**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**
**CRIMINAL APPELLATE JURISDICTION**

**BAIL APPLICATION NO.3616 OF 2019**

Arif Ahmed Wasif Sayyed .. Applicant

***Versus***

State of Maharashtra .. Respondent

**WITH**
**BAIL APPLICATION NO.181 OF 2020**

Kedar Basha Shaikh .. Applicant

***Versus***

State of Maharashtra .. Respondent

……

Mr.Ishrat Khan, Advocate for the Applicant in BA 3616 of 2019.

Mr.Sujit Shelar, Advocate for the Applicant in BA 181 of 2020.

Mr.R.M. Pethe, APP for the Respondent – State.

……

**CORAM : PRAKASH D. NAIK, J.**

**DATED : AUGUST 27, 2021.**

**P.C. :**

The applicants have preferred application for bail in connection with C.R.No.124 of 2019, registered with Malad Police Station, Mumbai, for the offences punishable under Sections 420, 465, 467, 468, 471 and 506 read with 34 or Indian Penal Code ("IPC", for short). Subsequently, Section 409 read with 120–B of

IPC were added. First Information Report ("FIR", for short) was registered on 26th February, 2019.

2 The case of the prosecution is that on 27th January, 2019 complainant and his wife had visited the Mall at Kandivali. They were approached by one person who told them to fill up the lucky draw coupon. On 18th February, 2019, the complainant received a message about free gift provided to them and they were called to collect the same on 23rd February, 2019 at Autos Spam Spring Building, Malad, Mumbai. The complainant and his wife visited the said place. They met two persons, Shahbaz Shaikh and Imran. Several other persons had visited the said premises. They were informed about the schemes of company. It was represented that on depositing an amount of Rs.1,01,000/-, the members would be entitled for stay at three star hotels for 35 days and nights in India and out of India. Membership of Gymnasium situated near their house would be given to them for one year. If they deposit more than one lakh, they would earn returns of Rs.15,000/-. It was also insisted that it was last day for becoming member of scheme and they should deposit amount immediately. The complainant paid the amount of Rs.1,01,000/- to Elite Group Company and also filled up the form/agreement. On

inquiry, they were told that the applicant Arif Sayyed and Samar Khan are the owners of the company. The amount was accepted from several such persons and the promises made to them were not fulfilled. Statement of aggrieved persons were recorded and on completing investigation, charge–sheet was filed.

3 The applicant in BA No.3616 of 2019, was arrested on 15th April, 2019, whereas, the applicant in BA No.181 of 2020, was arrested on 3rd September, 2019.

4 Learned counsel for the applicant in both the applications submitted that the allegations against them are vague. They have not being played any role in making false representation made to the aggrieved persons. They are not the owners of the company. They are not beneficiary of misappropriated amount. No witnesses stated that applicants have made false representation or induced them to deposit amount. The applicant in B.A.181 of 2020, is not partner. There are reversal entries relating to amount transferred into the bank account of wife of said applicant. Investigation is completed and the charge–sheet is filed. There is no evidence to constitute the offences under Sections 409 and 467 of IPC. All the offences are

triable by the Court of Magistrate. There are no criminal antecedents against the applicant Arif Sayyed. Learned counsel for the applicant in BA No.181 of 2020 submitted that although other cases were registered against him, the transactions are similar and the applicant is on bail in those cases. The applicants are in custody for a period of about two years. Trial has not commenced.

5 Learned APP submitted that there is evidence showing involvement of the applicant in this case. They have played vital role. They were active. They were directly concerned with the Elite Group Company. Their bank account are frozen. The statements of the victims indicate that false representations were made to them. The applicant Arif Sayyed had executed leave and licence agreement with the owner of the premises. The said premises is used in conducting business of Elite Group of Companies. Partnership deed collected during the course of investigation shows that he is partner of concern. Licence issued under the Shops and Establishment Act reflects the name of the applicant Arif Ahmed Sayyed, as the owner of Elite Group. Huge amount was involved in the transaction. He relied upon bank statement and halt upon the amount credited into the accounts

and submitted that the misappropriated amount is the tune of more than Rs.8 crores. There are criminal antecedents against the applicant Kadar Basha Shaikh. He is involved in similar cases at Hyderabad and State of Maharashtra.

6 In rejoinder learned advocate for the applicants urged that the figure of Rs.8 crores is inflated by the investigating agency. There is no evidence to substantiate the said allegations. Learned advocate for applicant in Bail Application No.3616 of 2019, referred to entries in the bank statements of pages 418, 434, 441, 442, 444 of said application and submitted that, all the entries were in relation to cheque return. There is no evidence of any transactions of such huge amount. On the contrary, after recording the statements of witnesses and after completing investigation, the charge–sheet was filed stating that the amount involved is Rs.1,16,37,000/-. The entries in the bank statement relied upon by the prosecution does not indicate that these transactions or the amount reflected therein has any connection with the amount collected from the investors. The statements of aggrieved persons does not commensurate with the amount of Rs.8 crores, as contended by learned APP.

7 I have perused the documents on record. The applicants are in custody for a period of about two yearss. The case of the prosecution is that the amount was collected from several persons by inducing them to invest the amount with attractive offers. The investigation is completed and charge–sheet is filed. Although the applicant Kadar Shaikh is involved in other cases. He is on bail in those cases. Learned counsel for the applicant in BA No.181 of 2020, has relied upon the orders passed by this Court in BA No.1347 of 2020 dated 20th August, 2021, wherein this Court had considered the fact that although there is *prima facie* material against the accused, detention cannot be a pre-trial punishment, particularly since the offence punishable under Section 420 of IPC entails maximum punishment of seven years imprisonment. The Court also noted that the charge is not framed and the prosecution has cited several witnesses. He also placed for consideration the order passed by this Court in Criminal BA No.373 of 2011, in the case of Raosaheb Patole Vs. State of Maharashtra dated 24th March, 2011, wherein it was observed that the lower Court has refused bail on the ground that there are several cases registered against him. This Court granted bail on certain conditions. The charge–sheet mentions that the amount involved in this offence is

Rs.1,16,37,000/-. The prosecution has now contended that the bank statements collected by the investigating agency refers to the account reflected in the bank account is to the tune of more than Rs.8 crores. It is pertinent to note that the charge–sheet does not disclose this amount. It is not specified as to how this quantum is calculated. There is no material to draw an inference that the amount was collected from investors. The learned counsel for the applicants have contended that merely on account of the fact that the amount reflected in the bank account is to the tune of Rs.8 crores, it cannot be assumed that it was the misappropriated amount. The prosecution has also invoked Sections 409 and 467 of IPC. Section 409 of IPC was added subsequently Section 467 relates to the forgery of valuable security, Will etc. Prosecution was not able to point out any documents in the form of valuable security, which has been allegedly forged. All the offences are triable by the Magistrate. Application of Section 409 is debatable. Considering the factual aspects, applicants need not be detained further in custody. Bail can be granted on certain conditions.

**:: ORDER ::**

(i) Bail Application Nos.3616 of 2019 and 181 of 2020, are allowed;

(ii) Applicants in both the applications are directed to the released on bail in connection with C.R.No.124 of 2019, registered with Malad Police Station, Mumbai, on executing P.R. Bond in the sum of Rs.50,000/-, each, with one or more local sureties in the like amount;

(iv) Applicants shall attend concerned police station once in three months on first Saturday of the month between 11:00 a.m. to 01:00 p.m., till further orders;

(v) Applicants shall provide the details about the place of the residence alongwith the authentic documents while executing the bail bond;

(vi) Applicants shall attend the trial Court regularly on the date of hearing, unless exempted by the Court;

(vii) Applicants shall deposit their Passports in the trial Court;

(viii) If the applicants do not have Passport, they shall execute affidavit in that regard before the trial Court while executing bail bond;

(ix) Applicants are permitted to furnish cash bail in the sum of Rs.50,000/-, each, for a period of eight weeks, in lieu of surety;

(x) Bail Application Nos.3616 of 2019 and 181 of 2020, stand disposed of accordingly.

(**PRAKASH D. NAIK, J.)**