IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

ANTICIPATORY BAIL APPLICATION NO. 2146 OF 2019

Mrs. Savita Dattatray Deshmukh …. Applicant
v/s.
The State of Maharashtra …. Respondent

Mr. Vikas R. Kudiya for the Applicant.
Mr. S.V. Gavand, APP for the State.
Mr. Prashant Sawant, P.I., EOW, Thane City, present.

CORAM: SMT. ANUJA PRABHUDESSAI, J.

DATED : 01st DECEMBER, 2021.

P. C. :-

. This is an Application under section 438 of Cr.P.C. filed by the aforesaid Applicant, apprehending her arrest in C.R.No.I-45/2021 registered at Badlapur (W) Police Station for offences punishable under sections 406, 420 r/w. 34 of the Indian Penal Code and Section 3 of The Maharashtra Protection of Interest of Depositors (in Financial Establishments) Act, 1999.

2. Heard Mr. Vikas Kudiya, learned counsel for the Applicant and Mr. S.V. Gavand, learned APP for the State. I have perused the records and considered the submissions advanced by the learned counsel for the respective parties.

3. The crime against the Applicant was registered pursuant to the First Information Report (FIR) lodged by one Pradeep Dinkar Kandalkar. The FIR reveals that the Applicant had started a financial concern – Mumbadevi Fund with an assurance of high rate of interest i.e. 5% p.m. The Applicant was known to the complainant. He invested Rs.1,00,000/- in the financial concern of the Applicant sometime in the month of April, 2014. The Applicant returned Rs.1,05,000/- immediately after a month and thus gained confidence of the first informant. Between 2015 to 2017, the first informant invested total Rs.36,00,000/-. Subsequently, the Applicant issued card of Mumbadevi Fund which showed entry of only Rs.9,14,000/-. The complainant repeatedly requested the Applicant and her husband to refund the money but they only gave evasive replies. The Applicant and her husband left Badlapur and went to village Kanhor. They executed a promissory note on 26/10/2018 and assured to refund the money on 15/03/2019. Accordingly, they issued two cheques drawn on Dombivali Nagari Bank and Satara Sahakari Bank in favour of the complainant. The said cheques were dishonoured. The complainant learnt that the said financial establishment was not registered. The Applicant and her husband also stopped receiving calls from the complainant and the other investors. Realizing that he was cheated, the complainant lodged

the first information report based on which the aforesaid crime came to be registered.

4. In the course of investigation, it was revealed that apart from the first informant, about 56 other investors, who had invested money to the tune of Rs.1,93,63,300/- had been defrauded. It was revealed that the financial establishment was not registered and it was a fraudulent investing scam hence provisions under the MPID Act were applied.

5. The FIR as well as the statements of the other depositors indicate that the Applicant and her husband had induced them in investing money under a false promise of high rate of returns. These investors, who had invested Rs.1,93,63,300/- have not received the principle amount much less the high rate of returns. They have been defrauded and the material on record prima facie indicates that the Applicant has played an active role in this scam. The offence is a serious economic offence.

6. Certainly, a person apprehending his arrest in cognizable / non-bailable offence, has a right to apply for pre-arrest bail. However, this is not an absolute or indefeasible right. It is within the discretion of the

Court to grant or reject pre-arrest bail. This discretion under section 438 of Cr.P.C. has to be exercised judiciously considering the nature and seriousness of the offence, the material in support thereof, reasonable apprehension of witnesses being tampered with, accused not being available for trial, etc and finally strike a balance between the right of an individual to his liberty, right of the police to investigate the crime and interest of the society and State at large.

7. In the instant case, the material on record prima facie indicates that the Applicant has committed the offence with a deliberate design on personal benefits regardless the huge loss caused to the investors who had blindly invested their life long savings in the sham investment scheme floated by the Applicant and her husband. These investors, as noted above, have been defrauded to the tune of Rs.1,93,63,000/-. Considering the nature of accusations against the Applicant and the material in support thereof and the societal interest, in my considered view, the Applicant is not entitled for pre-arrest bail.

8. Furthermore, the records reveal that after registration of the crime the Applicant has taken away movable and other valuables from her residential premises situated at Badlapur. The records also indicate

that after registration of the crime, the Applicant deposited an amount of Rs.83,000/- with Mannapuram Finance Ltd. and redeemed gold, which was pledged by her in the said financial institution. The conduct of the Applicant would not justify exercise of discretionary powers. Learned APP also states that another crime being C.R. No.26 of 2019 is registered against the Applicant with Badlapur police station for similar offence.

9. Considering the above facts and circumstances, the Applicant is not entitled for pre-arrest bail. Hence, the Application is dismissed.

PREETI H JAYANI

Digitally signed by PREETI H JAYANI
Date: 2021.12.02 16:56:34 +0530

(SMT. ANUJA PRABHUDESSAI, J.)