs in the financial establishment by promising rosy returns. He himself had promised to repay the amount invested. Statement of Akshay also reflect the role of other applicants in deceiving the investors by tempting them to invest handsome amount.

9. As stated by the learned APP amount of this scam surfaced on record by this time, is about Rs.19 Crores and the affected parties are members of 43 Bachat Gats and 401 individuals. The modus operandi of the financial establishment is also clear from the F.I.R. The financial establishment used to convince the depositors by stating that it is a Federation of Mahila Bachat Gat and they will pay handsome

returns on the deposits made with the establishment. Affected persons are poor women from rural areas who used to save their hard earned money by depositing it with the financial establishment.

10. Economic offence are a class apart and effect of grant of anticipatory bail on the Society in such offence must be a prime concern. The offence is still under investigation and even it is reflected from the impugned order that specialized investigation is necessary in this financial offence. Therefore, it can not be said that the impugned order is bereft of reasons. Overwhelming evidence is surfaced on record showing complicity of applicants in the subject crime does not allow me to hold that the impugned order is suffering from any error of law.

11. Both the applications are, therefore, rejected.

(A. M. BADAR, J.)