IN THE HIGH COURT OF JUDICATURE AT BOMBAY BENCH AT AURANGABAD

935 APPLICATION FOR CANCELLATION OF BAIL NO. 49 OF 2021

1. Shaikh Shamsul Haq s/o Mohammed Abdul Haq.

2. Mohammed Abdul Haq s/o Mohammed Qasim

3. Shaikh Najma Begum w/o Mohammed Abdul Haq,

4. Shaikh Hanifa Begum w/o Mohammed Abdul Haq,

5. Shaikh Nazeer s/o Abdul Razzak,

6. Asma Parveen w/o Mohammed Hamid Ali

7. Naseeruddin s/o Zaheeruddin Siddiqui

8. Rubina Mohammed Naseeruddin Siddiqui

9. Quazi Khabeer Ahmed Mohammed Naser,

10. Quazi Abubaker Ahmed,

11. Quazi Zaid Ahmed Quazi Khabeer Ahmed **...Applicants**

Versus

1. State of Maharashtra through City Chowk Police Station,

2. Khan Ubaid Khan Javeed **...Respondents**

...

WITH
APPLICATION FOR CANCELLATION OF BAIL NO. 50 OF 2021

1. Shaikh Shamsul Haq s/o Mohammed Abdul Haq.

2. Mohammed Abdul Haq s/o Mohammed Qasim

3. Shaikh Najma Begum w/o Mohammed Abdul Haq,

4. Shaikh Hanifa Begum w/o Mohammed Abdul Haq,

5. Shaikh Nazeer s/o Abdul Razzak,

6. Asma Parveen w/o Mohammed Hamid Ali

7. Naseeruddin s/o Zaheeruddin Siddiqui

8. Rubina Mohammed Naseeruddin Siddiqui

9. Quazi Khabeer Ahmed Mohammed Naser,

10. Quazi Abubaker Ahmed,

11. Quazi Zaid Ahmed Quazi Khabeer Ahmed **...Applicants**

Versus

1. State of Maharashtra through City Chowk Police Station,

2. Junaid Khan s/o Javed Khan **...Respondents**

...

WITH
APPLICATION FOR CANCELLATION OF BAIL NO. 51 OF 2021

1. Shaikh Shamsul Haq s/o Mohammed Abdul Haq.

2. Mohammed Abdul Haq s/o Mohammed Qasim

3. Shaikh Najma Begum w/o Mohammed Abdul Haq,

4. Shaikh Hanifa Begum w/o Mohammed Abdul Haq,

5. Shaikh Nazeer s/o Abdul Razzak,

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7. Naseeruddin s/o Zaheeruddin Siddiqui

8. Rubina Mohammed Naseeruddin Siddiqui

9. Quazi Khabeer Ahmed Mohammed Naser,

10. Quazi Abubaker Ahmed,

11. Quazi Zaid Ahmed Quazi Khabeer Ahmed **...Applicants**

Versus

1. State of Maharashtra through City Chowk Police Station,

2. Ayaz Ahmed s/o Izhar Ahmed

3. Zaid Khan s/o Izhar Ahmed **...Respondents**

...

Advocate for the Applicants : Ms. Rashmi S. Kulkarni
APP for Respondent – State : Mr. S. B. Narwade
Advocate for Respondents : Mr. Balraj P. Pande

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CORAM : PRAKASH D. NAIK, J.

RESERVED ON : 24th NOVEMBER,2021

PRONOUNCED ON : 23rd DECEMBER, 2021

PER COURT :-

1. These applications are preferred under Section 439(2) of the Code of Criminal Procedure seeking cancellation of bail granted to the respondent accused.

2. First Information Report was registered with City Chowk Police Station, Aurangabad City on 17.12.2019 for offences under Section 420, 406 read with Section 34 of the Indian Penal Code and Sections 3 and 4 of Maharashtra Protection of Interest of Depositors Act. The complaint was lodged by Abul Hasan Ali. Junaid Khan Javed Khan (accused No.1), Ubaid Khan Javed Khan (accused No.2), Zaid Khan Izhar Khan (accused No.3) and Aayaz Khan s/o Izhar Ahmed (accused No.4) were impleaded as accused. It was alleged that Junaid Khan is a proprietor of "M.R.Group". He had published various pamphlets related to investments in various schemes of M.R.Group Company. The complainant contacted the office of Company and had discussion with accused No.1 about the schemes of investment and terms and conditions. Thereafter he sent the accountant working with him to the office of accused for making enquiries relating to investments. Junaid Khan, his brother-in-laws Zaid Khan and Ayaz Khan were present in the office. They gave pamphlets of business of M.R.Group and also

discussed various schemes of business. The complainant had discussion with the accused in August-2018. It was represented by the accused that in the event of investment the investor earns huge profit. On 10.09.2018 the complainant issued cheque for amount of Rs. 1,00,000/- to M.R.group. Agreement was executed. On 07.05.2019 Junaid Khan provided returns of Rs. 24,484/- and credited the said amount into the account of the complainant. The accused gained confidence of the complainant and told him that he can invest Rs. 25 Lakhs which can earn good returns. He was induced to deposit Rs. 25 Lakhs. Since he was not in a position to make one time investment of Rs. 25 Lakhs, the complainant told accused No. 1 that he would provide different cheques dated 13.06.2019, 17.07.2019 and 30.08.2019. The total amount invested was Rs. 25 Lakhs. Multi business account was provided to the complainant. Agreement was executed in September - 2019 through Advocate Kadri. Some amount was deposited into the account of the complainant. Complainant had tried to contact the brother-in-laws of accused No.1. Further returns for the investment was not accounted into the account of the complainant. The accused avoided to make the payment. Complainant was cheated.

3. FIR was registered against Junaid Khan (Accused No.1), Ubaid Khan (Accused No.2), Ayyaz Khan (Accused No.3) and Zaid Ahmed Khan (Accused No.4). Accused No.1 was arrested on 06.06.2020. Accused Ubaid Khan was granted anticipatory bail on 13.06.2020. Accused Ayaz Ahmed Khan Izhar Ahmed khan and Zaid Ahmed Khan Izhar Ahmed Khan were arrested on 15.10.2020. The accused had deceived complainant and 53 witnesses and misappropriated amount of Rs. 2,13,00,000/- . Charge-sheet is filed on 01.06.2021.

4. Ubaid Khan Javeed Khan preferred application for anticipatory bail which was numbered as Bail Application No. 200/2020 on 29.01.2020. It was contended before the Sessions Court that there is a settlement with the complainant which is supported by Affidavit of the complainant. Learned Special Judge allowed the application preferred by Ubaid Khan (accused No.2) vide order dated 20.03.2020, on the ground that first informant has appeared before the court and filed his own affidavit dated 03.03.2021, stating that Ubaid Khan may be released on bail because during pendency of application, main accused Junaid Khan had approached him and paid him entire invested amount of Rs.25 Lakhs. Junaid Khan preferred application for regular bail on 07.07.2020. The said application

was allowed by granting bail to accused No.1 Junaid Khan by order dated 13/07/2020. The court while allowing the application has observed that, prima facie it appears that, first informant has received total amount, which he had invested with accused and that co-accused was granted anticipatory bail. Flat is seized. Ayaz Izhar Ahmed and Zaid Ahmed preferred application for regular bail on 17.10.2020. The application was allowed by Sessions Court by order dated 31.10.2020 on the ground that Zunaid Khan is granted bail.

5. Learned Advocate Ms. Rashmi Kulkarni for the applicants in all these applications submitted that the original complainant and the accused had misled the Court to believe that the complainant is the only person who is aggrieved by the loss caused to him on account of investment. All the respondents accused have induced the complainant and other investors to invest huge amount. Although Charge-sheet is filed, the investigation is still in progress. The statements of other investors were recorded. There are about 53 aggrieved persons who were deceived by accused. The learned Judge mechanically considered the fact that the amount of Rs.25 Lakhs is refunded to complainant. Since the provisions of Section 3 and 4 of MPID Act were invoked, the Court ought to

have ascertained whether there are other persons who were cheated by accused. Even the prosecution was silent and it was not brought to notice of court, that investigation is in progress and loss is caused to several investors. All the accused have acted in connivance with each other. Seizure of one vehicle and flat would not protect interest of depositors. The applicants have filed additional affidavit stating that undue favours were shown to accused by police. There are several civil and criminal cases pending against Junaid Khan. During the pendency of application seeking cancellation of bail, charge-sheet was filed by respondent No.1 against Junaid Khan and other accused. There are lacunas in the charge-sheet. The applicants have filed application seeking further investigation under section 173(8) of Cr.P.C. The applicants are receiving threats. Complaints were filed with Police Station. The accused Junaid Khan had executed Memorandum of Understanding with the investors. The amount involved misappropriated is not merely Rs. 25 Lakhs, but it is to the tune of more than Rs. 2 Crores. The order passed by the learned Special Judge allowing applications for bail is cryptic and without application of mind. The interest of depositors were required to be protected. The ob ject of the MPID Act is to protect the depositor’s interest.

6. Learned Advocate for applicants further contended that accused No.1 in order to induce gullible investors had printed attractive pamphlets. The investors were made to believe that if a particular amount is invested with accused they would earn good returns. The advertisement represented that after the period of one year the investors would be entitled to receive the invested amount. The investors were induced by respondent No.2 to invest in the scheme. In order to induce the informant and other persons, false promises were made. The applicants in these applications are the investors. They were cheated of their hard earned money. They had approached the police with their complaints. The investigation in Crime No. 458/2019 does not restrict to the claim of first informant. The statements of the applicants herein were recorded during the investigation. The investigation was not closed. The avenues of Section 173 (8) of Cr.P.C. were kept open. The learned Sessions Judge proceeded only on the basis of the grievance of first informant. The accused has misled the Court and suppressed the fact that there were several other investors, who were not satisfied with their claims. The settlement was executed with informant. Accused No.1 had executed notarized Memorandum of Understanding. Accused

Ubaid Khan had signed as witness. The other accused were aware at the time of signing the document. All the accused were acting in connivance. Initially the complainant received returns. Thereafter no returns were received by the complainant. Applicant Nos.1 to 6 are the family members of one family who were induced to deposit different amount by using the same modus operandi. Applicant Nos. 7 and 8 are husband and wife who were cheated by the accused. Applicant Nos. 9 to 11 who were investors in the Company who were also cheated. The applicants had approached the Police Station to lodge complaint. That statements were recorded by the police. They are also witnesses in Crime No. 458/2019. Applicant Nos. 10 and 11 are sons of applicant No. 9. The MOU refers to the investment of witnesses and profits assured by the accused.

7. Accused No. 1 induced applicant Nos. 9, 10 and 11. To settle the claim a memorandum was executed on 04.03.2020 before the Notary. By virtue of new agreement accused No.1 had acknowledged that he would pay the amount of Rs.8 Lakhs to the applicant No. 9. Sameer Khan and Shahabaz Khan were guarantors. The investors then realized that the accused is making false promises. Complaints were forwarded

to police station by applicant Nos. 9, 10 and 11.

8. Learned Advocate for the applicant relied upon the decision of the Apex Court in the case of ***Dinesh M.N.(S.P) Vs. State of Gujrat, AIR 2008 SC 2318***, decision of the Supreme Court in the case of ***Supreme Bhivandi Wada Manor Infrastructure Private Limited Vs. The State of Maharashtra , AIR 2021 sc 3580, Kanwar Singh Vs State of Rajasthan and others, AIR 2013 SC 296***.

9. Learned APP supported the prayer for cancellation of bail. It is submitted that the bail and anticipatory bail was granted only on the ground of settlement with informant although there was no settlement with the other investors. It is submitted that no latitude was shown to accused by investigating agency. Investigation revealed that the accused had cheated at about 53 investors and misappropriated around Rs.2 Crores.

10. Learned Advocate for the respondents accused in respective applications submitted that no case is made out for cancellation of anticipatory bail / bail. Investigation is complete. Charge-sheet is filed. There is no ground for

custodial interrogation. The respondents have filed affidavit in reply. Accused Ubaid Khan in his affidavit-in-reply dated 01.10.2021 has stated that he has been falsely implicated in this case only because he is brother of Junaid Khan (accused No.1). He had not induced people to invest money. Custodial interrogation is not necessary. Investigation is over. There is no ground for cancellation of anticipatory bail. The allegations are false. The statements recorded during the investigation are vague. He has not made false promises to the investors. Respondent No. 2 Junaid Khan Javed Khan has also filed his affidavit-in-reply opposing the application for cancellation of bail. It is stated that the decisions relied upon by applicants were delivered in facts of the cases. The office of company is not closed. The applicants had mutually agreed to the terms and conditions of membership of M.R. group. Applicants 9, 10, and 11 are relatives of informant. They are pressuring police machinery by using political power. Informant has criminal background. The amount invested by informant is returned to him. The applicants had obstructed him and threatened. Signatures were obtained on bond papers. Legal opinion of legal officer of police department opined that agreement claimed by applicants is illegal. There is no breach of conditions. M.R group is registered as sole proprietorship in his name. Reliance is placed on decision in the case of ***Ranjit Singh V/s State of M.P. 2016 All SCR 668.*** Settlement was executed with the complainant. The flat of the accused is seized during the investigation. Custodial interrogation is not necessary. The respondent accused in ACB No. 51/2021 has also filed affidavit-in-reply denying their involvement in making false promises to the investors. They are implicated being relatives of accused no.1. They had no decision making power.

11. I have perused the documents on record. The FIR was registered by Abul Hasan Ali alleging that he had invested the amount of Rs. 25 Lakhs with the accused Company. He had executed settlement with the accused. On the basis of the settlement the Court was pleased to grant bail to Junaid Khan, Ayaz Ahmed Izhar, Zaid Khan and anticipatory bail to Ubaid Khan. During the course of investigation statement of various persons including the applicants were recorded. The applicants herein are the investors, witnesses in these proceedings. Huge amount was accepted by the accused. However, on perusal of the documents it appears that accused No.1 Junaid Shaikh is a prime accused involved in this offence. He has admitted that he is sole proprietor of M.R.group. He has played vital role in inducing the investors with false promises.

Accused No. 2 is the brother of accused No.1. Accused Nos. 3 and 4 are brother-in-laws of accused No.1. Accused No. 1 had executed Memorandum of Understanding with the investors. Settlement was executed with informant by accused no.1. In spite of repeated promises no payment was returned to the investors. Accused No.1 has executed agreements owing liability. The respondents accused had submitted that opinion was given that agreements are illegal. The fact that he has executed agreements shows his deep involvement in crime. The applicants are witnesses in this case. The accused were granted bail on the ground that there is settlement with informant. Investigation was in progress and it was not expected that there is only single investor. Provisions of MPID Act were invoked. The object of the Act is to protect interest of depositors. The accused No.1 had suppressed that there are other investors and claimed bail on the ground of settlement with informant. The applicants have preferred application for further investigation. Charge sheet is filed, however, while filing charge sheet it is stated by Investigating Officer that in the event additional evidence is received, it would be brought on record by exercising powers under Section 173(8) of Cr.P.C. and permission to do so may be granted. The statements of witnesses show main role of inducement to invest and making false promises to Junaid Khan

12. In the case of ***Kanwar singh Meena (supra)***, it was held that the High Court or the Sessions Court can cancel the bail even in case where the Court ignores relevant material indicating *prime-facie* involvement of the accused or takes into account irrelevant material which are no relevance to the question of grant of bail to the accused and in such situation the High Court or Session Court would be justified in cancelling bail.

13. In the case of ***Puran singh Vs. Rambilas 2001 (6) SCC 338***, it is held that one of the ground for cancellation of bail would be ignoring the material brought before the Court without any reason. In the case of ***Dinesh (supra)***, the Apex Court has considered the ratio laid down in various decisions and observed that the Court dealing with the application for cancellation of bail can consider whether irrelevant material was taken into the consideration. In the case of ***Supreme Bhivandi Wada (supra)***, the Supreme Court has observed that bail can be cancelled if the order suffers from serious infirmities, resulting in miscarriage of justice. In the case of ***Ranjit Singh Vs. State of M.P.(supra)*** the Apex Court has

observed that if order granting bail is perverse or passed on irrelevant material, it can be set aside by superior Court. There is distinction between concept of setting aside a bail order and cancellation of that order.

14. The report of the police and the investigation papers would reveal that the owner of the Company Junaid Khan had induced the public to invest money in his scheme by publishing pamphlets. The investigation reveals that 53 witnesses had invested money and they were cheated. The amount involved is Rs.2 Crores 13 Lakhs.

15. As stated above accused No.1 is the main person who is running M.R. Group. Various agreements memorandum of understanding were executed by him with investors. The allegations primarily are against him that false promises were made by him. The other respondents herein are the relatives of accused No.1. Anticipatory bail and bail granted to accused Nos. 2, 3 and 4 does not warrant cancellation.

16. However, in the light of the material on record and overt act attributed to accused No.1 Junaid Khan, the order granting bail to him deserves to be set aside. The order granting bail

has resulted in miscarriage of justice. Hence, the order :-

ORDER

(i) Application for Cancellation of Bail No. 50 of 2021 is allowed. Impugned order dated 13.07.2020 passed by the Court of Sessions, Aurangabad granting regular bail to accused No.1 Junaid Khan is set aside and bail granted to him stands cancelled.

(ii) Application for Cancellation of Bail No. 49 of 2021 and Application for Cancellation of Bail No. 51 of 2021 are rejected.

(iii) Respondent No. 2 in Application for Cancellation of Bail No. 50 of 2021 Mr. Junaid Khan shall surrender before the Investigating Officer within a period of six weeks.

(iv) All the applications are disposed of.

(PRAKASH D. NAIK)
JUDGE

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