IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

BAIL APPLICATION NO.261 OF 2021

BHAIYYASAHEB YASHWANT GUJELA

VERSUS

THE STATE OF MAHARASHTRA

...

Mr. R.S. Deshmukh, Senior Counsel i/b Mr. D.R. Deshmukh, Advocate for the applicant

Mr. A.M. Phule, APP for the respondent

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CORAM : SMT. VIBHA KANKANWADI, J.

RESERVED ON : 22nd APRIL, 2021

PRONOUNCED ON : 08th JUNE, 2021.

ORDER :

1 Present applicant has been arrested on 23.10.2020, in connection with Crime No.59/2020 (67/2020) by Dhule Taluka Police Station, Dist. Dhule, for the offences punishable under Section 406, 409, 420, 120-B, 467, 468 of the Indian Penal Code, 1860, under Section 3, 4, 5 of The Maharashtra Protection of Interest of Depositors (In Financial Establishments) Act, 1999 and under Section 3, 4, 6 of The Prize Chits and Money Circulation Schemes (Banning) Act, 1978. Apart from him, there are

about 5 accused persons involved in the offence. Present applicant has filed present application under Section 439 of the Code of Criminal Procedure, 1973. It will not be out of place to mention here that this is his second application. His earlier bail application bearing No.53 of 2021 was disposed of by this Court as withdrawn on 01.02.2021 with liberty to him to approach the Trial Court to seek regular bail as it was submitted that the supplementary charge sheet has been filed. Accordingly, he approached the learned Special Judge under M.P.I.D. by filing application for bail at Exh.4 in Special Case No.9/2021. It came to be rejected on 15.02.2021. Hence, he has approached this Court once again.

2 Heard learned Senior Counsel Mr. R.S. Deshmukh instructed by learned Advocate Mr. D.R. Deshmukh for the applicant and learned APP Mr. A.M. Phule for the respondent.

3 It has been vehemently submitted by learned Senior Counsel Mr. R.S. Deshmukh instructed by learned Advocate Mr. D.R. Deshmukh that the present applicant has been posed as director of one Mauli Multi-State Credit Co-operative Society Limited and Ujjwalam Agro Multi-State Co-operative Society Limited. It is alleged that amount of Rs.10,29,41,956/- has been collected from 1461 depositors by giving them various promises including the

enhanced interest rate, trips at various destinations as well as gold and silver articles. However, upon the maturity of those deposits the office has been closed down and the directors have been fled away. Present applicant was, in fact, agent of the said company. He himself has invested amount in the company and his amount has not been returned. Thus, he himself is a victim. In fact, accused No.1 Vishnu Ramchandra Bhagwat is responsible for all these frauds. Now, entire record has been seized by the police, even the supplementary charge sheet is also filed. Under such circumstance, the further physical custody of the applicant is not required for the purpose of investigation. It would take long time to stand the trial. Applicant is not an hardened criminal. There is no documentary evidence to point out that the present applicant, at any point of time, was the director of Mauli Multi-State Credit Co-operative Society Limited and he had ever pressurized anybody or represented the depositors to deposit their amount with the said society. At the costs of repetition, the learned senior counsel submitted that when the applicant himself is a victim to the fraud and he has not got his amount back, police ought not to have made him an accused. The applicant is ready to abide by the terms of the bail. He also submitted that even if the present offence can be said to be an economic offence; yet when there is no such document on record and there is no possibility of speedy trial, his right under Article 21 of the Constitution of India is hampered and on that count also the applicant deserves to be released on bail.

4 Per contra, the learned APP strongly opposed the application and submitted that the FIR itself is very much clearly stating that the present applicant had disclosed his identity as director. He along with one Bhaiyya Dilip Ahire had induced various persons, whose number at present is 1461 got amount of Rs.10,29,41,956/- by giving the depositors promises of various kinds. They have received their commission. In order to get more and more depositors they have tried to show that they have fulfilled their promises and, therefore, they had distributed products like Yewla Paithani Sari, 10 grams of gold, 100 grams of silver. Even for 11 members, they had distributed expensive four wheeler Range rover, however, they have not given the principal amount and thereby the fraud is to the tune of more than ten crore rupees. Various documents have been seized. The role, that is, attributed to the present applicant is very much clear. The present applicant had made the propaganda of those deposits. Apart from his role in Mauli Multi-State Credit Co-operative Society Limited, he along with Bhaiyya Dilip Ahire had started one firm by name Green Berry and through that firm they were conducting the bhishi/work of accepting deposits. However, after the registration of the present offence they have closed the Green Berry's office also. Documents having signature of the present applicant as director on the certificates issued

to the depositors have been seized, which shows his such involvement in the offence. The *modus operandi* is required to be considered and, therefore, he does not deserve any kind of sympathy.

5 At the outset, when the charge sheet as well as supplementary charge sheet has been filed, the further physical custody of the applicant may not be required for the purpose of investigation. The evidence, that is, collected against him is required to be considered. FIR has been lodged by one Kishor Chindhu Patil, who has stated that after he was convinced by chairman Vishnu Bhagwat of Mauli Multi-State Credit Co-operative Society Limited he has given huge deposits. Initially he had given amount of Rs.1,00,000/- in the hands of present applicant and Bhaiyya Ahire, who told that they are concerned with said Muli Multi-State Credit Co-operative Society. That amount was invested by him for a period of one year. He and his wife were offered air fair and stay at Tirupati Balaji, where said Vishnu Bhagwat had arranged seminar. No doubt, he says that the present applicant and Bhaiyya Ahire as well as about 500-600 depositors were present at that place, but then when he received the documents, he could rely the present applicant with the company as director. From the FIR it can be seen that many persons, whose number has now touched 1461, had invested to the tune of Rs.10,29,41,956/- in various companies, of which said Vishnu

Bhagwat, present applicant and other four persons were shown as directors. There are statements of co-depositors, who have stated as to how they got influenced by the representatives made to them. It includes the names of the present applicant and his representation as director of Mauli Multi-State Credit Co-operative Society Limited. The representation was that upon the deposit of the amount the depositor would be given huge amount of interest and other gifts. Further, in the charge sheet we can find certificates issued under the signature of the present applicant, who has posed himself as director. At one point of time it is stated that he was the representative of the company at local as well as divisional level/agent and at another place those certificates have been recovered. His own account would show that he has received huge amount of commission. If he was also the depositor, then how he could not have noticed that the main person is cheating them, itself is a question. He has not taken any action against said Vishnu Bhagwat. Therefore, it is for him to prove at the time of trial that in fact, he is a victim and not an accused. Taking into consideration huge voluminous evidence, that has been, collected, which would definitely show the active involvement of the present applicant in receiving the deposits, definitely, it was his responsibility also to make endeavour that the amount is returned to the depositor as promised.

6 The hard earned money of the depositors has been misappropriated in such a way. This is a serious economic offence and, therefore, in view of the observations in **State of Gujrat vs. Mohanlal Jitamalji Porwal and another, (1987) 2 SCC 364**, which are as follows :

> "5. ….The entire community is aggrieved if the economic offenders who ruin the economy of the State are not brought to book. A murder may be committed in the heat of moment upon passions being aroused. An economic offence is committed with cool calculation and deliberate design with an eye on personal profit regardless of the consequence to the community. A disregard for the interest of the community can be manifested only at the cost of forfeiting the trust and faith of the community in the system to administer justice in an even-handed manner without fear of criticism from the quarters which view white collar crimes with a permissive eye unmindful of the damage done to the national economy and national interest….."

6.1 Further, in **Y.S. Jagan Mohan Reddy vs. Central Bureau of Investigation, (2013) 7 SCC 439** following observations have been made :

> "34. Economic offences constitute a class apart and need to be visited with a different approach in the matter of bail. The economic offences having deep-rooted conspiracies and involving huge loss of public funds need to be viewed seriously and considered as grave offences affecting the economy of the country as a whole and thereby posing serious threat to the financial health of the country.
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> 35. While granting bail, the court has to keep in mind the nature of

accusations, the nature of evidence in support thereof, the severity of the punishment which conviction will entail, the character of the accused, circumstances which are peculiar to the accused, reasonable possibility of securing the presence of the accused at the trial, reasonable apprehension of the witnesses being tampered with, the larger interests of the public/State and other similar considerations."

Both these cases have been considered in P**. Chidambaram vs. Directorate of Enforcement, (2019) 9 SCC 24**. Though that case i.e. **P. Chidambaram** was in respect of grant of anticipatory bail in economic offence; yet those observations are definitely applicable to the regular bail also.

6.2 Further, in State of **Bihar and another vs. Amit Kumar alias Bachcha Rai, (2017) 13 SCC 751** it has been observed that -

"11. Although there is no quarrel with respect to the legal propositions canvassed by the learned counsels, it should be noted that there is no straight jacket formula for consideration of grant of bail to an accused. It all depends upon the facts and circumstances of each case. The Government's interest in preventing crime by arrestees is both legitimate and compelling. So also is the cherished right of personal liberty envisaged under Article 21 of the Constitution. Section 439 of The Code of Criminal Procedure, 1973, which is the bail provision, places responsibility upon the courts to uphold procedural fairness before a person's liberty is abridged. Although 'bail is the rule and jail is an exception' is well established in our

> jurisprudence, we have to measure competing forces present in facts and circumstances of each case before enlarging a person on bail.
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> 12. We are of the considered opinion that the case of Sanjay Chandra (supra), as relied upon by learned counsel for respondent, is distinguishable from the case at hand as the charges in that case carried a maximum punishment for a term which may extend to seven years. In the present case, charge sheet has been submitted, inter alia, for the offences under section 409, 465, 467, 468, 471, 188, 201, 212 and 120-B of Indian Penal Code, 1860 and Section 8, 9, 13 (1)(c)/(d) read with 13(2) of Prevention of Corruption Act, 1988. Therefore the case of Sanjay Chandra (supra) provides no assistance for the respondent herein."

7 Thus, taking into consideration this legal position, taking into consideration the huge public money misappropriated by the present applicant and others; no case is made out to grant discretionary relief to the present applicant. Application stands rejected.

(Smt. Vibha Kankanwadi, J.)

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