

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CRIMINAL APPELLATE JURISDICTION****CRIMINAL WRIT PETITION NO. 847 OF 2021**

Vikaram Mahadev Hinge

....Petitioner.

Vs.

State of Maharashtra & Anr.

....Respondents.

Mr. Siddhesh Pilankar i/by Dr. Uday Warunjikar for the Petitioner.

Mr. A.R. Patil, APP for the Respondent No.1-State.

CORAM : A. S. GADKARI, J.**DATE : 16th MARCH, 2021.****P.C.:-**

By the present Petition, the Petitioner, one of the victims out of 125 victims as of today, has impugned Order dated 16th February, 2021, thereby rejecting his Application for intervention in Bail Application No.126 of 2021 filed by accused Ravi Barku Gavali in CR No.435 of 2020 registered with Agripada Police Station, Mumbai under Section 420 read with Section 34 of the Indian Penal Code and under the provisions of Maharashtra Protection of Interest of Depositors (in Financial Establishments) Act, 1999, (for short, "*the MPID Act*").

2 Heard Mr. Pilankar learned counsel for the Petitioner and Mr. Patil, learned APP for the Respondent No.1-State.

3 It is the case of the Petitioner that, he invested Rs.51,50,000/- with the firm of the accused. That, the accused returned Rs.30,50,000/-, to the Petitioner, however did not repay an amount of approximately

Rs.20,00,000/-. Accused Ravi Barku Gavali has filed Bail Application No.126 of 2021 for bail before the learned Additional Sessions Judge, Greater Mumbai. The Petitioner being one of the victims, it is necessary for the Trial Court to hear him in the matter before any Orders are passed in the said Bail Application.

In this brief premise, the Petitioner filed a Miscellaneous Application below Exh-3 in the said Bail Application No.126 of 2021 before the learned Additional Sessions Judge, Greater Mumbai. The learned Additional Sessions Judge, by its Order dated 16th February, 2021, was pleased to reject the said Application by holding that, there are 125 investors in the present crime and if the Application of the Applicant (present Petitioner) is allowed, the other persons may also approach the said Court for seeking intervention. It is also observed that, the first informant namely Mr. Imran Vartak is being represented by his Advocate Shri. Khandagale and is prosecuting the said Application.

4 Mr. Pilankar, learned Advocate for the Petitioner submitted that, the Petitioner is a “*victim*” as contemplated under Section 2(wa) of the Code of Criminal Procedure, 1973 (for short, “*the Cr.PC.*”) and therefore, he is entitled to represent himself to espouse his cause before the Trial Court. In support of his contention, he relied on the two decisions of the Supreme Court namely (i) *Sundeep Kumar Bafana Vs. State of Maharashtra & Anr.* Reported in (2014) 16 SCC 623 and (ii) *Rekha Murarka Vs. State of West*

Bengal & Anr., reported in (2020) 2 SCC 474.

5 During the course of arguments, Mr. Pilankar, fairly submitted that, if the Petitioner is granted an opportunity to assist the learned Additional Public Prosecutor appearing before the Trial Court, the Petitioner will not pressurize the concerned Addl. PP. appearing before the Trial Court, to argue his case in a particular manner or fashion. That, the Petitioner will assist the Court, if the Court directs so and calls upon him, as per the law laid down by the Hon'ble Supreme Court in the case of *Sundeep Kumar Bafana (Supra)* and not otherwise. He therefore submitted that, appropriate Orders in the interest of justice may be passed in the present Petition.

6 The Hon'ble Supreme Court in its celebrated judgment in the case of *Sundeep Kumar Bafana (Supra)*, in paragraph No.32 has held as under:-

“32. The upshot of this analysis is that no vested right is granted to a complainant or informant or aggrieved party to directly conduct a prosecution. So far as the Magistrate is concerned, comparative latitude is given to him but he must always bear in mind that while the prosecution must remain being robust and comprehensive and effective it should not abandon the need to be free, fair and diligent. So far as the Sessions Court is concerned, it is the Public Prosecutor who must at all times remain in control of the prosecution and a counsel of a private party can only assist the Public Prosecutor in discharging its responsibility. The complainant or informant or aggrieved party may, however, be heard at a crucial and critical juncture of the Trial so that his interests in the prosecution are not prejudiced or jeopardized. It seems to us that constant or even frequent interference in the prosecution

should not be encouraged as it will have a deleterious impact on its impartiality. If the Magistrate or Sessions Judge harbours the opinion that the prosecution is likely to fail, prudence would prompt that the complainant or informant or aggrieved party be given an informal hearing.”

7 It is thus clear that, upon the Trial Court recording finding that, the prosecution is likely to fail, prudence would prompt that, the complainant or informant or aggrieved party be given an informal hearing. What is important is that, the recording of finding by the Court that, due to improper assistance by the Public Prosecutor appearing before the Trial Court, the prosecution is likely to fail.

This Court has noticed that, in several economic offences, there are hundreds of victims. In those circumstances, it will not certainly be appropriate, rather feasible to hear each and every victim or an Advocate representing a victim.

In a given case, if there are large number of victims, the concerned Court may consider to hear an Advocate for majority of the victims, to bring to the notice of the concerned Court their grievance. However, as noted earlier, recording of finding by the concerned Court that, the prosecution is likely to fail, is indispensable.

8 As noted by the Trial Court in its impugned Order, there are 125 victims in the present crime and it will not be feasible for any Court to hear each and every investor and to adjudicate independent grievance of each of the victim at the stage of bail. Statements of victims have been

recorded by the Investigating Officer. The State Government has appointed Addl. PP, who is competent enough to take care of the said case and to represent all the victims in the Crime. It will also therefore be inappropriate to allow each and every victim to intervene in the matter, as it will have demoralizing effect on the concerned Addl. PP appointed by the State Government. The independent thought process of the concerned Addl. PP cannot be eclipsed by the presence, pressure or alleged assistance of the Advocate for victim.

9 In view of the above deliberation, the Petitioner herein is permitted through his Advocate only to assist the Addl. PP appearing in CR No.435 of 2020 registered with Agripada Police Station Mumbai, under Section 420 read with Section 34 of the IPC and under Section 3 of the MPID Act.

It is made clear that, the Petitioner shall not pressurize the concerned Addl. PP to plead his case in a particular mode or manner and it will be the sole discretion of the concerned Addl. PP, to plead the case of State as per record and instructions received by him from the Investigating Officer, before the Trial Court.

10 Impugned Order is modified to the above extent only.

Writ Petition is partly allowed in the aforesaid terms.

(A.S. GADKARI, J.)