NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

MCRC No. 7838 of 2020

- Smt. Pooja Tandon W/o Devendra Singh Aged About 48 Years R/o Smriti Nagar Supela, P.S. Supela, District Durg, Chhattisgarh

---- Applicant

Versus

- State Of Chhattisgarh Through, SHO Police Station Supela, District- Durg, Chhattisgarh

---- Respondent

For Applicant	:	Shri B.P.Singh, Advocate
For State	:	Shri Lalit Jangde, Dy.G.A.

Hon'ble Shri Justice Manindra Mohan Shrivastava

CAV Order

12/04/2021

Heard.

1. The applicant has been arrested in connection with Crime No.596/2015 registered at Police Station – Supela, District – Durg (C.G.) for alleged commission of offences under Section 420, 409, 120-B/34 of IPC, Section 10 of Protection of Depositors Interest Act, 2005 (for short 'the Act of 2005'), Section 45 of RBI Act and Section 3, 4, 5, 6 of Chit Fund Act.

2. Prosecution case is that the present applicant and co-accused being Directors of the Chit Fund Company, circulated an investment scheme in the public luring intending investors to invest in the company extending false assurance of high return / double of the investment within a short period. Induced by such false assurance of high return, it is alleged that about 2695 persons were involved and 6417 accounts were opened in which more than Rs.20 Crores were invested by large number of investors in the hope of getting high return as assured but the appellant, one of the accused, acting in

conspiracy with other accused Directors, had no intention to return the money to the investors and the amount collected by way of investment was utilised for the purposes of purchasing land, houses and real estate properties in their own name and larger portion of the property so acquired was transferred to a developer namely Maa Sharda Developers. It is alleged that by such deceitful act, acting in criminal breach of trust, huge amount was collected in the name of chit fund scheme by the applicant and other Directors of the investment company.

3. Learned counsel for the applicant would argue that the allegations against the applicant of she involved in cheating is baseless and merely because, she happened to be one of the Directors, it cannot be said that any breach was committed by her and she was involved in any such conspiracy. It is argued that the investment scheme was openly floated and known to every investors. It is also submitted that it is not a case where no steps were taken towards implementation of the scheme but the scheme, as disclosed to all intending investors, was to purchase properties, develop houses, earning high profits and giving benefits to the investors. If the investors could not be paid back amount assured, that by itself, without anything more, would not amount to commission of offence as alleged.

Further submission is that the applicant has been arrested way back on 03/10/2015 and charge sheet has also been filed. Even after lapse of more than 5 years and 5 months, till date, trial has not been concluded nor it is likely to be concluded early as out of 109 witnesses, only 22 witnesses have been examined so far and the speed with which trial is taking place, particularly in the pandemic situation, it is not likely to be concluded early. He would next submit that the applicant has undergone pre-trial detention of more than 5 years which is more than half of the sentence which could be awarded under Section 10 of the Act of 2005. This is far more than the minimum sentence which could be awarded in the alleged commission of offence. It is further argued that the maximum sentence which could be awarded for other offences is also not punishable with any minimum sentence. Last but not the least, learned counsel prays for grant of bail on the ground that the applicant is a lady and was made Director, though she was not an active Director of the company. She is 48 years of age and she has a son to maintain. One of the co-accused – Sindhu Singhare who is identically situated as the present applicant as one of the Directors, has been granted bail by the Supreme Court taking into consideration that she is a lady and has children. Therefore, the applicant may also be granted bail at this stage.

4. On the other hand, learned State counsel would submit that the applicant, who is one of the Directors in the company which floated an investment scheme luring large number of investors to invest in the company extending false assurance of high return / double of the investment within a short period without any intention of return as assured to the investors and they collected more than Rs.26 crores from the investors and used those money for purchasing land, houses and also diverted funds to various real estate properties etc. which *prima facie* make out a case. It is further argued that though there is delay in completion of trial, but the magnitude of offence and the manner in which it is committed and number of persons cheated, is also relevant consideration in the present case. It is further submitted that more than Rs.26 crores have been collected by the applicant and other Directors. It is a case of criminal breach of trust for which, punishment could be imposed up to life imprisonment under Section 409 IPC and also under Section 10 of the Act of 2005. He would also submit that the applicant and other Directors are influential persons and if the applicant is granted bail, she is likely to abscond which would hamper early conclusion of trial. In the present case, as is revealed from the case diary and the charge sheet placed before the Court, the applicant and other Directors of the investment company collected more than Rs.26 crores from large number of investors which is reflected from the allegations contained in the records.

5. The applicant is one of the Directors in the company. The allegation is that the Directors, including the applicant, collected huge amount from the investors on the

assurance of giving high return / doubling the return which lured large number of investors to invest in the company. It is further alleged by the prosecution and material which has been collected during investigation, out of the fund so generated, huge property was purchased and certain funds were also said to be diverted for development of housing project etc.

The applicant is alleged to have committed offence under Section 420, 409, 120-B of IPC and also under Section 10 of the Act of 2005, Section 45 of RBI Act and Section 3, 4, 5, 6 of Chit Fund Act. However, at the same time, it has to be seen that the applicant was arrested way back on 03/10/2015, investigation was complete and charge sheet was filed long back. The trial of the applicant is going on since last more than 5 years and the same has not been concluded till date. Learned State counsel could not dispute the averments made in the application that till the date of filing of application for grant of bail on 16/10/2020, out of 109 witnesses, only 20 witnesses were examined. Even till date, no further development could be brought to the notice of the Court to show that large number of witnesses have already been examined and there is likelihood of early conclusion of trial. Nothing could be brought on record by the State that the applicant is responsible for delay in trial. The speed with which the trial is going on and number of witnesses who have been examined for the last 5 years, there is no likelihood of early conclusion of trial.

Though learned State counsel stated that in case of grant of bail, the applicant may influence the prosecution witnesses and she is likely to abscond, we do not find any material from the records and the case diary to substantiate such apprehension. The applicant is a lady Director in the company and there is nothing to show that she is likely to abscond. Despite seriousness of the allegations and the punishment which could be imposed, long detention during trial which is more than half of the sentence which could be awarded under Section 10 of the Act of 2005, at this stage, the applicant is entitled to be released on bail. One of the co-accused and other Directors of the company Smt. Sindhu Singhare, who, on the basis of allegation of material collected during investigation against her, appears to be identically placed as the present applicant, in so far as their role is alleged as Director in the company. Smt. Sindhu Sighare has been granted bail by the Hon'ble Supreme Court in Special Leave to Appeal (Crl.) No.4239/2018 (*Deepak Singare and anr. v. The State of Chhattisgarh*) on consideration of she being aged about 42 years and mother of two children in the background that she had remained in jail for about three years. The present applicant is in jail since 5 years and 5 months approximately by now.

6. Accordingly, the application is allowed. It is directed that the applicant shall be released on bail on her furnishing a personal bond in the sum of Rs.1,00,000/- along with two local sureties for the like amount to the satisfaction of the Trial Court on the condition that -

a) She shall not leave Durg District without prior permission of the local court.

b) She shall not make any attempt to influence any of the witnesses.

Certified copy as per rules.

Sd/-
(Manindra Mohan Shrivastava)
Judge

Deepti