IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL BAIL APPLICATION NO. 1287 OF 2020

Smt. Kishori Omprakash Dayma .... Applicant
Versus
The State of Maharashtra .... Respondent

Mr. Sanjeev Kadam i/b Ramdas P. Hakepatil, for the applicant.
Smt. A.A. Takalkar, APP for the State/Respondent.

CORAM :SARANG V. KOTWAL, J.
DATE : 10th MARCH, 2021

P.C. :

1. The applicant is seeking her release on bail in connection with C.R.No. 469 of 2019 registered at Faujdar Chawadi Police Station, Solapur, on 20/04/2019 under sections 406,409,420,467,468,201 read with Section 120B of the Indian Penal Code and under Section 3 and 4 of the Maharashtra Protection of Interest of Depositors Act. (in short 'M.P.I.D.Act').

2. Heard Mr. Sanjeev Kadam, learned counsel for the applicant and Smt. A.A. Takalkar, learned APP for the State.

3. The FIR was lodged by one Shivanand Bagalkoti. He has stated that he came to know that M/s Onkar Finance was accepting investment and was giving high returns. The informant therefore went to the office of that firm and met one Omprakash Dyama. He represented to the informant that their firm could give 13% interest in the first year, 14% interest in the second year and 15% interest for three or more years of the investment. The informant was interested in that scheme and deposited his and his wife's money with that firm since 6/1/2016. It is alleged that he was receiving interest till March 2019. Omprakash Dyama passed away in September 2018. Thereafter the business of that firm was looked after by Omprakash's son Abhijit, widow Kishori- who is the present applicant and one Sushma Asapure.

4. The FIR mentions that in January 2019 the informant met Abhijit Dayma and expressed his inclination to invest some further amount. On Abhijit's instructions the informant gave cheque in the name of the present applicant. In all Rs. 2.50 lakh were given through cheques issued in the name of the present

applicant and Rs. 4 lakhs were transferred in the account of Abhijit Dayma. The informant was given receipts in the name of Mahalingeshwar Prasanna, which was another finance company. The informant was told that even that firm was look after by the applicant, Abhijit Dayma and Sushma and, therefore, there was no difficulty. Finally those amounts were not returned, promised interest was not paid and therefore this FIR is lodged.

5. Investigation was carried out and it was revealed that there were many such victims. The applicant was arrested on 20/7/2019 and since then she is in custody. The investigation is over and charge-sheet is filed.

6. The investigation revealed that Omprakash Dyama had started a financial establishment named ‘M/s, Onkar Finance’. Subsequently, another financial establishment by name M/s Mahalingeshwar Financiers was established by Omprakash Dayma and others. It was a partnership firm. The allegations are that the applicant was one of the partners in M/s Mahalingeshwar Financiers. All the accused i.e. Directors and partners of both

these entities made inducement to various investors and accepted their deposits, through various schemes in the nature of Honey Collection (Pigmi), Recurring Deposit, Fixed Deposit, Bhishi etc. and misappropriated that amount.

7. The affidavit dated 2/3/2021, filed by the Investigating Officer attached to Economic Offences Wings, Solapur City, gives figures and details of these investments and misappropriation of amounts.

8. It is stated in the affidavit that M/s. Mahalingeshwar Financiers had licence to lend money to many people but they had no right to collect deposits from investors. Both these firms together accepted investment of Rs. 8,61,25,750/- from 197 depositors, out of which Rs. 5,13,79,340/- were deposited with the firm M/s. Mahaligneshwar Financiers. The applicant was one of the partners of this firm.

9. The affidavit further goes on to mention that total

moveable and immoveable properties of the accused worth Rs. 6,99,09,895/- were attached under the M.P.I.D. Act, out of which a property worth Rs. 48,87,885/- was belonging to the present applicant but it was mortgaged with Nilkanth Co-operative Bank, Solpaur. Her amount in the bank to the tune of Rs. 32,426/- was also attached.

10. Shri Sanjeev Kadam, learned Counsel for the applicant relied on two orders passed by this Court granting bail to two co-accused. One of them was Eknath Ghadge, who was granted bail (Coram: Prakash D. Naik, J.) vide order dated 21/8/2020 passed in LD/VC/DIST Bail Application 55 of 2020. That accused was one of the partners of M/s. Onkar Auto Finance which was established on 30/6/2007. The investment was also accepted in the name of that firm. Shri Kadam also relied on another order passed by this Court (Coram: C.V. Bhadang, J.) in case of Anavirappa Chanvirappa Motagi passed in Criminal Bail Application(St.) No. 1958 of 2020 dated 21/10/2020 . Shri Kadam submitted that the role of the present applicant is almost

similar to these co-accused. Their firm had also accepted deposits of the investors. He submitted that the main offender was Omprakash Dayma i.e. the applicant's husband. The investigation is already over. Majority of the properties of all the accused are attached and therefore further custody of the present is not necessary.

11. Learned APP opposed this application. She submitted that the applicant was an active partner and after the death of her husband, she had accepted deposits from the investors. In fact, the FIR itself shows that the informant had transferred the amount of investment to the applicant's personal account. There are statements of witnesses like Anil Sarvade, Navnath Sarvade etc. who have stated that after death of her husband, applicant was looking after the business. The applicant was not available to face the investors. This factor is also important.

12. I have considered these submissions. At this stage, there is no doubt that the applicant has played active role in

accepting deposits from the investors though neither of these firms was authorised to accept such deposits. The money was misappropriated and the investors lost their money.

13. However, the applicant is in custody since 28/07/2019. The investigation is already over. The trial is not likely to commence soon and even when it commences, considering the scope of the trial, it will take a long time to reach to its conclusion. The co-accused as mentioned earlier, are granted bail by this Court. Therefore, on principle of parity, she also deserves same leniency. More importantly, the investigating agency has attached property worth more than Rs. 6 crores under the provisions of M.P.I.D. Act. Therefore, most of the property is secured. After thorough investigation, whatever property was connected with the applicant is already attached. Therefore, her further custody during the entire period of trial will not serve any purpose. The applicant is a lady aged about 61 years and that also is factor which needs to be considered.

14. From the prosecution case it appears that everything was started by her husband and major part of inducement as well as investment was made during his life time. It is only after his death, the applicant seems to have played an active role. In this view of the matter, considering all the above factors, applicant can be granted bail in this case with some conditions.

15. Hence the following order.

<u>O R D E R</u>

(i) In connection with C.R. No. 469 of 2019 registered with Faujdar Chawadi Police Station, Solapur the Applicant is directed to be released on bail on her furnishing PR bond in the sum of Rs.1,00,000- (Rupees One lakh Only) with one or two solvent local sureties in the like amount.

(ii) The applicant shall attend the Office of the investigating agency every fortnight till beginning of the trial. In addition, the applicant shall attend the office of the Investigating Agency as and when called and shall co-operate with the further investigation.

(iii) The applicant is directed to deposit her passport, if any, with the investigating agency.

(iv) The application stands disposed of accordingly.

(SARANG V. KOTWAL, J.)