IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

922 **BAIL APPLICATION NO.267 OF 2021**

SUSHANT ROHIT PATIL AND ANR
VERSUS
THE STATE OF MAHARASHTRA

...
Advocate for Applicants : Mr. Paranjape Prakash S.
APP for Respondents/State : Mr. S.D. Ghayal
...

CORAM : M.G. SEWLIKAR, J.
DATE : 26th August, 2021

P.C.:-

This is an application under Section 439 of the Cr.P.C. for releasing the applicant on bail.

2. Prosecution case in short is that one Ramesh Ikkar approached the informant on phone and informed him that Maestros Medilines System Limited Mumbai is a product based company. It offers good returns. Therefore, the applicant on 21.07.2018 attended the meeting. One Ashish Misal, Sushant Patil who was the Chief Managing Director, Sachin Savant who was the Managing Director, explained various plans which the company was intending to float. Since the informant found the plans of the company attractive, he decided to deposit the amount in this company. It was assured that company would be paying monthly cashback to the depositors. On

10.02.2019, informant deposited Rupees One Lakh in cash. The company floated a scheme of tour of Malaysia only for those investors who have deposited Rupees Five Lakhs with company, therefore, the informant deposited an amount of Rupees Four Lakhs in cash with CMD-Sushant Rohit Patil, M.D.-Sachin Dharma Savant, Ashish Misal. On 25.04.2019, the informant went for Thailand tour along with other investors. Sprout company did not make any arrangement of the informant and other investors. Therefore, the informant realised that the applicant and other office bearers cheated the informant. On 03.05.2019, the informant and others went to the office of Sprout Company at Vashi and demanded return of deposit from Sushant Rohit Patil, Sachin Dharma Savant, both of them assured the investors that they would be giving one guntha plot at Solapur and Pune and would be returning the amount also. The informant and other investors believed the representation made by them. On 16.05.2019, CMD-Sushant Rohit Patil and MD-Sachin Dharma Savant called the informant and other investors and represented to them that they would be giving one plot beside aerodrom. When they demanded papers of the said plot, applicants informed them that within 15-20 days papers would be provided. However, the informant and others did not believe them and on making inquiries it was revealed that the said land was reserved as 'Gairan'. Therefore, they realised that the applicants have cheated them. Following is the list of investors and the amount deposited by each of them:

Monthly Return Cashback plan:

S.No.	Name of Investor	Invested amount	Scheme	Maturity date	Profit (return) monthly
1	Veena Laxmikant Futane	17,25,000/-	Monthly	14 months	15%
2	Dharamsingh Ganesh Pawar	10,00,00/-	Monthly	14 months	15%
3	Govind Marotrao Kendre	50,500/-	Monthly	14 months	15%
4	Shankar Subhashrao Dubbewar	1,00,000/-	Monthly	17 months	12%
5	Vidya Shankar Pame	10,000,00/-	Monthly	14 months	15%
6	Shankar Subhashrao Pame	10,000,00/-	Monthly	14 months	15%
7	Gajanan Janardhan Sase	1,00,000/-	Monthly	17 months	12%
8	Surekha Uttam Dhumal	50,000/-	Monthly	20 months	10%
9	Anita Gangadhar Gaikwad	10,000/-	Monthly	20 months	10%
10	Vijay Dnyandeo Nalawade	50,000/-	Monthly	20 months	10%
11	Meera Vallabh Dhotre	6,50,000/-	Monthly	14 months	15%
12	Sangeeta Ramrao Rampurikar	27,500/-	Monthly	20 months	10%
13	Vishal Bharatrao Popale	50,000/-	Monthly	20 months	10%
14	Rahul Ramkrishna Wagh	50,000/-	Monthly	20 months	10%
15	Santosh Khuba Rathod	6,50,000/-	Monthly	14 months	15%
16	Vishal Bharatrao Popale	87,000/-	Monthly	20 months	10%
17	Ananta Yashwantrao Waghmare	25,000/-	Monthly	20 months	10%
18	Taterao Amritrao Kashide	50,000/-	Monthly	20 months	10%
19	Gajanan Ramji Ingole	25,000/-	Monthly	20 months	10%
20	Amit Ramesh Ondhekar	68,000/-	Monthly	20 months	10%

3. On these allegations FIR came to be registered with New Mondha Police Station, Parbhani vide Crime No.233 of 2019 under Section 420, 406, 409, 120-B read with Section 34 of the I.P.C. and under Section 3 and 4 of the Maharashtra Protection of Interest of Depositors (In Financial Establishments) Act, 1999 (in short 'MPID' Act).

4. Heard Shri Paranjape learned counsel for the applicant and Shri Ghayal learned APP for the State.

5. Shri Paranjape submitted that the present case does not fall within the purview of the MPID Act. He submitted that to attract the provisions of MPID Act it will have to be first ascertained whether the amount accepted was a deposit and whether the said deposit was to be returned on maturity. He further submitted that amount was deposited on 10.02.2019 and the FIR came to be lodged on 07.08.2019. He submits that in less than six months the FIR has been lodged. He states that FIR does not state as to how much was the period of maturity. Without there being any mention of period of maturity, FIR has been lodged and therefore this FIR is premature. He submitted that the applicant had made application for releasing him on bail vide Bail Application No.260 of 2020 and it was withdrawn with a direction to expedite the trial. He submits that after withdrawal of the application, he filed application for discharge before the Civil Court before whom the trial is pending. The said application came to be rejected and the applicants have preferred revision against the said order which is pending before this Court. He submits that this is a change in circumstance which entitles him to apply for bail again.

6. Shri Ghayal submits that there is no change in circumstance. Mere filing of discharge application and its rejection will not amount to change in circumstance. He further states that monthly cashback was assured by the company and the informant and other investors had received monthly cashback also for some time. Thereafter, it was stopped. He submits that the promises which were given about tour of Malaysia were also not kept. He further submits that assurances of monthly cashback falls within the scope of definition of deposit. He further submits that this company has not obtained approval from Securities and Exchange Board of India (SEBI) nor from the Reserve Bank of India (RBI) in terms of Section 5 of Unregulated Deposit Scheme Act. Therefore, he prays for dismissal of the application.

7. Deposit has been defined under Section 2(c) of MPID Act, which reads as under:

> “(c) "deposit" includes and shall be deemed always to have included any receipt of money or acceptance of any valuable commodity by any Financial Establishment to be returned after a specified period or otherwise, either in cash or in kind or in the form of a specified service with or without any benefit in the form of interest, bonus, profit or in any other form, but does not include-
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> (i) amount raised by way of share capital or by way of debenture, bond or any other instrument covered under the guidelines given, and regulations made, by the 5EBI, established under the Securities and Exchange Board of India Act, 1992;
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> (ii) amounts contributed as capital by partners of a firm;
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> (iii) amounts received from a scheduled bank or a co-

operative bank or any other banking company as defined in clause (c) of section 5 of the Banking Regulation Act, 1949;

(iv) any amount received from,-

(a) the Industrial Development Bank of India,

(b) a State Financial Corporation,

(c) any financial institution specified in or under Section 6A of the industrial Development Bank of India Act, 1964, or

(d) any other institution that may be specified by the Government in this behalf;

(v) amounts received in the ordinary course of business by way of, -

(a) security deposit,

(b) dealership deposit,

(c) earnest money,

(d) advance against order for goods or services;

(vi) any amount received from an individual or a firm or an association of individuals not being a body corporate, registered under any enactment relating to money lending which is for the time being in force in the State; and

(vii) any amount received by way of subscriptions in respect of a Chit."

8. From this definition, it is evident that deposits includes receipt of money by any financial establishment to be returned after a specified period or otherwise, either in cash or in kind or in the form of a specified service. In the case at hand from the statements of the investors, it appears that monthly cashback was assured. Therefore, *prima facie* it appears that the monthly return which was assured was not granted by the company and therefore, *prima facie* it falls under the definition of deposit. Secondly, mere filing of

application for discharge and its rejection does not amount to change in circumstance. Moreover, it is pending before this Court in revision. In this view of the matter, I do not find any substance in the application and since there is no change in circumstance, the application is rejected.

9. These observations are made only for the disposal of this application and the learned trial Court shall not get influenced by these observations and can come to its independent conclusion during trial.

[M.G. SEWLIKAR, J.]

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