THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO. 393 OF 2021

Suraj Sunil Zawar,
Age 28 years, Occupation : Business,
Indian inhabitant having his permanent place of address and residing at Sai Bungalow, Plot No. 11, Suhas Colony, Jainagar, Jalgaon ...Petitioner

Versus

1. The State of Maharashtra, at the instance of Deccan Police Station Pune City, Pune – Investigating Officer in Crime No. 673/2020

2. Milind Patil, Asst. Police Commissioner, Special Branch, Pune City, Commissioner Office, Pune. (Investigating Officer)

3. Sucheta Khokale, Asst. Investigating Officer Police Inspector, EOW, Pune City, Commissioner Office, Pune.

4. Mr. Walke Asst. Police Officer, Economic Offence Branch, Pune.

5. Commissioner of Police – Pune. Police Commissioner Office, Pune.

...Respondents

***

Mr. Aabad Ponda, Senior Advocate i/by Mr. H.D. Deshmukh for the Petitioner.
Mr. Pravin P. Chavan, Spl. PP a/w Mrs. M.M. Deshmukh, APP for Respondent - State.

***

CORAM : PRASANNA B. VARALE & S.M. MODAK, JJ.

ORDER RESERVED ON : MARCH 05, 2021.
ORDER PRONOUNCED ON : MARCH 10, 2021.

ORDER (PER PRASANNA B. VARALE, J)

1. **Rule**. Rule made returnable forthwith. With the consent of learned Counsel appearing for the respective parties, Writ Petition is taken up for hearing and final disposal at the admission stage itself.

2. By way of the present Writ Petition the petitioner is challenging the order passed by the learned Principal District Judge, Pune dated 23.01.2021 thereby granting petitioner's police custody remand of 9 days to the Respondent – Investigating Agency in Crime No. 673/2021. The petitioner also challenges the act of the investigating agency effecting the arrest of petitioner with a submission that the arrest effected of the petitioner is an illegal act. Thus, the principal prayers in the petition are prayer clauses 'C' and 'D', which read thus:

c] *issue writ of certiorari or any other writ, order or direction in the nature of Certiorari or an appropriate writ or Direction under Article 226 of the Constitution of India and / or Order in exercise of the power under Section 482 of the Criminal Procedure Code and the impugned order dated 23/01/2021 thereby granting PCR of 9 days and subsequent acts be quashed and set aside.*

d] *order the release of the petitioner and put him at liberty by setting aside his illegal arrest.*

3. Prayer clauses 'E' and 'I' are the interim prayers and the same read as under:

e] *pending hearing and decision of the present writ petition impugned order of granting the PCR till 02/02/2021 may kindly be stayed.*

i] *stay the further proceedings of C.R. No. 673/2020 pending before Hon'ble Special District Judge, (M.P.I.D.) Court, Pune qua the Petitioner pending the hearing and final disposal of the present Writ Petition;*

4. As the petitioner claims that the arrest of the petitioner is an illegal arrest, prayer clauses 'J' and 'H' are couched for grant of compensation and order of inquiry against Respondent Nos. 2 to 4 and

same read thus:

> *h] inquiry be ordered against Respondent no. 2 to 4 in connection with illegal arrest of the petitioner.*
>
> *j] Pass interim and ad-interim reliefs in terms of prayer (d), (e) and (f) above;*

5. We may refer to the facts, in brief, giving rise to the present Writ Petition as follows:

First information report was lodged at Deccan Police Station, Pune city on 25.11.2020 against the accused person namely, 1. Maheshwari, 2. Jitendra Kedare, 3. Prakash Wani, 4. Kunal Shah, 5. Sunil Zawar, 6. Mahavir Jain, 7. Sujit Wani, 8. Dharam Sakla, 9. Yogesh Sakla, and 10. Vivek Thakre for the commission of offences under Sections 420, 464, 465, 468, 471, 477 read with Section 120-B, read with Section 34 of the Indian Penal Code (for short "**IPC**"). The complainant – informant Ranjana Ghorpade is a retired teacher resident of Pune City. She is staying in an area known as Bhosale Nagar in Pune City along with her daughters. In an advertisement published in local newspaper an offer was made for investment in Bhaichand Hirachand Raisoni Multistate Co-operative Credit Society, Jalgaon (hereinafter referred to as "**the said society**" for sake of brevity). The said society offered the rate of interest @ 13% on deposits. The complainant then visited the office of the said society. In the office of said society she found the material in the form of posters offering 13% rate of interest on investment.

One official Shri. Maheshwari who was present in the office assured of 13% rate of interest and further told to complainant that there are as many as 200 branches of the said society and various depositors have deposited the total amount to the tune of Rs. 2,000 crores and it was further assured that even if there arises some problem in the society money of depositors is protected and assured. Impressed by this assurance, the informant / complainant decided to deposit her hard earned money which she received in the form of provident fund and gratuity.

Then there is list of the amount deposited and the receipts to that effect. The total amount deposited by the complainant is to the tune of Rs. 14,90,142/- and to which the complainant was entitled to receive an amount on maturity, was Rs. 16,83,860/-. Sister of complainant Sanjana Nikalje, resident of Anand Society, Senapati Bapat Road, Pune was also impressed by the attractive advertisement of the said society and she also deposited an amount of Rs. 2,00,000/- (on maturity 2,26,000/-). Thus, the total amount deposited by both these sisters was to the tune of Rs. 19,09,860/-. When the deposits were matured, the complainant visited the office of the said society and made demand of about her amount as well as amount of her sister but there was no response from the said society.

6. Meantime, complainant came to know about the mischief and misdeeds revealed in the audit of the said society and it also came to the knowledge of the complainant that an administrator Mr. Jitendra Kandare was appointed on the said society. One Vivek Thakre is posing himself as a conveyor of the depositors forum and he started conducting the meeting. Mr. Vivek Thakre was creating an impression in the minds of depositors that there is no chance of receiving the entire amount deposited with the said society but he will see that the depositors at least receive 20-25% of amount deposited by them and for conducting such meeting etc. Mr. Thakare was asking for some amount from the depositors. The complainant and her sister paid an amount of Rs. 18,000/- to Mr. Thakare. Then there are the details how the

administrator Mr. Kandare also played an mischief and influenced upon the depositors to submit certain bonds and to handover the receipts to him through Mr. Thakare. When the inquiry made by the depositors as to who is going to purchase the property of the said society, Mr. Vivek Thakare informed that Sunil Zawar resident of Jalgaon is purchasing the property. In the year 2016 one Nilesh Bhoite and Virendra Bhoite approached the depositors and asked them to handover the receipts and an affidavit. On refusal threats of life were extended to them.

7. In the month of October – November 2019 the complainant visited the office of the said society and took a stand that unless the amount is paid she will not leave the office. Mr. Kandare told the complainant that she should submit an affidavit accepting that she had received 100% of amount deposited in the society. Another person by name Sujit Wani was present there who was insisting the complainant to fill up the form showing that the complainant had received 25% amount against deposit. One Sunil Zawar was also present there and on refusal of complainant to fill up the form of receiving 25% amount against the deposit, Sunil Zawar told complainant that if she is not filing up the form she would not get a single penny and she may do whatever she wanted to

do. As the economical condition of the complainant was too weak and there was no choice left with the complainant the complainant filled the form of receiving 25% of amount against deposit and handed over the receipts. She received an amount of Rs. 91,000/- and prior to that she had received a paltry sum of Rs. 4,000/- as the 20% amount against her deposit. After 8 to 10 days when she was proceeding from Gholeroad she found a board Sai Marketing affixed at the place where office of the said society was situated.

8. On inquiry it revealed that the said property is purchased by one Sunil Zawar. Then she came to know that the properties of said society are purchased by Sunil Zawar at the lowest price and administrator Mr. Kandare who was expected to sell property of the said society at a competitive price and in turn to repay the amount of deposit to the depositors had played a mischief in connivance with Sunil Zawar and other accused. The false and fabricated documents of the said society were prepared. The record was prepared in such a way showing that the entire amount of depositors is repaid. It also came to the knowledge of complainant that a show was made that the property of said society was put to auction and in auction property was purchased by Sunil Zawar.

Then is is stated in the complaint that the accused persons have engaged commission agent for collecting the receipts from the depositors. The depositors were either threatened or were mislead by the statement that they would not get entire amount and it is in their interest that they should accept 25% of the amount against their deposits and submit the receipts and affidavits stating that they have received the entire 100% amount deposited by them. It is further stated in the complaint that in the audit report of the said society audited by one Shri. Sonalkar there is a reference to the misdeeds and mischief in the affairs of the said society.

9. On the backdrop of this report, the submission of learned Senior Counsel, Mr. Ponda appearing for Petitioner is except the admitted relationship i.e. petitioner is son of Mr. Sunil Zawar the petitioner is not at all concerned either with the company of his father or any any alleged act referred in the compliant against his father Sunil. It is submitted by learned Senior Counsel, Mr. Ponda that there are two different entities, namely, Shri. Sai Marketing and Trading Pvt. Ltd which is a company incorporated under the Companies Act, 2013 and the petitioner is one of the director in the company. The company is having its distinct board of director. It is then submitted by learned

Senior Counsel, Mr. Ponda that one Shri. Sai Marketing and Trading Company is of proprietorship firm. Mr. Sunil Zawar father of petitioner is the sole proprietor of this proprietorship firm. It is also submitted that Shri Sai Marketing and Trading Pvt. Ltd and Shri. Sai Marketing and Trading Company are two separate and distinct entities having no concern with each other except a common office premises i.e. Pimprala Road, Khandesh Mill, Jalgaon. When the petitioner had no concern with Shri. Sai Marketing and Trading Company a proprietary firm of Sunil Zawar the respondents have approached in the office of the petitioner and then to his residential house and without following due process of law without serving a search warrant upon the petitioner have put seal on the office premises.

10. Mr. Ponda, learned Senior Counsel appearing with Mr. H.D. Deshmukh for the petitioner vehemently submitted before this Court that all the actions initiated against the petitioner are only on the basis of assumption and presumption of respondent authorities. It is further submitted by Mr. Ponda that the petitioner is running his own business having no criminal antecedents and only because the father of petitioner who is an alleged accused in one offence and as two companies, in one of

which the petitioner is director whereas, another propriety firm wherein the father of petitioner is a sole proprietor are having resembling names, the petitioner is picked up by respondent and it is an attempt of the respondents to punish the petitioner for the alleged misdeeds of his father. Mr. Ponda vehemently submitted that as the personal liberty of the petitioner is guaranteed under the Constitution of India any illegal act whereby the personal liberty of petitioner is curtailed causes a serious prejudice to the petitioner and in such matter the indulgence of this Court is must and necessary and the present petition is such an example of curtailing personal liberty of petitioner and without there being any material only on the assumption and presumption the Respondents are bent upon to keep the petitioner behind the bars by effecting his illegal arrest.

11. It was also the submission of learned Senior Counsel, Mr. Ponda that the remand order in challenge suffers on account of non application of mind. It was the submission of Mr. Ponda that in the remand order there ought to have been the reflection of application of mind and satisfaction of the Court. The remand order fails to show any such application of mind and is so cryptic that it also fails to show the

satisfaction of the learned Judge and the order is passed mechanically is the submission of learned Senior Counsel Mr. Ponda.

12. Mr. Ponda then by placing heavy reliance on the judgments of the Hon'ble the Apex Court as well as this Court submitted that there are directions by the Hon'ble the Apex Court so as to follow certain procedural directions in terms of the procedural safeguards so as to avoid an act of arrest to protect the personal liberty of an individual and these directives are not followed by the Respondents. Mr. Ponda then placing an heavy reliance on the recent judgment of the Hon'ble the Apex Court submitted that personal liberty of an individual is the paramount consideration, and if the personal liberty is curtained, even for the shortest period, the same causes a serious prejudice. Mr. Ponda, the learned Senior Counsel relied on the following judgments of the Hon'ble Apex Court in the cases of Joginder Kumar Vs. State of U.P. and another[1], Arnesh Kumar Vs. State of Bihar and Anr[2], Sheila Sebastian Vs. R. Jawaharaj and Anr[3], Arnab Manoranjan Goswami Vs. State of Maharashtra and Others[4], Satyajit ballubhai Desai and Ors Vs. State of

1 (1994) 4 SCC 260
2 (2014) DGLS (SC) 578
3 (2018) 7 SCC 581
4 2020 DGLS (SC) 660

Gujrat[5], Central Bureau of Investigation, Special Investigation Cell-I, New Delhi Vs. Anupam J. Kulkarni[6], P. Chidambaram Vs. Directorate of Enforcement[7], Sushila Aggarwal and Others Vs. State (NCT of Delhi) and Another[8] and also relied on the Judgment passed by the Hon'ble Division bench at Principal Seat in the case of Daulat Samirmal Mehta Vs. Union of India through the Secretary and others[9].

13. Per contra, learned Special Public Prosecutor, Mr. Pravin Chavan appearing with Mrs. M.M. Deshmukh, APP for Respondent – State vehemently submitted that all the contentions raised by the petitioner hold no water. It is submitted by Mr. Chavan that on lodgment of the report the investigating agency was set in motion and in the process of investigation sufficient material against the petitioner was revealed. It is also revealed that the petitioner played an active role in connivance with the other accused person. The offences committed by petitioner and other accused person are serious in nature and punishment prescribed for certain serious offences committed by petitioner and other accused persons is of life imprisonment. It is also

5 (2014) 14 SCC 434
6 (1992) 3 SCC 141 : 1992 SCC (Cri) 554
7 (2020) 13 SCC 791 : (2020) 4 SCC (Cri) 646
8 (2020) 5 SCC 1 : (2020) 2 SCC (Cri) 721
9 Writ Petition No. 471 of 2021

submitted by Mr. Chavan that it revealed in the investigation that petitioner was responsible for manipulation of data, illegal transfer of data and petitioner also obtained the data illegally, then there are certain entries in the books of account and from the material available with the investigating agency the reasonable belief was formed by the investigating agency that the petitioner in connivance with other accused committed crime and investigation was in progress and as the offences are of serious nature, any act of per-intimation to the petitioner in the form of notice could have resulted in either hampering the investigation and/or disappearance of evidence as such, by following due procedure the arrest of the petitioner was effected. The material collected by the investigating agency discloses the active involvement of the petitioner, he was arrested and was produced before the Magistrate. Investigating agency submitted an application by quoting the reasons, the investigation agency also presented the material before the appropriate Court and the learned Special Court on its satisfaction passed the order granting police custody remand of the petitioner.

14. Learned Special Public Prosecutor, Mr. Chavan submitted that though, the order passed by the learned Special Judge is not an

exhaustive order or a lengthy order but the order certainly show the application of mind and the satisfaction that there is a convincing material presented before the Court to grant police custody remand of the petitioner. It is then submitted by Mr. Chavan that the petitioner is having an alternate efficacious remedy in the nature of regular bail application to be filed before the competent Court on his arrest by the respondent authorities. Mr. Chavan further submitted that there is no convincing reason coming forth as to why the petitioner cannot avail such alternate and efficacious remedy. It is also submitted by Mr. Chavan that even the Hon'ble the Apex Court in the judgment relied by learned Senior Counsel, Mr. Ponda was pleased to observed that the remedy to approach higher forum under Article 226 of the Constitution of India shall not be treated as a bypass to the efficacious and alternate remedy available to the parties. It is also submitted by Mr. Chavan that the respondent authorities have discharged their official duties and action taken by the Respondent authorities are as per provisions of law. This is not the case either to grant any compensation to the petitioner or cause an inquiry against the Respondent authorities.

15. In support of his submissions, learned Special P.P., Mr. Chavan placed reliance on the following judgments in the case of Kanti Bhadra Shah and Another Vs. State of W.B.[10], Yash Pal Mittal Vs. State of Punjab[11], Shivnarayan Laxminarayan Joshi and Others Vs. State of Maharashtra[12], Saurabh Kumar through his father Vs. Jailor, Koneila Jail and Another[13], Pradeep S/o. Gyanchand Raisoni Vs. The State of Maharashtra, through Additional Superintendent of Police[14], Nimmagadda Prasad Versus Central Bureau of Investigation[15], State of Assam & Ors. V. Susrita Holdings Pvt. Ltd.[16], Chhagan Chandrakant Bhujbal V. Union of India and Others[17].

16. The petitioner filed an application before the competent Court for removal of the seal of the office premises and to return files, check book, account book, income tax returns etc. Respondents filed their reply to the application and on 12.01.2021 the District Judge – 1 and Additional Sessions Judge, Pune passed the order thereby directed the in-charge of Forensic Laboratory, Pune to complete work of

10 (2000) 1 SCC 722
11 (1977) 4 SCC 540
12 (1980) 2 SCC 465
13 (2014) 13 SCC 436
14 (2012) 0 Supreme (Mah) 1439
15 (2013) 0 Supreme (SC) 477
16 AIR (2014) SUPREME COURT 2307
17 2017 (1) ABR (Cri) 929

download of seized electronic record of the applicants (petitioner is one of the applicant) which is submitted by investigating officer in connection with above said crime within 10 days from receipt of his order and thereafter provide the mirror image copy of that electronic record to the applicants on the new hard disk submitted by them. Investigating officer was further directed to complete all formalities of recording spot panchanama, seizure of documents, if any remained from the sealed shop of applicants bearing shop nos. 42 and 43 situated at Khandesh Mill Complex, Jalgaon within two days from this order and had over those shops in possession of applicants on or before 12.00 noon of 15/1/2021. Applicants were directed to remain present at the time and place given by the IO for taking possession of those shop and complying other formalities required by law. While handing over the possession, video shooting should be done. Learned Judge further directed IO to supply xerox copy of bank pass book of applicant, at the cost of applicants.

17. It is submitted in the petition that as per order passed by the Hon'ble Court the investigating officer had carried out panchanama of the shop and also conducted the video recording and opened the seal of

the shop. Then there is a reference in the petition in respect of letter forwarded by Respondent No. 3 to bank authorities in respect of freezing of account and in turn the bank official forwarding a communication and then communication dated 14.01.2021 by Respondent No. 3 to the Branch Manager, Union Bank of India to defreeze the accounts of petitioner and the relatives of accused Sunil Zawar.

18. As the petitioner raised challenge to the remand order and prayed for quashment of the said order as well as raises challenge to his arrest on the ground that there is absolutely no material against the petitioner and as such his arrest is illegal act, now we may refer to the application seeking remand, the order passed by the learned Court below and the material submitted before this Court for perusal by learned Special P.P.

19. The application submitted to the Special Court dated 23.01.2021 seeking police custody remand of the petitioner refers to the reasons. In the application the petitioner is shown as an arrested accused no. 6. Thus, it is clear from the remand application that though initially the father of applicant was shown as an accused in CR No. 673/2020

subsequently, petitioner is also added as an accused. Then there is reference in brief in respect of offence and then while referring to the role played by the petitioner under caption “Suraj Sunil Zawar Yancha Gunyatil Sahabhaag” (participation of Suraj Sunil Zawar in the offence), four relevant factors which are mentioned.

20. It is stated firstly that petitioner Suraj Zawar who is the son of main accused Sunil Zawar had filled up the tender forms with a designed plan. Secondly, it is stated that petitioner who is director of Shri Sai Marketing and Trading Pvt. Ltd in connivance with his father Sunil Zawar and other accused had submitted a tender showing as if it is a tender submitted by Sai Marketing and Trading Company and the property i.e. Shop Nos. 16, 17, 18 and 18A situated at Kohinoor Arcade Bulk Land No. 2, Nigadi Tq. Haveli of which market price is of Rs. 7 crore was purchased in connivance with the other accused at low price i.e. at the rate of Rs. 2,11,11,111/-. In the said purchase the amount of deposits which was kept in the society by various depositors was utilized. Similarly, four commercial blocks having market price Rs. 8 crore and above situated at Balgandharv Chowk, Ghole Road, Pune was purchased at lower rate to the tune of Rs. 3,11,33,111/-. Similarly, the shops No. 1, 2

and 3 situated at Nashirabad were also purchased at the rate of Rs. 19,51,515/-. It is then stated that the office address of Shri Sai Marketing and Trading Company and Shri Sai Marketing and Trading Pvt. Ltd is one and the same and Suraj is one of the partner in Shri Sai Marketing and Trading company.

21. It is then stated that accused Suraj submitted tender forms in the name of various person. Then there are reasons assigned for seeking police custody remand. The important reason is a software was installed in the office of the petitioner by co-accused Kunal Shah in respect of tenders. The software names as BHR software was linked with the tender process and the software were designed in such a way that the petitioner was able to keep the track on the on the tender process. As the petitioner was in a position to know the tender code he used to fill up tenders through other persons quoting lower bid offers and filing up his tender quoting higher bid offer. Tenders filled in the process were through those persons who were either the employees of the petitioner working with him for sometime or some relatives of the petitioner. As it was stated in the complaint that certain meetings with the depositors were held in the office of the said society wherein main accused Sunil Zawar alongwith

other accused and petitioner Suraj Zawar were also present. Then it revealed in the investigation that the other arrested accused Mahavir Jain was a frequent visitor in the office of petitioner. Mahavir Jain on the basis of information of depositors was handling the transaction i.e. against the deposit receipts the depositors were pressurized to accept 25% or 30% amount and submit the documents in the form of affidavit that they have received 100% of the amount. Mahavir Jain used to make accounting for the deposits and due amount with simple interest and with 12% interest.

22. The learned Special Court allowed the application and petitioner was remanded in the police custody till 02.02.2021. Learned Judge recorded the following reasons for grant of police custody remand to the petitioner:

> *This Accused is son of main Accused Sunil Zawar. He is Director at Shri Sai Marketing and Trading Pvt. Ltd. I.O & A.P.P. in their argument stated that Shri Sai Marketing & Trading company & Shri Marketing and Trading Pvt Ltd both are having same address of 42, Khandesh Mill Shopping Complex, Jalgaon & this Accused is connected to both. It is further submitted that he in collusion with other Accused stolen information about Tender of other Tenderer from the*

website of BHR & then submitted through his acquaintances. He provided margin amount required for tender to those acquaintances & then obtained demand draft & submitted it with tender to BHR society. In conspiracy with main accused Jitendra Kandane he & his father had purchased property (shops) situated at Ghole road, Nashirabad & Nigdi at very cheap rate. Even purchase price & market price of those properties are much more than at which they were purchased.

The allegations are serious. To get important leads in investigation his custodial interrogation is necessary. Learned Advocate for Accused strongly opposed for granting Police custody. But in view of above stated reasons mentioned in remand report Police custody is necessary. Hence accused is remanded in police custody till 02/02/2021.

23. The foundation of the petition in challenge to the remand order and effecting the arrest of the petitioner emerged from the submission of learned Counsel for Petitioner. We have already referred to the submission of learned Counsel Mr. Ponda in earlier part of our order.

24. Submissions of learned Senior Counsel, Mr. Ponda though looks very attractive at the first blush but on going through the order

passed by the learned Special Court along with material presented for our perusal, we are unable to accept the submissions of learned Senior Counsel Mr. Ponda.

25. First of all, we may refer to the first information report lodged at Deccan Police Station, Pune City at the instance of Ranjana Ghorpade. Though, it is submitted by learned Senior Counsel, Mr. Ponda that the allegation in complaint are in respect of a conspiracy being hatched by the accused person so as to deprive the depositors from there money deposited in the society and that object is achieved, we may state that it was one part of entire series of offence. The depositors were lured by an assurance that they would get handsome returns with attractive interest of their amount deposited in the said society. It was also assured to the depositors that even if there occurs some complications in the society their amount is secured. On such an assurance the complainant and other depositors deposited their hard earned money in the said society. When they came to know that they are cheated as the society went in liquidation they approached administrator (liquidator, referred as administrator in complaint) the liquidator only added misery to the misfortune of the depositors. Then the complaint refers to

purchase of property by Sunil Zawar and one of such property was the office of the said society wherein the complainant had visited initially to deposit the amount and subsequently the complainant found that board of an company was affixed in that very premises.

26. The material collected in the process of investigation revealed that Shri Sai Marketing and Trading Company is a partnership firm of petitioner Suraj Zawar and his father Sunil Zawar. Thus, the submission that petitioner Suraj is having no concern with Shri Sai Marketing and Trading Company and the same is sole proprietorship firm of his father Sunil Zawar cannot be accepted in view of document collected by investigating agency and this document is registered partnership deed. Opening part of the partnership deed is, partnership deed made on this 07th day of September, 2011 so that this is a partnership of two persons namely, Shri. Sunil Devkinandan Zawar and Shri. Suraj Sunil Zawar. In so far as commencement of business it is stated in the deed that business of firm will be continued from 07.09.2011. The name of the partnership firm is M/s. Shree Sai Marketing and Company. The deed further refers to an equal contribution towards the capital of the firm and the same is Rs. 15,000/- each by way of fixed capital. It is also stated in the

partnership deed that the bank account or accounts for the partnership business shall be operated by single signature of either of the partner.

27. It is admitted by the petitioner that Shri. Sai Marketing and Trading Pvt. Ltd is a company where Suraj is a director. Then there is another company Shri. Salasar Trading Company and this is a partnership firm of petitioner Suraj, one Yogesh Laddha and Sunil Zawar. Certain role is played by this company also and we may refer the relevant material at a later part of our order. The petitioner also admitted that the office of both companies namely Shri Sai Marketing and Trading Pvt Ltd and Shri Sai Trading and Marketing Company is situated in one and the same premises. Then there is material in the form of receipts issued to the depositors through the establishment head of the said society of the year 2016. The receipt show that on accepting a part amount as per the application submitted by these depositors, the receipts are issued to the depositors showing these amount is made clear. Then there is a format affidavit. These documents assumes importance on the backdrop of the statement in the complaint that the depositors were pressurized and impressed upon by the liquidator and certain persons engaged by the liquidator to accept 20% or 30% of amount and handover their receipts

of deposit.

28. We have perused the statements of certain witnesses. As the investigation is in progress, we may not disclose the names of those witnesses. Though, there is specif reference in the statement of these witnesses as to in which capacity they were working with main accused Sunil Zawar but as the investigation is in progress, we deem it appropriate not to disclose the details as such, we have referred these witnesses as erstwhile employee of accused Sunil Zawar and we only refer statement of witnesses as A, B, C and D.

29. Statement of witness 'A' who stated that he had deposited amount with the said society to the tune of Rs. 3,60,59,357/- as he was in need of the money he approached the chairman of the said society Mr. Pramod Raisoni. Certain receipts were issued to this witness and it was told that as the condition of the society is not good and on improving the condition he would receive the entire amount deposited with the society. Subsequently, it came to knowledge that various offences are registered against the society and liquidator is appointed on the society. When he approached the liquidator Mr. Kandare, Mr. Kandare expressed inability

and then further told him that he would not get entire amount in one stroke but there is a way of receiving the amount in installments without any interest within 10 years. Initially the witness was not ready but then he was in dire need of the money he accepted the offer of Mr. Kandare. Then Mr. Kandare phoned a person and told him that he would come with the said person. When he approached the person he was Sunil Zawar. There was another person i.e. Suraj Zawar. Both of them offered him to accept 40% of amount against his deposit and told him that otherwise also the society had gone in liquidation.

30. Petitioner Suraj Zawar told his father Sunil Zawar that this depositor is getting his amount in 10 years and they will get a person with huge amount and they should not have to pay any commissions. When this witness refused the offer, liquidator Jitendra Kandare assured him that he would get entire amount deposited with the society. When the witness found that no amount was repaid to him as such, he made a phone call to Sunil Zawar on 13.11.2016. An amount of Rs. 1,45,00,000/- was deposited in his account through RTGS. The witness then asked the liquidator why only part payment was made to him and if the remaining amount of his deposit is not received by him he would

approach the police authorities. Then Mr. Kandare told this witness to come to Jalgaon along with photographs so as to prepare an affidavit. Accordingly, he along with his brother visited the Jalgaon in November, 2016. A document typed on 100 Rs bond paper was handed over to this witness. There was a reference to the amount received by this witness and it was stated that remaining amount of Rs. 13,47,500/- would be deposited in his account without any interest. When this witness refused to sign document he was asked to attend office of Sunil Zawar. He he attended the office of Sunil Zawar along with Kandare, at that time Petitioner Suraj was present their in the office. Petitioner pressurized this witness and gave threats to him. The witness was apprehended due to the pressure and threats and under that pressure he signed the document and also made his thumb mark on the documents. Not only this witness was pressurized but on the document signature of his brother was also obtained as a witness along with an employee in the office of Sunil Zawar.

31. There is a reference of receiving a some amount in the year 2018 and 2019 in the account of this witness. This statement clearly show that the petitioner was present in the office of his father Sunil

Zawar and played an active role in pressurizing and threatening the depositor. Thus, the ground raised in the petition that the petitioner had no concern with any alleged misdeeds of the other accused who is his father runs contrary to the material collected in the investigation. The statement of this witness was recorded on 14.01.2021 and this is a part of material collected in the process of investigation and was presented before Learned Special Court in support of the opposition to the remand application. Thus, it cannot be said that there was no material before the learned Special Court while considering the application. Along with the statement of this witness the copy of the bank account statement is annexed too. Perusal of this statement clearly show that as per the statement of this witness an amount of Rs. 1,45,00,000/- was deposited in his account through RTGS on 13.11.2016.

32. Statement of witness ‘B’ show that he was a former employee of Sunil Zawar. The company Shri Sai Marketing and Trading Company was recipient of tender for supply of food under scheme Shaleya Poshan Aahar. Initially witness ‘B’ was maintaining the record, preparing the receipts for Sai Marketing Company. Accused Sunil Zawar then handed over the consent letters, affidavits and nil loan receipts format to him and

then he was asked to prepare these documents in format and it was stored in the computer by him. In that period one Kunal Shah brought a software of the said Society and the same was installed in the computer being operated by this witness. The entire information in relation to the said society was accessible and witness 'B' was able to see the details of the depositors. Then he stated that whenever any depositor of of the said society used to approach Sunil Zawar his information was being stored in the computer and the receipts were handed over to the depositors. Then he stated that one officer of the said society was frequently visiting in the office and subsequently he came to know that the name of the officer is Mr. Kandare and he is the liquidator appointed on the said Society. He stated that the software installed in the computer being operated by this witness was connected with the said society through online.

33. It is further stated by this witness that certain person who were initially working with Sunil Zawar in the capacity of private contractors or store keeper in the venture of the food supply under the scheme Shaleya Poshan Puravtha were attending the office of Sunil Zawar in the year 2016. The meetings used to be held in the office for filling up the tenders. In this meetings and in the process of filling up the

tenders one Sunil Kalantri, Deepak Shinde and Alok Shivani were actively participating. Laptop belonging to Suraj Zawar used to be operated through Alok Shivani. Alok Shivani was in the constant touch with Kunal Shah in the process of filling up tenders. In the office of Sunil Zawar petitioner Suraj used to remain present along with other accused persons namely, Mr. Kandare, Akash Maheshwari, Mahavir Jain. Now statement of this witness is recorded on 10.01.2021. Supplementary statement of this this witness was recorded on 16.01.2021 and in his supplementary statement reference was given of two other persons who have submitted tenders forms on the directions of Sunil Zawar and petitioner Suraj Zawar.

34. On the backdrop of this supplementary statement, it would be useful to refer the statement of witness ‘C’ and ‘D’

35. Then comes an important statement of witness C. Witness C was also an employee of Sunil Zawar. He stated that a company Salasar Trading Company was initially operated by a person namely, Yogesh Laddha. Yogesh Laddha is a relative of Sunil Zawar. In the year 2018 Salasar Trading Company was transferred in the name of Suraj Sunil

Zawar. In the year 2017-2018 a tender was filled in for purchase of property of the said society. On direction of Sunil Zawar witness C participates in the process as representative of Salasar Trading Company. An authority letter in the name of witness 'C' signed by Sunil Zawar was handed over to this witness. He stated in the statement that all the documents required for participation in the process where prepared in the office of Sai Marketing Company. Then he stated that the form to participate in the tender process was filled in by Suraj Zawar and he identified handwriting of Suraj Zawar. Then he stated that another form was filled in against tender in respect of plot situated at Pasuba through Sai marketing and Trading Company and this form also filled in by Suraj Zawar.

36. There is another important statement of witness 'D'. In January 2017 he received a phone call from Sunil Zawar. Sunil Zawar told him that there is an auction process for purchase of shop situated at Bhosari and he told this witness to participate in the tender process. He further told that the initial amount to participate in the tender process would be deposited in his account and he should prepare the demand drafts of the amount as told by Sunil Zawar. Then he was informed that

the necessary documents are prepared and ready. Then Suraj Zawar told him on a telephonic conversation that his father Sunil Zawar would transfer amount in his bank account and accordingly, in his bank account at Raigad he received an amount of Rs. 08,05,000/- on 19.01.2017 and as per the directions he submitted two demand drafts through post to the liquidator of the said society. The bank statement of this witness is also perused by us, wherein we find the entries of the amount to the tune of Rs. 8,05,000/- received through RTGS and entries in respect of two demand drafts to the tune of Rs. 4,31,090/- and 3,72,433/-.

37. There is another witness who was also directed to participate in the tender process as bidder. An amount of Rs. 1,98,000/- was deposited in his account by way of electronic payment. Then there is a reference to the withdrawals and these amounts were utilized for participation in the tender process.

38. The documents collected in the process of investigation show that the property i.e. Shop Nos. 16, 17, 18 and 18A situated at Kohinoor Arcade Bulk Land No. 2, Nigadi Tq. Haveli of which market price is of Rs. 7 crore was purchased in connivance with the other accused at low

price i.e. at the rate of Rs. 2,11,11,111/-. In the said purchase the amount of deposits which was kept in the society by various depositors was utilized. Similarly, four commercial blocks having market price Rs. 8 crore and above situated at Balgandharv Chowk, Ghole Road, Pune was purchased at lower rate to the tune of Rs. 3,11,33,111/-. Similarly, the shops No. 1, 2 and 3 situated at Nashirabad were also purchased at the rate of Rs. 19,51,515/- . We have perused the documents showing that the properties situated in the prime area in city of Pune. Certain shops were shown as one premises and were purchased at a much lower rate than the market rate. It was also submitted that even entire purchase amount is not paid by the petitioner and he had only paid part amount against the purchase of property.

39. Then there is a audit report. The accounts of the petitioner and three companies namely, Shri Salasar Trading Company, Shri Sai Marketing and Trading Company and Sai Baba Cold Storage Pvt. Ltd wherein the petitioner Suraj Zawar is either partner or director were subjected to a forensic audit. The audit report refers in detail about transactions. Most of the transactions are in respect of those witnesses whose statement we have already referred. There were as many as 13

account holders in whose account amount was transferred and some of these account holders participated in the tender process at the instance of main accused Sunil Zawar and petitioner Suraj Zawar. It may not be necessary for us to refer to other details of the audit report in view of the fact that the investigation is in progress and such disclosure may adversely affect the process of investigation.

40. The above referred material in the form of witnesses and we have referred to their statements in detail as illustrative reference as there are many such other statements of witnesses. Thus, these statements clearly show that petitioner Suraj Zawar is a string puller who has played a major role and his participation by way of pressurizing and threatening the witnesses, by way of preparing the false and fabricated data, by way of tampering of data, by way of transferring of money in the account of proxy bidders who are either the employees of Sunil Zawar or his relatives is revealed in the investigation. This material is sufficient enough to record the *prima facie* observation that petitioner Suraj has played a significant role in the commission of offences giving rise to lodgment of report at Deccan Police Station namely, Crime No. 673/2020 and Respondent No. 1 was justified in taking appropriate

actions against the petitioner. Respondent No. 1 was also justified in seeking police custody remand of the petitioner so as to unearth various aspects involved in the serious crime wherein 100's of depositors have lost their hard earned money. Learned Special Court on the backdrop of these facts committed no error in observing that the allegations against the petitioner are serious and to get important lead in the investigation custodial interrogation of the petitioner is necessary and accordingly granted police custody remand of the petitioner.

41. Considering the nature and scope of mischief played in the affairs of the said society whereby 100's of depositors were cheated and their hard earned money was utilized by the accused person for purchase of property of the said society at a very lower rate.

42. Now the following material referred by us supports our opinion that there is an active involvement of the petitioner in the alleged crime. This is the most important factor revealed from material perused by us which clearly show that the petitioner was aware of the fact that a tender is to be flouted on 08.08.2016 and the copy of this tender was found in the laptop of the petitioner on 04.07.2016. This means that

the petitioner was aware of the tender which was to be flouted a month later and by using this information the petitioner was asking his former employees to participate in the tender process as proxy bidder and the petitioner was then submitting tender of highest amount.

43. Though, it was submitted that petitioner participated in the tender process in response to tender notice and as such he has not committed any illegal act but the material show entire process was manned and operated by the main accused Sunil Zawar and the petitioner in connivance with other accused persons. Thus, on the basis of material presented before us and referred above, we are unable to accept the submission of learned Senior Counsel, Mr Ponda that the petitioner is an innocent person and having no concern with the alleged offence. We also find considerable merit in the submissions of learned Special P.P., Mr. Chavan that though certain offences attracted against the petitioner may have a punishment for less than 7 years but as Section 120 B is attracted against the petitioner wherein severe punishment is prescribed i.e. imprisonment for life. It was also submitted by learned Special P.P., Mr. Chavan that considering the nature of offence and the material showing the involvement of the petitioner and preparation of

the software depositing the money in account of former employees and directing them to participate in the tender process, there was a reasonable apprehension that if the notice could have been issued to the petitioner the petitioner either would have been evaded the arrest or would have suppressed the material record. Learned Special P.P., Mr. Chavan submitted that on effecting arrest of the petitioner he was brought before the learned Magistrate and then an application was submitted seeking his police custody remand and appropriate orders were passed by the Court.

44. We are also of the opinion that though the remand order passed by the learned Special Court is not very exhaustive but it certainly refers to the reason for allowing the application. As it is submitted before this Court that the material collected in the process of investigation was submitted for the perusal of this Court and we have also made reference to the certain material collected by investigating agency, in our order as such it can be safely said that the reasons recorded in the order of Special Court were on the basis of perusal of the material, and application of mind order of granting police custody remand to the petitioner was passed.

45. The material presented before this Court showing clear involvement of the petitioner, we are of the opinion that it is not only the aspect that there a resemblance in the name of companies of the petitioner and his father main accused in Crime No. 673/2020 but there is much more than that and by using the data unauthorizedly obtained by the petitioner in respect of tenders prior to the flouting of tenders facilitate him to manipulate tender process for personal gains. It seems that property of said society was sold at lower price and hence there is a loss of the society and in turn of the depositors. Thus, we are of the opinion that though there cannot be any dispute on the propositions of law reflected in the judgments relied on by learned Senior Counsel, Mr. Ponda, the same are of no help to the petitioner on the backdrop of factual matrix referred by us in detail in earlier part of our order.

46. In our opinion, learned Judge committed no error in allowing the application seeking police custody remand though, the order of learned Special Court was brief but on perusal of material and by assigning cogent reasons and arriving at proper and just conclusion. The prayer for quashing and setting aside the order passed by the learned Judge dated 23.01.2021 is rejected. As we are unable to find any fault or

illegality committed by the investigating agency of Respondent No. 1 on effecting the arrest of petitioner, the prayer to that effect, namely, granting compensation to the petitioner or directing inquiry against the petitioner are also rejected.

47. In the light of discussion made in above referred paragraphs, we are of the opinion that Writ Petition is devoid of merits as such deserves to be dismissed. Accordingly, Writ Petition is dismissed. Rule stands discharged.

(S.M. MODAK, J.) **(PRASANNA B. VARALE, J.)**