IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO. 3910 OF 2021

Sunil Devakinandan Zawar ...Applicant

Versus

State of Maharashtra ...Respondent

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Mr. Aniket U. Nikam a/w. Mr. Ravindra K. Adsure, Mr. Yash P. Sonavane and Mr.Sidheshwar N. Biradar for the Applicant.
Mr. Pravin Chavan, Special Public Prosecutor a/w. Mr. H.J. Dedhia, APP for the Respondent -State.

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CORAM : V.G.BISHT, J.
RESERVED ON : 23RD NOVEMBER, 2021
PRONOUNCED ON : 7TH DECEMBER, 2021

PC:-

1. The present application has been moved by the applicant under Section 439 of the Code of Criminal Procedure in Crime No. 673 of 2020 registered with Deccan Police Station, Pune City for offences punishable under Sections 420, 464, 465, 467, 468, 471, 406, 409, 474, 477A, 225, 120B read with 34 of the Indian Penal Code (the IPC) and Section 3 of the Maharashtra Protection of Interest of Depositors (In Financial Establishments) Act, 1999 (for short, "MPID Act").

2. It is the case of prosecution that the informant and her sister had invested monies with Bhaichand Hirachand Raisoni Multi State Co-operative Credit Society, Jalgaon (for short, BHRMSCCS). In all they had deposited Rs. 16,90,142/-. They were promised that they would get more than Rs. 19 lacs, however, the money was not returned. According to prosecution, in the meantime, some investigation started and consequently, a Liquidator, namely, Jitendra Kandhare was appointed for BHRMSCCS.

3. The prosecution further alleges that the Liquidator Jitendra Kandare, who is co-accused, along with applicant and other co-accused hatched a conspiracy and in furtherance of that created a fabricated website and thereby siphoned off the monies of the BHRMSCCS by selling its property in less price, also the monies of depositors and further bought receipts of investors by paying them 30% of original amount and thereby misappropriated remaining 70%.

4. It is further seen that after conclusion of the investigation, it revealed that all the accused including applicant had misappropriated total amount of Rs. 61,90,86,163/-. Accordingly, the First Information Report came to be lodged.

5. Mr. Nikam, learned Counsel for the applicant, invited my attention that the applicant purchased three properties by following uniform process of E-tender. Learned Counsel also invited my attention to the various charts filed on record **(Exhibit -C)** to substantiate his submission. Further, learned Counsel invited my attention to the List No. II **(Exhibit -Y and Z collectively)** and then would submit that those sale deeds till date are not challenged before the Competent Civil Court. Even otherwise, according to learned Counsel, no offence under the Maharashtra Protection of Interest of Depositors (in Financial Establishments) Act, 1999 is made out inasmuch as the applicant was not involved in collection of deposits on behalf of BHRMSCCS with assurance of 13% per annum

interest nor in any manner had accepted deposits from the depositors. For all these reasons, the applicant deserves to be enlarged on bail, argued learned Counsel. Learned Counsel placed reliance in **Ravindra Babulal Jain v. State of Maharashtra**[1], **K. Virupaksha and Another Versus State of Karnataka and Another**[2], **Virendra Khanna Versus State of Karnataka by Banasawadi Police and Another**[3], **Sanjay Chandra Versus Central Bureau of Investigation**[4], **Sheila Sebastian Versus R. Jawaharaj and Another**[5], **P. Chidambaram Versus Director of Enforcement**[6] and **Arnab Manoranjan Goswami Versus State of Maharashtra and Others**[7]

6. Learned Spl. PP, on the other hand, vehemently opposes submissions by inviting my attention to the affidavit in reply filed by the respondent -State. Learned Spl.PP impressed upon me that whole tender process was manipulated by the

1 2015 SCC OnLine Bom 5002
2 (2020) 4 Supreme Court Cases 440
3 2021 SCC OnLine Kar 5032
4 (2012) 1 Supreme Court Cases 40
5 (2018) 7 Supreme Court Cases 581
6 (2020) 13 Supreme Court Cases 791
7 (2021) 2 Supreme Court Cases 427

applicant in collusion with other accused. The Liquidator, namely, Jitendra Kandhare and the applicant colluded with each other to misappropriate the properties and funds of BHRMSCCS and illegally disposed of the properties by creating a manipulated website on which they had full control and further illegally projected the loans to be repaid by creating false entry that too by adjusting fixed deposit receipts.

7. According to learned Spl. PP, while manipulating the website, they took help of Krunal Shah, resident of Ahmedabad, who was looking the business of applicant at Ahmedabad. The said Krunal Shah was preparing website and software for BHRMSCCS and had also installed software at the office of applicant. Huge data has been found in the hard disks seized from the office of applicant.

8. Learned Spl. PP has also indicated at paragraph 9.6 to 17 as to how the properties of BHRMSCCS were sold. Although the property purchased by applicant may show a bit

higher valuation than the market price but during investigation, it revealed that the valuation was on higher side than what was shown by the applicant at the time of purchase.

9. Learned Spl. PP lastly submits that the offence committed by applicant and others are of very serious in nature as the same is against whole society. The whole process of liquidation was frustrated by entering into a systematic conspiracy aimed at misappropriating the public monies. In such circumstances, the application deserves to be rejected, argued learned Spl PP. Learned Spl. PP placed reliance in **Dukhishyam Benupani, Asstt. Director, Enforcement Directorate (FERA) Versus Arun Kumar Bajoria**[8]**, State Rep. By the C.B.I. Versus Anil Sharma**[9]**, Adri Dharan Das Versus State of West Bengal**[10]**, Abhay R. Sinha and others Vs. State of Maharashtra and others**[11]**, Harshad S Mehta Vs. Union**

8 (1998) 1 SCC 52
9 (1997) 7 SCC 187
10 (2005) Cri.LJ SC 1706
11 (2000) O BomCR (Cri) 307

of India Anr.[12] and **Ajay Kumar Jain, I.P.S. Vs. State of Maharashtra**[13]**.**

10. During the course of submission, learned Spl. PP filed certain statements of prosecution witnesses so as to bring home charges against the applicant.

11. The first statement is of Rajendra Vasantrao Ingole. According to this witness, he had invested Rs. 3,60, 59, 357/- and as he was in need of moneys so he went to the office of BHRMSCCS. However, later on, he came to know about the registration of offence against the Directors of BHRMSCCS. In the month of November, 2015, after the appointment of Liquidator, namely, Jitendra Kandare, he met him, however, Kandare told him that since BHRMSCCS have gone into liquidation, he would not get anything. At the same time, he also suggested that he may get his amount in a phased manner that too without interest and within a period of 10 years. The said Kandare then rang up a party and took this

12 (1992) 3 Crimes 645
13 (2000) 4 Crimes 27

witness to his house, who is none other than the present applicant and another was Suraj Zawar, son of applicant. The applicant purportedly told this witness that BHRMSCCS is almost gone and asked him to give his deposit receipts to him and that he would give him 30% of the total deposit receipts. When this witness refused, the applicant offered him 40%. When this witness further refused, Jitendra Kandare told him that he would get whole amount and thus obtained all the deposit receipts from him.

12. The above statement *prima facie* goes to show that the Liquidator, namely, Jitendra Kandare was well connected with the applicant and therefore, had taken this witness to the latter's house so that they can bargain the deposit receipts by making payment of only 40% of the original amount deposited by this witness.

13. Next witness is Ramesh Shantaram Umale, who at the relevant time was working as a computer operator with Shree

Sai Marketing and Trading Company belonging to applicant. His statement shows that the applicant had got prepared all the documents of the investors of BHRMSCCS, namely, consent letter, affidavit, and nil loan certificates on the basis of drafting supplied by Jitendra Kandare. His statement further shows that Krunal Shah of Ahmedabad had also prepared software of BHRMSCCS having all the information of the investors and the said software was online connected to BHRMSCCS. The password was known to Mahavir Jain and he had taught this witness as to how to view all the information. His statement further shows that Jitendra Kandare always used to visit his office.

14. From the above statement, it is very much clear that it was the accused Jitendra Kandare, who had provided all the information of the investors to the applicant and the applicant, on his part, had asked this witness, after supplying all the documents relating to BHRMSCCS, to prepare those documents.

15. The third statement is that of Anil Shrikant Sutar, an investor, who had invested Rs. 50,000/- in BHRMSCCS. According to him, he has been given only Rs. 10,000/- till date and not the remaining amount by the BHRMSCCS.

16. Dheeraj Ramchandra Joshi is a tenderer, who had participated in a bid and had deposited necessary amounts of the tender amount. However, his tender was rejected. He alleges that his tender was illegally rejected by Jitendra Kandare.

17. Ketan Vijay Malu states that he knows applicant. In the year 2017, he was told by applicant that BHRMSCCS has gone into liquidation and the tender in respect of its property is to be published and therefore, asked him to fill the tender on his behalf. Accordingly, he participated in the tender process on his behalf.

18. His statement lastly shows that when he was shown the tender form, he found that it was not having his signature although it was having his name, email id and phone number etc.

19. This also goes to show that the applicant had made this witness to stand as a dummy tenderer in his place inasmuch as rest of the thing like deposit amount of the tender and other formalities were done by applicant so as to grab the property of BHRMSCCS. Similar are the statements of Kailash Omprakash Dhut, Rohit Pravin Kothari, Niranjan Pravin Kothari, Prashant Prabhakar Mahamunkar, Anupam Sharad Kulkarni and Arun Natthu Sonar.

20. Lastly, there are supplementary statements of Deepak Shreepatrao Shinde and Sunil Shamlal Kalantri.

21. The statement of Deepak S. Shinde also shows that he had also participated in a tender on the say of applicant. It is also his statement that Jitendra Kandare and Mahavir Jain used to bring all the papers pertaining to BHRMSCCS to the office of applicant.

22. Similarly, the supplementary statement of Sunil S. Kalantri shows that Jitendra Kandare always used to visit the office of applicant and have meeting with applicant in his chamber.

23. From the above, it is *prima facie* clear that the Liquidator and other officials were closely hand in glove with the applicant. Not only the Liquidator provided all the necessary information of investors of BHRMSCCS to the applicant but also used to regularly visit and had meeting with the applicant. It is also clear that the applicant, at the instance of Jitendra Kandare, was in habit of offering 30% to 40% of the fixed deposit receipts to the hapless investors. Even they had prepared the website with all necessary details inasmuch as the same was connected to official website of the BHRMSCCS. The modus operandi appears to be very much clear and *prima facie* the participation and main role of applicant along with Liquidator, namely, Jitendra Kandare is there.

24. The learned Counsel for the applicant has filed List No. II showing the purchase price and as also Government valuation which apparently shows that the purchase price is more than the Government valuation. I have pointed out from the affidavit of the investigating officer that in respect of

certain properties the Government valuation was shown less than the original price of the properties. It is also revealed during investigation that the valuation was much on the higher side than the valuation shown at the time of sale.

25. It may be noted that the provision of MPID Act will not be attracted against applicant but then provisions of IPC are already there to take care of role of applicant in whole episode.

26. I have carefully gone through the judgments filed by either side. In view of facts and circumstances of the case, I do not find applicable to the case in hand.

27. Having regard to the material on record, in my considered opinion, the offence is of grave nature involving crores of public monies and as also the involvement of properties belonging to BHRMSCCS.

28. Having regard to the material on record, in the light of above discussion, I do not find this is a fit case where the applicant can be enlarged on bail.

29. For the aforesaid reasons, I do not find merit in the application and therefore, I am not inclined to allow the application. Hence the following order :

ORDER

The bail application is rejected.

(V.G.BISHT, J.)

TRUPTI SADANAND BAMNE

Digitally signed by TRUPTI SADANAND BAMNE
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