IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL BAIL APPLICATION NO. 3019 OF 2019

Pradyumna Bhagwantrao Gawande .. Applicant
V/s.
State of Maharashtra .. Respondent

Mr. Sumant Deshpande, for the Applicant.
Mr. H. J. Dedhia, for the Respondent / State.

CORAM : C.V. BHADANG, J.
DATE : 7th DECEMBER, 2020

P.C.

. The applicant (accused No.1) along with others, is facing prosecution for the offence punishable under Section 420, 406, 120B read with Section 34 of I.P.C. and Section 3 and 4 of the Maharashtra Protection of Interest of Depositors Act, 1999 ('MPID Act' for short).

2. The prosecution case is that the applicant along with the co-accused had formed 'Maa Gayatri Marketing', which is a partnership firm, said to be registered in Gujarat. The applicant and the co-accused had represented to the complainant and other investors and induced them to make investment in a marking scheme, which

envisaged deposit of monthly contribution for 15 months. It was represented that there would be a lucky draw every month and those investors, who do not get selected in the lucky draw would be given a 22 inches LED TV at the end of 15 months period. According to the prosecution, in order to gain confidence the applicant and others gave the prizes as per the lucky draw for some initial period, however, did not abide by the promise thereafter. According to the prosecution an amount of Rs.9,400/- was collected from each of the investors and there are about 9,700 such investors and the total amount collected is Rs.9,11,80,000/-.

3. On the basis of a complaint lodged by Umesh Shirsat, who is one of the investors, the aforesaid offence came to be registered and after investigation, a chargesheet is filed against the applicant and 11 others, which is registered as Special (MPID) Case No. 5 of 2018, which is pending before the Special Court at Nashik. The learned Special Judge by an order dated 25.07.2019 (below Exh.83) has refused to release the applicant on bail.

4. I have heard Mr. Deshpande, the learned Counsel for the applicant and Mr. Dedhia, the learned APP for respondent/State.

With the assistance of the learned Counsel for the parties, I have gone through the record.

5. It is submitted by the learned Counsel for the applicant that the marketing scheme was floated in April, 2016 while the applicant became the partner of the said partnership firm in September, 2016. It is submitted that the applicant was a sleeping partner and had no role to play in the representation made to the investors. The learned Counsel for the applicant has referred to the statement of the account of the partnership with Kotak Mahindra Bank and has pointed out the entries dated 14.02.2017, 09.03.2017 and 23.05.2017 in order to submit that the applicant has received a paltry sum of Rs. 90,000/- and the applicant has no complicity in the alleged misrepresentation/ cheating or misappropriation of the amount. The learned Counsel for the applicant has pointed out that co-accused Vijay Nikam, Vijay Koli and Vinod Abak are released on bail by the learned Special Judge. It is submitted that the applicant would be entitled to parity with co-accused Vijay Nikam and Vijay Koli. Lastly, it is submitted that the offence under MPID Act invites a maximum punishment of 6 years and the applicant has spent more than 2 years in custody. It is submitted that the investigation is

complete and chargesheet is filed. It is submitted that further detention of the applicant pending trial is not necessary.

6. The learned APP pointed out that the applicant is shown to be an active partner of Maa Gayatri Marketing. It is submitted that it was the applicant who was operating the account of the partnership with Kotak Mahindra Bank and a substantial amount of more than Rs.94 lakhs has been withdrawn from the said account. It is submitted that there are large number of investors, who have been duped and applicant is not entitled to be released on bail. It is submitted that some of the co-accused are yet to be arrested and further investigation is being carried out under Section 173(8) of Cr.P.C. The learned APP pointed out that the ground of parity has been considered by the learned Special Judge and has been rightly rejected.

7. I have carefully considered the rival circumstances and the submissions made.

8. Prima facie from the material collected during the investigation, it appears that the applicant was a Director of Maa Gayatri Marketing and had obtained shop premises on leave and

licence basis and a licence under the Shops Act. It was also disclosed that the applicant was actively participating in the programmes in which the investors were called upon to make investment. It was also found during the course of the investigation and from the correspondence with the Reserve Bank of India (RBI) that the partnership had not obtained any licence/authorisation/approval for conduction of such marketing scheme and the partnership is not registered as a Non-Banking Financial Institution and was not entitled to accept deposits. Prima facie it can be seen that there were two accounts of the partnership, one each with the Kotak Mahindra Bank and DCB Bank. According to the applicant, he was only concerned with Kotak Mahindra Bank. The learned Special Judge has noted that an amount of Rs.94,92,210/- was withdrawn from the account of partnership which has not been accounted for. Although, the applicant has been inducted as partner on 01.09.2016, there is prima facie material to show that he was actively associated and involved in the operation of the said scheme.

9. The ground of parity in my considered view cannot be accepted. This aspect has been considered by the learned Special Judge. Insofar as Vijay Nikam is concerned, the amount credited to his account was only Rs.1,56,000/- which he was directed to

deposit. Vinod Abak was granted bail on medical ground. Vijay Koli was granted bail as he was found to be entitled to parity with Vijay Nikam and in view of the fact that trial was not likely to conclude in near future.

10. The offence under the MPID Act invites a maximum punishment of 6 years, while under Section 420 of IPC, it is 7 years. The applicant is in custody from 20.12.2018 and has completed about 2 years. In my considered view, looking to the overall circumstances, the applicant is not entitled to be released on bail at this stage. Now that the physical court hearings have resumed, the trial can be expedited with liberty to the applicant to renew the request for bail after a period of one year, if there is no substantial progress in the trial.

11. In the result, the application is rejected with liberty to the applicant to renew the request for bail, after a period of one year, if there is no substantial progress in the trial.

C.V. BHADANG, J.