IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL BAIL APPLICATION NO.3014 OF 2019

Mayur Ashok Agarwal .. Applicant

Versus

The State of Maharashtra .. Respondent

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Mr.Niranjan Mundargi i/b Mr.Prasanna Bhangale for the Applicant.

Mr.S.R.Agarkar, APP for the State.

PI Megha Shetye attached to E.O.W., Unit VII present.

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CORAM: BHARATI DANGRE, J.
DATED : JUNE 16, 2021

P.C:-

1. By the present application, the applicant prays for his release on bail, on being arrested in connection with C.R.No.11 of 2019 registered with E.O.W., G.C.-3 for the offences punishable under Sections 409, 420 read with Section 34 of the Indian Penal Code (**for short, "the IPC"**) and Sections 3 and 4 of the Maharashtra Protection of Interest of Depositors (In Financial Establishments) Act, 1999 (**for short, "the MPID Act"**). He was arrested on 6th February, 2019 and his bail application came to be rejected by the Designated Court under the MPID Act, which constrained him to approach this Court.

2. The C.R. in question came to be registered on a complaint of one Mr.Rodney Rocky Fernandes and he indicted the

applicant alongwith Sanjay Agrawal, Nitin Lohadiya, Kiran Bangera, the directors of M/s Nimbus Industries Limited and M/S Captial Wide PDF, LLP and attributed that he was induced by the accused persons to invest his hard earned money into the project with an assured return of 18 to 22% per month. Resultantly he alongwith his colleagues in the Band group, friends and relatives deposited the amount by way of cash and cheque, which was utilised by them for their own personal use and by the said *modus operandi*, the investors were duped of an amount of Rs.17.77 crores.

3. The complainant alleged that initially, he was introduced to one Ashok Jain, who was running an investment company in Vile Parle and he promised return of 9% and in fact, also paid the interest. The applicant is alleged to be working with said Ashok Jain and that is how, the complainant got introduced to him. However, in the year 2015, he lured him with a further interest of 18 to 22%, if the amount is invested with his uncle, Sanjay Agarwal at Surat in Gujarat, who would invest the amount in land. That is how from October 2015, the complainant started investing money with the present applicant. The complainant was running a Band company and whatever amount was received by him towards his avocation, he used to deposit it either in cash or either in form of gold bars with the applicant.

Upto 2016, the complainant received the amount of interest, but thereafter the accused persons showed laxity in paying the amount. The complainant was informed that the amount was invested by Sanjay Agarwal in M/s Nimbus

Industries Limited and said Sanjay Agarwal, on meeting the complainant, informed that the amount was invested in a project for developing a piece of land in Surat and after the project is completed, he would be entitled for the amount. The amount, however, was never paid, which constrained the complainant to approach the Court.

4. The complaint clearly reflect the *modus operandi* of the accused persons and, *prima facie*, it can be seen that it is the applicant, who prompted the complainant to change his investor and it is because of the assurance of higher rate of return, the complainant invested the amount with Sanjay Agarwal, who is in relation with the applicant.

5. The bail application of the applicant was rejected on the ground that the investigation was on-going. As on date, the investigation is complete and the charge-sheet has been filed. On 28th September, 2020, the Designated Court under the MPID Act, released the co-accused Sanjay Agarwal on bail and deposit of an amount of Rs.25,00,000/- was imposed as condition precedent for his release.

The parameters of releasing the accused on bail, pending the trial, are well established and apart from the gravity of offence, possibility of the accused tampering with the prosecution evidence or witnesses and flight risk are the relevant factors. The outcome of the trial would determine the culpability of the applicant. The charge-sheet filed, no doubt, point out the complacency of the applicant in the present crime. However, since the co-accused for whom the applicant was working and collecting the money from the investors, including the complainant is released on bail, in my considered opinion, the applicant also deserves his liberty, as he has been arrested on 6th February, 2019.

6. The crime in which the applicant is arrested invoke the provisions of the MPID Act. The enactment itself provides a mechanism for securing the interest of the investors and the learned APP concede to the fact that the jewellery worth Rs.6,31,396/- have been seized from the applicant and his wife. Further, the accounts of his wife as well as the applicant in the different banks have been freezed.

The learned APP Mr.Agarkar, who is assisted by the Investigating Officer in the Court, would urge that the applicant is involved in a serious offence. When specifically asked, whether the amount, which was collected from the investors by the applicant is deposited in his account, the Investigating Officer submitted that an amount of Rs.16,13,000/- is deposited in cash in his HDFC Bank Account and this amount forms part of the total amount of Rs.1,28,41,166/- in his account. But, this is for the period stretched over to more than five years. The Investigating Officer is unable to point out the entries which would show that the amount has come either from Sanjay Agarwal or from the investors and the entries of the huge amounts are from an account of his mother by way of transfer and the justification offered by the applicant is that the said amount was given by his mother, since he has purchased a flat. There is no material in the charge-sheet which would reflect that the amount is received from the investors or from part of the investors at the instance of Sanjay Agarwal.

7. Learned APP do not dispute the statement made by Mr.Mundargi about the jewellery belonging to the applicant and his wife being seized, after the offence was registered and that the fixed deposits worth Rs.6,44,049/- and Rs.22,535/- being freezed.

8. The submission of the learned counsel Mr.Mundargi, which is not refuted by the prosecution, is to the effect that the applicant has purchased a flat bearing No.D-401 for Rs.90,50,000/- in Dremax Vega, Andheri, Mumbai. The said flat is in an under construction building and the balance amount of Rs.20,00,000/- is due to the builder from the applicant at the time of handing over possession. Mr.Mundargi makes a statement to the effect that the applicant is ready and willing to submit an undertaking in the MPID Court that he will not create any third party right in the said flat till the conclusion of the trial and such an undertaking would be tendered by him within a period of seven days of his release. He would also tender the original registered agreement for sale before the Special Court in Special Case No.8 of 2019. He also states that the Sale Deed/Deed of Conveyance, which would be executed on depositing the balance amount of Rs.20,00,000/- on part of the applicant, shall also be submitted before the Special Court within seven days on receiving the original

document from the Sub-Registrar's office.

The learned APP, in presence of the Investigating Officer, admit of an agreement for sale executed for purchase of flat and the consideration being approximately Rs.One crore.

9. The applicant is arrested since 6th February, 2019 and the prosecution has not expressed any apprehension that he is likely to flee from the course of justice and will not be available for trial or that he is likely to influence the witnesses in an adverse manner. The charge against the applicant being framed on the basis of the complaint from the investors, it is necessary to secure the interest of the investors. Since the fixed deposits of the applicant are already freezed alongwith the gold and silver ornaments being attached, coupled with the flat in respect of which an agreement to sale has been registered, with the aforesaid exercise being undertaken the interest of the depositors can be well secured. The statement of learned counsel Mr.Mundargi is accepted as an undertaking given to this Court and the applicant is directed to file an affidavit in Special Case and also tender the agreement to sale in respect of the aforesaid flat. In the affidavit, the applicant shall undertake that he will not create any third party right and that he will clear the payment of Rs.20,00,000/- to the builder before handing over the possession when the flat is ready and the Sale Deed/Deed of Conveyance shall be deposited in the Court within a period of seven days from its receipt. Such compliance should be carried out by the applicant within seven days of his release. Failure to comply with the aforesaid directions would automatically result in

cancellation of his bail and he will be taken in custody forthwith, for failure to comply with the aforesaid said directions. Hence, the following order.

: **ORDER** :

(a) Application is allowed.

(b) Applicant – Mayur Ashok Agarwal shall be released on bail in C.R.No.11 of 2019 registered with E.O.W., G.C.-3 on furnishing P.R. bond to the extent of Rs.50,000/- with one or two sureties of the like amount. The applicant is, however, granted time of six weeks to furnish the surety and by way of temporary bail, he is entitled to be released on cash bail for a period of six weeks.

(c) The applicant shall not directly or indirectly make any inducement, threat or promise to any person acquainted with facts of case so as to dissuade him from disclosing the facts to Court or any Police Officer

(d) The applicant shall not tamper with the prosecution evidence.

(e) The applicant shall abide by the terms and conditions of the undertaking and any failure on his part would call for cancellation of his bail.

SMT. BHARATI DANGRE, J