IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL BAIL APPLICATION NO. 1641 OF 2021
WITH
INTERIM APPLICATION NO. 1595 OF 2021

Nida Ayyub Hussain .... Applicant
Versus
The State of Maharashtra .... Respondent

Mr. Advait U. Shukla for Applicant.
Smt. Anamika Malhotra, APP for State/Respondent.

CORAM : SARANG V. KOTWAL, J.
DATE : 28th JULY, 2021
(Through Video Conferencing)

P.C. :

1. The Applicant is seeking her release on bail in connection with C.R.No. I 289 of 2019 registered at Kapurbavdi police station, Dist. Thane, under sections 420, 406 and 409 r/w. 34 of the Indian Penal Code (for short 'IPC') and under section 3 of The Maharashtra Protection of Interest of Depositors (In Financial Establishments) Act, 1999 (for short 'MPID Act'). The applicant is arrested on 02/01/2020 and since then she is in custody. The investigation is over and the charge-sheet is already filed.

2. Heard Shri. Advait Shukla, learned counsel for the applicant and Smt. Anamika Malhotra, learned APP for the State.

3. The prosecution case begins with the First Information Report (for short 'F.I.R.') which is lodged by one Shabina Gulam Khan on 24/12/2019. She has stated that, one Mumtaz Alam Shaikh told her in the year 2017 that, he was a Branch Manager with M/s. Ridas India Properties. The company was owned by one Mohammad Ayub Husain. He told the informant that, if money was invested in this company they were giving good returns. The main office of the company was in Bengluru. The informant went to the Kapurbavdi office of M/s. Ridas India Properties. There, she met Mohammad Ayub Husain and aforementioned Mumtaz. They told her that, on different investments the investors were to get different amounts by way of returns. The investments made by the investors were used in Real Estate, Agriculture and livestock breeding. The informant was impressed by their representations and decided to invest in their company. Similar to the informant, there were other investors who also had invested in the company. The F.I.R. gives details of 35 of such investors who had in total

invested Rs.93 lakhs. The first informant has mentioned that, in the year 2015 she had deposited Rs.2,50,000/-. After 18 months she got Rs.2,50,000/- in her bank account and remaining Rs.2,50,000/- were invested in the company's monthly investment scheme. The informant and others had received returns on their monthly investments. However, since December 2018 they stopped receiving returns. According to the first informant, the investors, thus, lost Rs.93 lakhs and, therefore, this F.I.R. is lodged.

4. The prosecution case is mentioned in the charge-sheet. It is mentioned in the charge-sheet that, Mohammad Ayub Husain was Director of Ridas India Properties and one Anis Aayman Ayub Husain formed a financial entity named Ridas India Properties. It's office was at Kapurbavdi naka, Majivada, Thane. The accused Mumtaz was the Branch Manager. He induced the investors to invest in their company on the aforementioned representations. The accused gave documents in the form of Membership Enrollment Receipt, Final Receipt, Business Associate Agreement, Cancellation Letter etc.

5. The case against the present applicant is that, she was

wife of the main accused Mohammad Ayub Husain. She had also induced the investors into investing in the scheme of the company by telling the investors that the investments would be used in real estate, construction, agriculture and livestock breeding etc. There are allegations that the applicant had obtained additional Rs.1000/- from each of the investors and they were given Membership Enrollment Receipt signed by the applicant. She had signed final receipts for their investments. She had signed Business Associate Agreements. The charge-sheet mentions that the applicant had received Rs.5 lakhs on 13/04/2017 from Ridas India Properties in her Axis Bank account. These are the allegations against the applicant.

6. Learned counsel for the applicant submitted that the applicant was never a Director of the company. She was earlier employed with the company and later on she got married with the main accused Mohammad Ayub Husain and only because of that she had to follow his orders. He submitted that, the applicant is in custody since 02/01/2020. There is no recovery from her, showing her complicity in the offence. Though, she had signed the

documents, she had signed those documents as a part of her employment and she personally had not benefited in any manner. He submitted that the allegations show that, she had opened a separate office at Kharghar of the same company and for that purpose a separate C.R.No. 365 of 2019 at Kharghar police station was registered against her under the same sections i.e. 420, 406 and 409 of IPC and under section 3 of MPID Act. He submitted that, the applicant is already arrested and then released on bail in connection with that offence. Therefore, same principle should apply in this case also since the company involved is the same and the applicant may be released on bail. The applicant should not have been arrested second time, when she was already arrested in the other C.R. where allegations are in respect of the same company.

7. Learned APP strongly opposed this application. She submitted that the total amount involved in this case has gone to Rs.4,15,25,000/- and Rs.30 lakhs in cash. More investors are coming forward. The investigating agency is in the process of filing a supplementary charge-sheet. She submitted that the applicant

cannot take shelter under the argument that she was not in-charge of the company. She was wife of the main accused who still is absconding. She submitted that, the statements do indicate that, it was the applicant who had induced many of the investors and therefore, her role is clearly spelt out in the charge-sheet. However, she accepted that, there was no recovery personally from her, either in the nature of immovable property or movable property, except an amount of Rs.5 lakhs which was lying in her bank account.

8. I have considered these submissions. With the assistance of both learned counsel I have perused the charge-sheet. In the charge-sheet there are statements of investors and there are documents in the nature of agreements etc. There are different investors. Some of them have stated that the applicant had also explained the scheme to the investors. Some of them have restricted these allegations against the Branch Manager Mumtaz Alam Shaikh. Statement of Sandhya Chiplunkar mentions that, she was explained the scheme by main accused Mohammad Ayub Husain. She has stated that the company at Majivada was

functioning properly between 2015 to October 2018. In July 2018 the applicant started a different office by the name Ridas at Kharghar and there she used to give high returns to the investors. Subsequently, the investors started withdrawing their investments from Ridas India Properties and since January 2019 the investors did not get returns from the said company. The statement of Asharaful Chisti shows that, he was told about the scheme by Mumtaz and the applicant. Shahbaz has stated that, he was told about the scheme by Branch Manager Mumtaz. Alok Roy has stated that, he was told about the scheme by Mohammad Ayub Husain and the present applicant. There are many such investors.

9. At this stage, there is some definite material against the present applicant that she had explained the scheme to the investors and had also signed the documents. Significantly, she had opened another branch at Kharghar, for which, a different C.R.No. 365 of 2019 under the same sections was registered, in which, she was arrested and released on bail. The said allegations are concerning the same company. Therefore, allegations in the present case are overlapping. The most important feature in this

case is that, in spite of arrest and custodial interrogation of the applicant in this case, which was incidentally second arrest on the similar allegations, the investigating agency has not found any property which the applicant could have derived from the misappropriated amount.

10. The history of the company shows that, the applicant was never a Director. The scheme was originally floated by her husband. She herself got married with the main accused in the year 2016. The scheme was operational much prior to that. The applicant herself was an employee of the said company and subsequently she became wife of the main accused who is still absconding. In this view of the matter, it does appear that the absconding accused is the main beneficiary and he is the mastermind behind this case. Undoubtedly, the applicant had informed the investors about the scheme, but initially that was her job as an employee and subsequently she continued doing the same. The significant feature, as mentioned earlier, was that the investigating agency has not found that the applicant had benefited in any manner from the scheme and nothing was

recovered from her. No property was seized. The applicant is already in custody since 02/01/2020. It is more than obvious that the trial is likely to take a very long time, even to commence and even further more time to conclude. Therefore, I do not see it appropriate to keep the applicant behind bars as an under trial prisoner for inordinately long period in the background of these facts. In view of this discussion, I am inclined to grant bail to the present applicant.

11. Hence, the following order :

ORDER

(i) In connection with C.R.No. I 289 of 2019 registered at Kapurbavdi police station, Dist. Thane, the applicant is directed to be released on bail on her furnishing P. R. bond in the sum of Rs.50,000/- (Rupees Fifty Thousand Only) with one or two sureties in the like amount.

(ii) The Applicant shall attend the office of the Investigating Agency once in a month till the charges are framed.

(iii) The applicant shall deposit her Passport, if any, with the Investigating agency and she shall not leave India without prior permission of the trial court.

(iv) Application stands disposed of accordingly.

(v) In view of disposal of bail application, the Interim Application also stands disposed of.

(SARANG V. KOTWAL, J.)