ISM

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

ANTICIPATORY BAIL APPLICATION NO. 3093 OF 2021

MR. KHUSHAL BHAVANJI CHHEDA ….APPLICANT

V/s.

THE STATE OF MAHARASHTRA …..RESPONDENT

Mr. Ghanshyam Upadhyay a/w Rajkumar Mishra i/b Law Juris for the applicant
Mrs. Rutuja Ambekar APP for the State
Mr. Ramesh D. Andher, API, EOW, Unit-8, Mumbai.

CORAM : NITIN W. SAMBRE, J.

DATE: DECEMBER 21, 2021.

P.C.:

1] Applicant a partner in a firm R. H. Associates has holdings of 11%, alleged to have duped the depositors in in crores of rupees resulting into registration of crime initially registered with Matunga Police Station as C.R. No. 306 of 2020 for offence punishable under Sections 406, 420, 409, 465, 467, 468, 471, 120B r/w 34 of the Indian Penal Code and the same was transferred to EOW, Unit-VII Mumbai being F.I.R. No. 18/2020.

2] Counsel for the applicant Mr. Upadhyay would strenuously urge that shareholdings of the applicant is only to the extent of 11 % and other co-accused Mukesh who has holdings of 17% is already released on pre-arrest bail. Mr Upadhyay would invite attention of this Court to the orders passed by the sessions court thereby securing the interest of the depositors by attaching the property of the partnership firm and partners. He would claim that since chargesheet against other accused is already submitted, applicant's custodial interrogation is not required as the investigation is complete.

3] He would further claim that there is absence of *mens rea* as the repayment as was assured could not be honoured because of loss in business. Risk of investing in the business by the depositors was well known to complainant. Mr Upadhyay then would urge that applicant has very limited role in the matter of administration in the partnership firm as he was a salaried partner. As such he would claim that applicant is entitled to be released on bail.

4] Learned APP opposed the prayer. Learned APP informs that prosecution is in the process of challenging the order of the sessions court by which co-accused Mukesh is granted bail. It is further claimed that applicant's custodial interrogation is necessary as the investigation to that extent is yet to be completed.

5] Considered submissions.

6] The firm R. H. Associates of which the applicant is partner with 11% shareholdings is not in dispute. Said firm is in the business of accepting deposits, with an assured hefty returns in the form of interest. The applicant, a senior partner in the business of the firm was actually controlling day to day affairs by accepting the deposits in cash with promise of higher return.

7] It appears that said firm defaulted in making repayments not only of the interest but also of the principal amount. Investigation depicts that offence is registered as loss to the extent of around 129 crores is suffered by the depositors.

8] The fact remains that statement of the witnesses and also the investigation depicts that the applicant was instrumental in accepting the amount of cash from the depositors with assured hefty returns. Even if other co-accused Mukesh is ordered to be released on pre-arrest bail, statement of learned APP that a proposal is moved for cancellation of pre-arrest bail granted to the said accused is under process needs to be accepted.

9] The claim that the applicant was salaried partner cannot be accepted at this stage as in addition to salary, applicant was in the management of the entire business. His claim of salaried partner appears to be in existence only on papers.

10] Very conduct of the applicant reflected in the investigation depicts his prima-facie involvement in a serious offence wherein principal of depositors are duped. That being so in my opinion no case for bail is made out. Application stands rejected.

[NITIN W. SAMBRE, J.]