IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

ANTICIPATORY BAIL APPLICATION NO.1505 OF 2021

Manjiri Kaustubh Marathe .. Applicant
Versus
The State of Maharashtra .. Respondent

WITH

ANTICIPATORY BAIL APPLICATION NO.1672 OF 2021

Pranav Balwant Marathe .. Applicant
Versus
The State of Maharashtra .. Respondent

WITH

ANTICIPATORY BAIL APPLICATION NO.1673 OF 2021

Neena Balwant Marathe .. Applicant
Versus
The State of Maharashtra .. Respondent

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Mr. Manoj Mohite, Sr. Advocate with Chaitanya Pendse for the applicant in ABA 1505/21.
Mr.A.H.H. Ponda, Sr. Advocate with Reshma Mutha, Meherpuja Mathur and Nikhil Kulkarni for applicant in ABA 1672/21 and 1673/21.
Mr.A.R. Kapadnis, APP for the State.
Mr.Kuldip T. Pawar for intervenor in both matters.

CORAM: BHARATI DANGRE, J.
DATED : 6th AUGUST, 2021

<u>P.C</u>:-

1 ‘*All that Glitters is not Gold’ is what the investors who invested amount over Five crores with a prominent Jeweller in the City of Pune, on an assurance of high returns, have perceived.*

By the three Applications, the applicants are seeking protection from arrest in connection with C.R.No. 0064/21 registered on 11th March 2021 with Kothrud police station, thereby invoking Section 406, 420 read with Section 34 of the IPC and Section of the Maharashtra Protection of Interest of Depositors (In Financial Establishments) Act, 1999 [for short ‘the MPID Act’]

ABA No. 1505/21 is filed by Manjiri Marathe (Accused no.3) whereas ABA 1673/21 is filed on behalf of Neena Marathe (Accused no.4) and in ABA 1672/21 – Pranav Marathe (Accused no.5) is the applicant.

2 Heard learned Senior counsel Mr.Manoj Mohite for the applicant in first application whereas the other applicants are represented by learned senior counsel Mr.A.H.H.Ponda. Learned APP Mr.A.R.Kapadnis is representing the State and learned Advocate Kuldeep Pawar has filed the application for intervention and appeared for the complainant.

3 The subject C.R came to be registered on a complaint filed by a house wife who was lured in investing money in a scheme of Fixed Deposit propagated by Pranav Marathe Jewellers of which Milind Marathe, Pranav Marathe, Kaustubh Marathe and Neena Marathe are the Directors on being assured of 15% interest on the deposit. She invested an amount of Rs.29 lakhs for a period of one year and in the year 2016, re-invested the said amount on its maturity. Apart from this, she also invested an amount of Rs.8 lakhs in the scheme totalling to Rs.37 lakhs and in the year 2017, an amount of Rs.37,80,000/- which was due, which was again re-invested in the scheme run by Pranav Marathe Jewellers for a period of one year with an assurance of 15% returns. Though the date of maturity of the Fixed Deposit expired, there was no return on repeated request. No explanation was afforded by those who accepted the amount as to why the amount was not coming back. Apart from the complainant, names of several other investors are also mentioned in the FIR who had invested their amount in the scheme floated by Pranav Marathe Jewellers and the total amount which was invested by various investors, which remain unpaid is Rs.5,07,02,970/-.

4 The complaint set the investigation machinery rolling and it has surfaced that Pravin Marathe Jewellers, a Private

Limited Company, Laxmi Road is registered and incorporated under the provisions of the Companies Act in the year 2011-12. The Directors of the said Company are one Milind Marathe @ Balavant Marathe, Applicant Manjiri, Neena and one Kaustubh Marathe with each Director having 23% stake. In the year 2014 and to be precise on 1st July 2014, a partnership firm is constituted in the name of M/s.Marathe Jewellers. With the aforesaid persons being recorded as partners and the applicants Manjiri and Neena are 20% partners in the said firm. Pranav Marathe is neither a partner nor a Director, but he is an employee who received salary from Pranav Marathe Jewellers.

5 The two applicants Manjiri and Neena lay emphasis on their retirement from the partnership firm effected by a deed of reconstitution executed on 30th November 2018 between the continuing partners and Mrs.Neena, Mrs. Manjiri and Mr.Pranav, referred to as retiring partners who had expressed their desire to retire from the firm due to personal difficulties and accordingly, they stand retired from the partnership business with effect from 30th November 2018. Similarly, applicant Mrs.Neena and Mrs.Manjiri place reliance upon documents from the Registrar of Companies (ROC) which reflect that they had resigned from the post of Director with effect from 30th November 2018.

6 In the backdrop of the aforesaid scenario, respective

Senior counsel have advanced their submissions in favour of the applicants, whom they are representing. The cumulative effect of the submissions is that the applicant Mrs.Neena and Manjiri were only Directors and Partners for name sake and they never actually participated in the business of the Company or the partnership firm, and from 30th November 2018, they do not continue even the said position and have no concern with the said business of the Company and the firm and necessarily they cannot be implicated in the allegations levelled when the FIR is registered in the year 2021.

Learned senior counsel Mr.Mohite representing Mrs.Manjiri would submit that the business had reached a nadir and attained financial implode on account of the deeds of Milind Balwant Marathe who had shot himself dead on 27th December 2020, being unable to face the financial distress. It is alleged that without knowledge of Kaustubh Marathe, husband of Manjiri, another Director of the Company – Milind had diverted the funds into some other ventures behind the back of the other partners and he also constituted another partnership firm where he staked 50% of the contribution and not only this, he also ventured into by buying certain property in form of Hotels and Resorts. It is argued that since Milind Marathe was exclusively looking after all the business and financial transactions of both, the Company and the partnership firm, and the method adopted by him for usurping the money from the Company and the firm, literally amounted to siphoning off the amount and this was estimated to be worth Rs.7,75,81,920/- from the year 2013-14 to 2019-20.

This act on part of the Milind Marathe who is referred to as '*karta*' has put PNJ Pvt.td and Marathe Jewellers under financial stress and the two entities could not recover from the financial loss, is the submission.

Another important fact which is harped upon is the Company Petition jointly lodged by the Applicant Manjiri with her husband Kaustubh against Milind Marathe and Neena Marathe in the month of January 2020, before the NCLT, Mumbai praying a direction to restore the name and property to the respondent no.1 Company and to compensate such sum to the assets of the Company on account of misfeasance and breach of trust. However, after the Petition is lodged, unable to bear the financial stress, Milind has committed suicide.

7 As far as Pranav is concerned, learned counsel Mr.Ponda submit that Pranav was added as a partner when he barely attained majority and there is no role of actively involved in the business of firm ascribed to him. As far as Mrs.Neena is concerned, the submission advanced is on par with Manjiri, that she is not at all involved in the business of the Company of the firm and is a dormant partner.

8 Another submission asseverated on behalf of the Applicants is that neither the Company nor the partnership firm fall within the ambit of financial establishment {as defined under Section 2(d) of the MPID Act} and therefore, the invocation of provisions of MPID Act itself is fallacious. It is also argued that there are no allegations in the FIR against the applicant as to misappropriation as well as wrongful gain and ingredients of Section 406 and 420 of the IPC are not made out.

The learned APP has invited my attention to the papers of investigation which include the statement of several investors who have attributed that Applicants Manjiri, Neena and Kaustubh were personally present in the shop and that they had induced the investors by propagating the scheme of Fixed Deposit implemented by Pranav Marathe Jewellers. The scheme was explained to the investors by the applicants and they were assured of a fixed rate of interest on lapse of time. This assurance prompted the investors who invested their hard earned money in the scheme floated by the Company and the firm, but when the date of maturity approached, the return never came. Cash as well as gold was invested by the investors in the Company and the statements implicate the applicants as the investors have spoken in sync with the complainant. The investigation papers also include the statement of account of applicant Manjiri who have received amount from Marathe Jewellers on various dates which include the transfer on 14th August 2018, 16th July 2018, 8th March 2018. The balance-sheet of the Company signed on 31st March 2013 reflect entry of managerial remuneration of Rs.1,38,00,000/- where Neena and Manjiri are shown as Directors of the Company and the payment received by them in the said financial year is shown as Rs.18 lakhs each. In the Assessment Year 2015-2016, the remuneration to Meena and Manjiri is disclosed as Rs.18 lakhs. The balance-sheet as on 31st March 2017 reflect remuneration of Rs.12 lakhs being paid to Neena Marathe and Rs.10 lakhs to Manjiri Marathe, in the capacity as Directors.

The investigation papers also reflect transaction effected by Manjiri in favour of the investors Jyoti Deshpande and Pradnya Joshi through her mobile banking and the submission of the prosecution is she was an active participant in the business of the Company as well as the firm. The case of the prosecution on the basis of the documents on which they could lay hand is to the effect that both Manjiri and Neena were actively participating in the business of M/s.Marathe Jewellers and PMJ Pvt.Ltd and they are not entitled to claim innocence on the basis of the documents collected by the Investigating Officer.

Pertinent to note that Kaustubh Marathe is absconding and Milind Marathe is no longer available for investigation. A huge scam has been reported through the aforesaid C.R. where the investors have been duped and the total amount of misappropriation is alleged to be more than Rs.5 crores.

9 As far as Pranav Marathe is concerned, he has received the salary from PMJ as an employee. The learned APP submit that the counsel for the applicant is not justified in arguing that he had barely attained majority as it can be seen from the documents that Pranav attained a degree in Bachelor of Business Administration in the year 2016 and in the year 2017, he was awarded a degree of Masters of Business Administration in Marketing Management. It is obvious that the family wanted to involve him in the business and therefore, he was shown as an employee in the Company and has received his monthly remuneration. Further, the reconstitution deed dated 30/11/2018 retire him as a Partner where he is shown as of 24 years. The statement of investors equally implicate Pranav, who state that he was present in the shop when the scheme was explained to them and he played an active role in the whole episode when investors coaxed to reap benefits of the Investment Scheme run by the Jewellers.

10 In the backdrop of the material collated by the Investigating Officer, when the position of law on the point of vicarious liability is perused, it becomes apparent that in criminal

law, no vicarious liability can be fastened unless the statute takes that also within its fold. It is settled position of law that the Corporate entity is an artificial person which acts through its Officers, directors, Managing Director, Chairman etc. and if such a company commits an offence involving *mens rea*, it would normally intent and action of that individual who would act on behalf of the Company. It would be more so when criminal act alleged is of conspiracy. Although it is a cardinal principle of criminal jurisprudence that there is no vicarious liability unless the statute specifically provided so.

In light of the said settled position, the provisions of Maharashtra Protection of Interest of Depositors (In Financial Establishments) Act, 1999, an Act to protect Interest of Depositors of Financial Establishments will have to be perused.

Prima facie, it can be seen that the PMJ and M/s.Marathe Jewellers would fall within the ambit of Financial Establishment under Section 2(d), which bring within its sweep any person accepting deposit under any scheme or arrangement or in any other manner. The term 'Deposit' within the purview of the Act of 1999 include receipt of money or acceptance of any valuable commodity by any Financial Establishment to be returned after specified period or otherwise, either in cash or in kind or in the form of a specified service, with or without any benefit in the form of interest, bonus, profit or in any other form. Undisputedly, the term 'Person' within the meaning of Section

2(d) would not include only natural persons but also include Company, Association of persons, body of individuals, entities incorporated or unincorporated.

11 The charging Section, Section 3 of the MPID Act make the Promoter, Partner, Director, Manager, or any other person or an Employee responsible for management of or conducting of the business or affairs of such Financial Establishment to be responsible for the default of any repayment of deposit on maturity along with any benefit in the form of interest, bonus, profit or in any other form as promised or fraudulently fail to render service as assured against the deposit.

The explanation appended to the said section also assume significance in the present case since it adumbrate that the financial establishment which commits defaults in repayment of such deposit with such benefits in the form of interest, bonus, profit or any other form as promised or fail to render any specific service promised against such deposit, with the intention of causing wrongful gain to one or wrongful loss to another person or commit such default due to its inability arising out of the impracticable or commercially not viable promises made while accepting such deposits shall be deemed to have committed a default or failed to have render the service fraudulently.

12 The act attributed to the applicants in the complaint

of the investors specifically fall within the four corners of Section 3 of MPID Act and the explanation appended to it.

Prima facie, the applicants Manjiri and Neena, being working as Directors and Partners of the Company which had floated the scheme of investment for luring the depositors continued to hold the position in the partnership firm and the Company till 31st December 2018 and the statement of witnesses reveal that the investments are made in the year 2016. The Deed of Reconstitution though specify that the retiring partners shall not be responsible and liable for any outstanding debts of the firm and continuing partner/s shall be responsible for all outstanding debts, in the peculiar situation, when Milind Marathe is dead and Kaustubh Marathe is absconding, the continuing partners are incapable for sharing any liability as per the Deed of the reconstitution. Investors have lost a fortune and looking to the enormity of the amount, the Applicants must undergo a Custodial Interrogation in the wake of serious allegations levelled against them under the Act of 1999, which intend to deal with the grabbing of money in form of deposits from public, mostly middle class or poor on the promise of unprecedented high attractive interest rates or reward and without any delegation to refund the deposit to the investors on maturity. The persons accused of committing such an offence must therefore, necessarily be tapped and an opportunity by afforded to the Investigating Officer to investigate and interrogate into the alleged offence.

13 The observations made hereinabove are prima facie in nature and limited to the extent of disposal of the present applications.

The applications are accordingly rejected.

SMT. BHARATI DANGRE, J

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