

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

CRIMINAL BAIL APPLICATION NO. 223 OF 2020

Vinay Prabhakar Phadnis	... Applicant
V/s.	
The State of Maharashtra	... Respondent

**WITH
INTERIM APPLICATION NO. 524 OF 2020
IN
CRIMINAL BAIL APPLICATION NO. 223 OF 2020**

Shrikant Anant Kulkarni	... Intervenor
<u>In the matter between :-</u>	
Vinay Prabhakar Phadnis	... Applicant
V/s.	
The State of Maharashtra	... Respondent

**WITH
INTERIM APPLICATION NO. 656 OF 2020
IN
CRIMINAL BAIL APPLICATION NO. 223 OF 2020**

VK Creative Constructions Mumbai Pvt. Ltd.	
Through Vinaykumar Khatu	... Intervenor
<u>In the matter between :-</u>	
Vinay Prabhakar Phadnis	... Applicant
V/s.	
The State of Maharashtra	... Respondent

Mr.Prasad Dhakephalkar, Senior Advocate a/w. Mr.Subhash Jha and Mr.Nitin Gangal for Applicant in BA/223/2020.
Mr.Pradeep M. Patil for Intervenor in IA/524/2020.
Mr.Amit Palkar, A.PP. for Respondent-State.

**CORAM : A.S. GADKARI, J.
DATE : 30th June 2021.
(Through Video Conferencing)**

PC. :

1. This is a successive application for bail under Section 439 of the Criminal Procedure Code (*for short, Cr.P.C.*) in C.R. No. 58 of 2017, dated 22nd April 2017, registered with Alankar Police Station, Pune City, for the offence punishable under Sections 406, 409, 420, 120-B read with 34 of the Indian Penal Code (*for short, "I.P.C."*), Sections 3 & 4 The Maharashtra Protection of Interest of Depositors (In Financial Establishments) Act, 1999 (*for short, "MPID Act"*), Sections 74, 75/447 of The Companies Act, 2013 and Sections 45-S, 45-IA/58 of the Reserve Bank of India Act, 1934.
2. The earlier Criminal Bail Application No. 3024 of 2017 preferred by the Applicant was dismissed by this Court by an Order dated 26th November 2018.
3. Heard Mr.Dhakephalkar, learned Senior Counsel along with Mr.Jha and Mr.Gangal, learned counsels for the Applicant in BA/223/2020, Mr.Patil, learned counsel for Intervenor in IA/524/2020 and Mr.Palkar, learned A.P.P. for the Respondent-State. Perused the Chargesheet annexed to the application.
4. The prosecution case in brief is that, the Applicant and his family members by floating 19 companies induced depositors to deposit amounts with a promise that, the investors will get handsome returns on it. The

Applicant and other accused persons subsequently failed to honour their promise and have defalcated huge funds invested by the investors. It is the further prosecution case that, there are about 342 victims, who have been allegedly duped to the tune of Rs.18,85,60,139/-.

During the course of investigation of the present crime, the Applicant came to be arrested on 15th June 2017 and since then, he is behind the bars. After completion of investigation, Police have submitted Chargesheet.

5. The earlier application preferred by the applicant was dismissed by this Court predominantly on the ground that, apart from the present crime, the Applicant is also involved in C.R. No.I-263 of 2016 dated 30th September 2016 registered with Mumbai Naka Police Station, District Nashik, under Sections 120-B, 420, 407, 409 read with 34 of I.P.C. and under Section 3 of MPID Act; in C.R. No. 126 of 2017 registered with Mundhwa Police Station, District Pune, under Sections 406, 420 of I.P.C. and under Section 13(4) of the Maharashtra Ownership of Flats (Regulation of the Promotion of Construction, Sale, Management and Transfer) Act, 1963 (MOFA Act) and in C.R. No. I-145 of 2017 dated 27th April 2017 registered with Naupada Police Station, District Thane, under Sections 420, 409, 120-B of I.P.C. read with Sections 3 & 4 of MPID Act and therefore, the Applicant did not deserve to be released on bail at that relevant stage.

6. Mr.Dhakephalkar, learned Senior Counsel for the Applicant on instructions submitted that, the Applicant has been released on bail C.R. No. I-145 of 2017 registered with Naupada Police Station, District Thane, by this Court by its Order dated 6th August 2018 in Criminal Bail Application No. 3010 of 2017. That the Applicant has been released on bail in C.R. No.I-263 of 2016 registered with Mumbai Naka Police Station, District Nashik, by the learned Additional Sessions Judge, Nashik, by its Order passed below Exh.89, dated 10th December 2019 in Special MPID Case No.9 of 2017. He submitted that, the Applicant has also been granted bail by the Court of competent jurisdiction in C.R. No. 126 of 2017 registered with Mundhwa Police Station, District Pune. He therefore submitted that, except the present crime, the Applicant has been released on bail in all other crimes.

He further submitted that, in the present crime, the Applicant has been arrested on 15th June 2017 and since then, he is behind bars. He submitted that, in C.R. No.I-263 of 2016 registered with Mumbai Naka Police Station, District Nashik, the learned Additional Sessions Judge, Nashik, while granting bail to the Applicant, in para No.10 of its Order dated 10th December 2019, has observed that, Section 409 of I.P.C. prima-facie, is not applicable to the said crime. He submitted that, the facts involved in the present crime are similar to the crime registered with Mumbai Naka Police Station, District Nashik, and therefore Section 409 of I.P.C. may not be attracted to the present

crime also. He further submitted that, Section 420 of I.P.C. prescribes maximum sentence of 7 years. That the Applicant has undergone more than 4 years of imprisonment in the present crime, out of 7 years of maximum sentence prescribed and therefore by invoking the provision Section 436-A of the Cr.P.C., the Applicant may be released on bail.

7. Mr.Patil, learned counsel for the intervenor in Intervention Application No. 524 of 2020 submitted that, the said intervenor was one of the investors, who has invested amounts with the Applicant. He on instructions submitted that, about 150 investors have requested the intervenor in IA/524/2020 to represent them by filing the present Interim Application. He submitted that, the intervenor has no serious objection in opposing the bail application of the Applicant. He further submitted that, if the Applicant is granted bail, it may perhaps facilitate recovery of the amounts of the investors.

8. Perusal of record would indicate that, the Applicant has been granted bail in other three crimes. The observations made by the learned Additional Sessions Judge, Nashik, in para No.10 of its Order dated 10th December 2019 passed below Exhibit-89 in Special MPID Case No. 09 of 2017 pertaining to the application under Section 409 of I.P.C. are prima-facie applicable to the case in hand too. As far as rest of the Sections applied to the present crime are concerned, Section 420 of I.P.C. prescribes maximum

sentence of 7 years of imprisonment.

9. Admittedly, in the present crime, the Applicant has undergone more than 4 years of imprisonment. The Applicant has already undergone detention for a period extending upto one half of the maximum period of imprisonment specified for that offence under Section 420 of I.P.C. and therefore provision of Section 436-A of Cr.P.C. is squarely applicable to the present crime.

Record further indicates that, the properties of the company, wherein the Applicant and his family members are Directors, have already been attached by the prosecution under the provisions of MPID Act. As noted earlier, the investigation of the present crime is already completed and the police have submitted Chargesheet.

10. In view of the above and the fact that, the Applicant has already undergone more than one half of the maximum period of imprisonment specified for Section 420 of I.P.C. , the Applicant can be released on bail. No fruitful purpose will be served by keeping the Applicant in further incarceration during the pendency of the trial.

11. Hence, the following order :-

- (i) Applicant be released on bail in C.R. No. 58 of 2017, dated 22nd April 2017, registered with Alankar Police Station, District Pune, on his furnishing P.R. bond of Rs.1,00,000/-

(Rs.One Lakh Only) with one or more solvent sureties in the like amount.

- (ii) Applicant is permitted to avail cash bail for a period of 12 weeks and during the said period, the Applicant will comply with the condition of furnishing sureties as has been directed herein above.
- (iii) After his release from Jail, the Applicant shall attend Alankar Police Station, District Pune, on every first Saturday of the month between 11:00 am and 01:00 pm.
- (iv) Applicant shall attend all the dates before the Trial Court, unless precluded for medical reasons.
- (v) Applicant shall not tamper with the evidence and/or influence prosecution witnesses.
- (vi) Applicant shall deposit his Passport with the Registry of the Trial Court, if not earlier deposited in any other crime.
- (vii) Applicant shall not travel abroad without prior permission of the Trial Court.

12. Bail Application No.223 of 2020 is allowed in the aforesaid terms.

13. In view of disposal of Bail Application No.223 of 2020, the intervention applications for intervention bearing Interim Application No.524 of 2020 and Interim Application No.656 of 2020 do not survive and are accordingly disposed off.

[A.S. GADKARI, J.]