IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

BAIL APPLICATION NO. 1509 OF 2020

Bhausaheb s/o Chhabu Chavan,
Age 47 years, Occu. Business,
R/o Row House No.1 and 2,
Anandvihar Sankul, Bhagwati Nagar,
Near Tamboli Nagar, Hirawadi,
Panchavati Nashik ..Applicant

Versus

The State of Maharashtra,
Through Police Inspector,
Jawaharnagar Police Station,
Aurangabad ..Respondent

- WITH -

BAIL APPLICATION NO.1510 OF 2020

Mrs Arti w/o Bhausaheb Chavan
Age 47 years, Occu. Business,
R/o Row House No.1 and 2,
Anandvihar Sankul, Bhagwati Nagar,
Near Tamboli Nagar, Hirawadi,
Panchavati Nashik ..Applicant

Versus

The State of Maharashtra,
Through Police Inspector,
Jawaharnagar Police Station,
Aurangabad ..Respondent

- WITH -

BAIL APPLICATION NO.1513 OF 2020

1. Bhausaheb s/o Chhabu Chavan,
Age 47 years, Occu. Business,
R/o Row House No.1 and 2,
Anandvihar Sankul, Bhagwati Nagar,
Near Tamboli Nagar, Hirawadi,
Panchavati Nashik

2. Mrs Arti w/o Bhausaheb Chavan
Age 40 years, Occu. Business,
R/o Row House No.1 and 2,

Anandvihar Sankul, Bhagwati Nagar,
Near Tamboli Nagar, Hirawadi,
Panchavati Nashik ..Applicants

Versus

The State of Maharashtra,
Through Police Inspector,
Beed City Police Station, Beed ..Respondent

- WITH -

BAIL APPLICATION NO.1532 OF 2020

Mrs Arti w/o Bhausaheb Chavan
Age 47 years, Occu. Business,
R/o Row House No.1 and 2,
Anandvihar Sankul, Bhagwati Nagar,
Near Tamboli Nagar, Hirawadi,
Panchavati Nashik ..Applicant

Versus

The State of Maharashtra,
Through Police Inspector,
Ashti Police Station,
Taluka Partur, District Jalna ..Respondent

- WITH -

BAIL APPLICATION NO.1534 OF 2020

Bhausaheb s/o Chhabu Chavan,
Age 47 years, Occu. Business,
R/o Row House No.1 and 2,
Anandvihar Sankul, Bhagwati Nagar,
Near Tamboli Nagar, Hirawadi,
Panchavati Nashik ..Applicant

Versus

The State of Maharashtra,
Through Police Inspector,
Ashti Police Station,
Talukar Partur, District Jalna ..Respondent

Mr S.T. Pandey a/w Mr Jaydeep S. Vaishampayan i/b Mr Shaikh Kayyum Najir, Advocate for applicants
Mr B.V. Virdhe, A.P.P. for respondent/State in B.A.Nos.1509/2020 and 1510/2020
Ms P.V. Diggikar, A.P.P. for respondent/State in B.A.No.1513 of 2020
Mr A.M. Phule, A.P.P. for respondent/State in B.A.Nos.1534 of 2020 and 1532 of 2020

CORAM : SHRIKANT D. KULKARNI, J.

RESERVED ON : 23.11.2021

PRONOUNCED ON : 01.12.2021

ORDER :

1. The applicants are seeking bail under Section 439 of Code of Criminal Procedure in connection with respective crimes, mainly on the ground of delay in trial.

2. The following are the details of applicants/accused :

Sr. No	Bail Appln. No.	Crime No.	Spl. MPID Case No.	Name of applicant/ accused	Date of arrest	Date of MCR	Date of filing charge-sheet
1.	1534/2020	56/2014 at Ashti Police Station, Taluka Partur, Dist.Jalna under Sections 406, 409, 420 r/w 34 of IPC and Sec.3 and 4 of M.P.I.D. Act, 1999	1/2018	Bhausaheb s/o Chhabu Chavan,	7.9.2016	13.9.2016	6.12.2016
2.	1532/2020	56/2014 at Ashti Police Station, Taluka Partur, Dist.Jalna	1/2018	Arti w/o Bhausaheb Chavan	7.9.2016	13.9.2016	6.12.2016

		under Sections 406,409, 420 r/w 34 of IPC and Sec.3 and 4 of M.P.I.D. Act, 1999					
3.	1509/2020	261/2014 at Jawahar Police Station, Aurangabad under Sections 420, 409, 423, 424, 467, 471, 474, 406, 465, 34, 120-B of I.P.C. and uunder Sec.3 and 4 of M.P.I.D Act	1/2015	Bhausaheb s/o Chhabu Chavan	31.7.2016	9.8.2016	16.5.2015 Supplimen- tary charge sheet filed on 19.10.2016
4.	1510/2020	261/2014 at Jawahar Police Station, Aurangabad under Sections 420,409, 423,424, 467,471, 474,406, 465,34, 120-B of I.P.C. and under Sec.3 and 4 of M.P.I.D Act, 1999	1/2015	Arti w/o Bhausaheb Chavan	31.7.2016	9.8.2016	16.5.2015 Supplimen- tary charge sheet filed on 19.10.2016
5.	1513/2020	176/2016 at City Police Station, Beed, under Sections 420, 406 r/w 34 of I.P.C. and u/s Sec.3 and 4 of M.P.I.D. Act, 1999		Bhausaheb s/o Chhabu Chavan	28.6.2018	28.6.2018	31.8.2018

3. The facts of the case in narrow compass are as under :

(i) According to the prosecution case, the applicants who are accused in respective crimes alleged to have floated ponzi scheme with dishonest intention and invited the public at large to deposit their money in the various schemes of their companies viz. K.B.C.Club Resort, Nasik and K.B.C. Multi Trade Private Limited Company. The false promises were given to the investors to deposit their money with their respective companies with a promise that they would get double the amount of their investment within a short period. The applicants/accused in connection with respective crimes had given wide publicity of their schemes by way of advertisements at large gatherings at various places in Maharashtra, viz. Matoshri Lawns, Jalna, Dattaji Bhale School at Ambad, Guru Lawns of Aurangabad and Hotel Atithi at Aurangabad. It is alleged that during the gatherings, information brochures, pamphlets were distributed to the investors in respect of their companies, special plans for the depositors/investors to invest money in their companies. The applicants are the Directors/Managing Directors of K.B.C. Multi Trade Private Limited Company and K.B.C. Club Resort, Nashik. After the establishment of K.B.C. companies, 3089 investors had invested their money in various schemes with the K.B.C. group of Companies owned by the applicants/accused.

(ii) It is alleged that the applicants/accused did not return the amount to the investors as promised. Even, the applicants did not return the principal amount to the investors. The applicants are alleged to have used the deposited amount for their own purpose. Most of the cheques issued by the applicants to the investors came to be dishonoured due to insufficient funds.

(iii) On the basis of F.I.R.s respective crimes registered at different police stations. During course of investigation by the Crime Investigation Department, it is revealed that there are twenty-one cases registered against the applicants. It is further revealed during course of investigation that the schemes floated by the applicants were without licence of the Reserve Bank of India. The Companies are even not registered with the Reserve Bank of India for such financial services.

(iv) According to the prosecution case, the applicants have misappropriated total amount of Rs.22,10,93,500/- invested by more than 3000 investors. Similar type of cases came to be registered in different part of Maharashtra and one case is registered in the State of Rajasthan against the applicants/accused.

(v) Gajanan Vasantrao Muley has lodged F.I.R. against the applicants/accused at Ashti Police Station, Taluka Partur, District Jalna and on the basis of which Crime No.56 of 2014 came to be registered at Ashti Police Station, for the offences punishable under Sections 406, 409, 420 read with Sec.34 of the Indian Penal Code and under Section 3 and 4 of the Maharashtra Protection of Interest of Depositers (In Financial Establishments) Act, 1999 (hereinafter referred as "M.P.I.D. Act, 1999" for brevity). The charge-sheet came to be filed against the applicants/accused Bhausaheb Chhabu Chavan on 6.12.2016.

(vi) One Subhash Gopinath Padale lodged F.I.R. against the applicants/accused on 30.10.2014 with Jawahar Police Station, Aurangabad and on that basis, Crime No.261/2014 came to be registered for the offences punishable under Sections 420,409, 423,424, 467,471, 474,406, 465,34, 120-B of I.P.C. and under Sec.3 and 4 of M.P.I.D Act, 1999.

(vii) Crime No.176/2016 came to be registered at City Police Station, Beed, under Sections 420, 406 r/w 34 of I.P.C. and u/s Sec.3 and 4 of M.P.I.D. Act, 1999 on the basis of F.I.R. lodged by Abhijit Kalyanrao Gaikwad.

(viii) The applicants had applied for bail before the Special Court and their respective applications came to be turned down at the hands of Special Court as appearing from the record.

(ix) The applicants have knocked the doors of this Court for bail by taking aid of Section 439 of the Code of Criminal Procedure coupled with delay in trial and thereby violation of their fundamental rights.

SUBMISSIONS OF MR PANDEY AND MR VAISHAMPAYAN, LEARNED COUNSEL FOR THE APPLICANTS

4. Mr Pandey, learned Counsel for the applicants submitted that the applicants in connection with Crime No.261 of 2014 registered with Jawahar Police Station, Aurangabad are behind the bars since more than five years. The applicant in connection with Crime No.176 of 2016

registered with City Police Station, Beed is behind the bars since more than three years and four months. The applicants in connection with Crime No.56 of 2014 registered with Ashti Police Station, Taluka Partur, District Jalna are behind the bars since more than five years and two months. The trial Court has yet not framed the charges against the applicants. The trial Court has delayed the trial. He submitted that delay in trial results in incarceration for an indefinite period violates Article 21 of the Constitution of India. Even though the applicants are allegedly involved in serious economic offences, they are in jail since long time. The trial is yet not commenced. Their presence can be secured by imposing stringent conditions. He submitted that delay in trial is an important factor to be considered for grant of bail in view of Article 21 of the Constitution of India, which is the most basic of all the fundamental rights in our Constitution.

5. He submitted that main charges alleged against the applicants/ accused are under the provisions of M.P.I.D. Act, 1999 apart from Sections under Indian Penal Code. If the punishment provided under the M.P.I.D. Act, 1999 in various offences is taken into consideration, maximum sentence is provided for six years. The applicants/accused are languishing in jail since long time without commencement of the trial and, therefore, they are entitled to be released on bail. The applicants have surrendered their passports with the respective Courts. The property of the applicants more than Rs.4 Crores is already seized. The applicants are entitled to get bail in respective crimes/cases. They are ready to abide by the conditions if imposed by this Court while enlarging them on bail.

6. Learned Counsel for the applicants in support of their argument, relied upon the following stock of citations :

(i) ***Markas Yohan Thorat Vs. State of Maharashtra,*** *reported in* ***2020 SCC Online Bom 11252;***

(ii) ***Shekhar Revansiddhan Katgaonkar Vs. State of Maharashtra,*** *reported in* ***2020 SCC Online Bom 11031;***

(iii) ***Dipak Shubhaschandra Mehta Vs. Central Bureau of Investigation*** *reported in* ***2012 SCC Online;***

(iv) ***State of Kerala Vs. Raneef*** *reported in* ***2011 SCC Online;***

(v) ***Mehmood Mohammed Sayeed Vs. The State of Maharashtra*** *reported in* ***2001 SCC Online;***

(vi) ***Mehendra Singh and Ors.,Vs. State of Bihar,*** *reported in* ***2001 SCC Online;***

(vii) ***State of T.N. Vs. Selvi J. Jayalalitha,*** *reported in* ***(2000) 9 SCC Online;***

(viii) ***Vivek Kumar Vs. State of U.P., reported in (2000) 9 SCC Online;***

(ix) ***Appasaheb Trambakrao Janjire Vs. The State of Maharashtra, (Bail Application No.3202 of 2019);***

(x) ***Vinay Prabhakar Phadnis Vs. The State of Maharashtra, (Bail Application No.223 of 2020)***

7. Mr A.M. Phule, Ms P.V. Diggikar and Mr B.V. Virdhe, learned A.P.P.s appearing in respective bail applications have strongly opposed to grant bail.

SUBMISSIONS OF LEARNED ASSTT. PUBLIC PROSECUTORS

8. The learned A.P.P.s submitted that the applicants are involved in serious economic scam. They had formed Private Limited Companies with an intention to cheat the public at large by floating ponzi schemes. More than 3000 persons had invested hard earned money in the

companies of the applicants and their hard earned money is duped by the applicants. It was their plan since beginning to grab the amount by floating the ponzi schemes. They have misappropriated more than Rs.22 Crores. They have committed such kind of offences across the State of Maharashtra. One case has been registered in the State of Rajasthan.

9. The applicants/accused had arranged huge gatherings of public at large by making advertisements. The public at large was lured to invest their money in their respective schemes of their group companies with a promise that they would get double money in a short span and accordingly, innocent persons have been cheated. It is a huge financial scam committed by the applicants by forming private companies. The applicants/accused did not obtain prior permission or necessary licence from the Reserve Bank of India to conduct such financial transactions which indicates as to how they had planned to cheat the public at large. They had violated the provisions of The Prize Chits and Money Circulation Schemes (Banning) Act, 1978 coupled with the M.P.I.D. Act, 1999. The applicants had used Crores of rupees for their own purpose. Most of the cheques issued to the investors came to be dishonoured. There are statements of witnesses, which support the prosecution case. The Investigating Officers have collected sufficient documentary evidence which has revealed as to how the applicants had cheated the public at large. Learned A.P.P.s submitted that by looking to the serious financial scam, it may not be proper to release the applicants on bail even though there is some delay in trial. The Court may issue directions to the trial Court to expedite the trial. The applicants do not deserve to get bail. To

buttress their argument, learned A.P.P.s have placed reliance on following citations :

(i) ***Naveen Singh Vs. State of Uttar Pradesh,*** *reported in* ***(2021) 6 SCC 191;***

(ii) ***Y.S. Jagan Mohan Reddy Vs. Central Bureau of Investigating,*** *reported in* ***(2013) 7 SCC 439;***

(iii) ***Bail order passed by this Court, Bench at Nagpur in Criminal Application (BA) No.622 of 2016 with connected matters dated 19th September 2016***

10. The Honourable Supreme Court in ***Hussainara Khatoon and Ors. Vs. Home Secretary, State of Bihar, Patna,*** reported in ***AIR 1979 SC 1369*** held that it is the right of the accused to have a speedy trial. The speedy trial is a fundamental right of the accused.

11. In case of ***Dipak Shubhaschandra Mehta Vs. Central Bureau of Investigation*** (supra), it is held by the Honourable Supreme Court as under :

> " The Court granting bail should exercise its discretion in a judicious manner and not as a matter of course. Though at the stage of granting bail, a detailed examination of evidence and elaborate documentation of the merits of the case need not be undertaken, there is a need to indicate in such orders reasons for prima facie concluding why bail was being granted, particularly, where the accused is charged of having committed a serious offence. The Court granting bail has to consider, among

> other circumstances, the factors such as a) the nature of accusation and severity of punishment in case of conviction and the nature of supporting evidence; b) reasonable apprehension of tampering with the witness or apprehension of threat to the complainant and; c) prima facie satisfaction of the court in support of the charge. In addition to the same, the Court while considering a petition for grant of bail in a non-bailable offence apart from the seriousness of the offence, likelihood of the accused fleeing from justice and tampering with the prosecution witnesses, have to be noted.

12. The above principle and guidelines laid down by the Honourable Supreme Court have been reiterated in the remaining stock of citations.

13. This Court in case of ***Markas Yohan Thorat Vs. State of Maharashtra*** and in case of ***Shekhar Revansiddhan Katgaonkar Vs. State of Maharashtra*** (supra), was pleased to grant bail having regard to the facts of the case wherein offences under M.P.I.D. Act and offences under Indian Penal Code were involved. During the course of argument, learned A.P.P.s appearing in respective matters raised strong apprehension that if the applicants/accused are released on bail, there is every possibility that they would flee from justice having regard to their previous conduct.

14. Mr Vaishampayan, learned Counsel for the applicants submitted that the applicants have travelled abroad in the past only after taking permission from the Court and they were not at all absconding. Be

that as it may, the apprehension put forth by the prosecution cannot be said to be unreasonable having regard to the facts of the case and looking to the huge amount of financial scam.

15. In case of ***Y.S. Jagan Mohan Reddy Vs. Central Bureau of Investigating*** *(supra),* the Honourable Supreme Court has held as under :

> "34. Economic offences constitute a class apart and need to be visited with a different approach in the matter of bail. The economic offence having deep rooted conspiracies and involving huge loss of public funds needs 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.

16. There is recent citation of the Honourable Supreme Court in respect of grant of bail under Section 439 of the Code of Criminal Procedure. In case of ***Naveen Singh Vs. State of Uttar Pradesh*** (supra), it is held by the Honourable Supreme Court that while considering the application for bail under Section 439 of Code of Criminal Procedure, serious offence is one of the relevant considerations while considering grant of bail.

17. The Honourable Supreme Court has also held in catena of cases that while dealing with the issue of grant of bail, the Court should examine as to whether :

(i) accused can tamper with the evidence.

(ii) influence witness

(iii) evade trial/investigation.

18. It is also held by the Honourable Supreme Court in various decisions that the bail is the rule and jail is an exception.

19. Merely because the charge-sheet is filed, is no ground to release the accused on bail as held by the Honourable Supreme Court in case of ***Naveen Singh Vs. State of Uttar Pradesh*** (supra).

20. Now coming back to the facts of the case in hand. The applicant/accused are alleged to have established companies by name K.B.C. Club and Resorts Private Ltd., Nashik, K.B.C. Group of Companies and K.B.C. Multi trade Private Ltd. The applicants in Bail Application No.1534 of 2020 and Bail Application No.1532 of 2020 (Crime No.56/2014) happened to be Managing Directors of K.B.C. Multi Trade Private Ltd., and K.B.C. Club and Resorts Private Ltd., Nashik. respectively. It is very important to note that abovesaid group of Companies of K.B.C., without obtaining prior permission or licence from the Reserve Bank of India introduced financial schemes in the market. They alleged to have induced the public at large to invest money as deposits in their respective companies on the promise that they would get

double money of the invested amount within a short period. It is further alleged that the applicants are alleged to have arranged huge gatherings for investors/depositors by giving advertisements in the public. They held gatherings at Jalna, Ambad, Aurangabad and other places and distributed brochures, pamphlets to the investors in respect of their companies plans for depositors/investors to invest money in their companies. Their intention since beginning seems to be not honest. The applicants in connection with abovesaid crimes seem to have hatched criminal conspiracy to induce the public at large by forming private limited companies and by introducing ponzi investment schemes.

21. After establishing K.B.C. group of companies, more than 3089 depositors/investors seem to have invested their hard earned money in their companies. They could not get even their principal amount apart from double money. Whatever cheques issued to the investors mostly came to be dishonoured due to insufficient funds. The applicants are alleged to have misappropriated an amount of Rs.22,10,93,500/- of the respective depositors. The applicants are alleged to have siphoned the money. Even though property of Rs.4 Crores belonging to the applicants is seized, what about rest of the money.

22. These are not the three crimes registered against the applicants. Similar types of cases seem to have been registered against the applicants throughout Maharashtra. During the investigation, it was revealed that total twenty-one cases have been registered against the applicants and investigation is thoroughly carried out by the Crime Investigation Department. One case is also registered in the State of

Rajasthan. The investigation agency has recorded statements of witnesses which are prima facie supporting to the allegations levelled in the respective F.I.R.s The applicants are involved in serious economic offences. Even though applicants in Bail Application No.1509 of 2020 and Bail Application No.1510 of 2020, Bail Application Nos.1532 of 2020 and 1534 of 2020 are stated to be behind the bars more than five years and applicant in Bail Application No.1513 of 2020 stated to be behind the bars more than three years, they are not entitled to get bail having regard to the serious economic offences registered against them. The investigation agency seems to have collected documentary evidence which shows prima facie complicity of the applicants in the commission of said offences including the offences under M.P.I.D. Act and The Prize Chits and Money Circulation Schemes (Banning) Act, 1978. Learned Counsel for the applicants failed to point out that the applicants have obtained necessary licence/permission from the Reserve Bank of India to enter into such depository schemes for the investors. There is prima facie evidence against the applicants showing their complicity in the commission of serious offences involving financial scam of more than Rs.22 Crores.

23. Economic offences constitute a class apart and, therefore, different approach needs to be taken while considering their bail applications. The economic offences having deep routed conspiracy constitute involving public money of more than Rs.22 Crore needs to be viewed seriously. The offences alleged against the applicants have affected more than 3000 investors who had invested their hard earned money in the depository schemes introduced by the K.B.C. group of

Companies and put to loss. This Court cannot overlook the nature of accusations, the nature of evidence collected by the investigating agency in support thereof, the severity of the punishment which conviction will entail, the character of the accused, circumstances which are peculiar and looking to the reasonable possibility of accused fleeing from justice, it is not a fit case to grant bail even though the trial is delayed. The larger interest of the public at large needs to be considered. The financial scam has spread across the State of Maharashtra and also crossed the borders by entering into the State of Rajasthan. This is the magnitude of the serious economic offences committed by the applicants. Even though charges are not framed against the applicants in respect of said cases, the directions can be issued to the concerned Court to expedite the trial.

24. Having regard to the above reasons and looking to the serious economic offences committed by the applicants and looking to the larger interest of the public at large, I am not convinced to grant bail to the applicants.

ORDER

(i) The Bail Application Nos.1509 of 2020, 1510 of 2020, 1513 of 2020, 1532 of 2020 and Bail Application No.1534 of 2020 preferred by the respective applicants in connection with respective crimes are hereby rejected.

(ii) The Special Courts/trial Courts shall expedite the trial of abovesaid applicants by looking to the fact that they are behind the bars in some cases more than five years and in some cases more than three years. The Special Courts/trial Courts shall frame the charges within two months from today in respective cases and commence the trial.

(iii) If the trial is not commenced within six months from today, the applicants may renew their prayer for bail.

(v) The Registrar (Judicial) is requested to communicate this order to the concerned Special Courts/trial Courts for compliance.

(vi) The Bail Applications are accordingly disposed of.

(SHRIKANT D. KULKARNI, J.)

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