

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

**BAIL APPLICATION NO.2959 OF 2018
ALONGWITH
INTERIM APPLICATION NO.1518 OF 2019**

Markas Yohan Thorat

.. Appellant

Versus

State of Maharashtra

.. Respondent

.....

Mr.I.S. Thakur a/w. Mr.Arjun Singh Thakur i/b. M/s.Global Juris
Consults, Advocate for the Applicant.

Mr.Avinash Avhad, Advocate for the Applicant in IA 1581 of 2021.

Mr.Y.M. Nakhwa, APP for the Respondent - State.

P.I. R.V. Sahane, E.O.W., Pune, present.

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**WITH
BAIL APPLICATION NO.2323 OF 2019**

1) Deepa Devidas Sajnani; and

2) Vanita Devidas Sajnani

.. Appellants

Versus

State of Maharashtra and Anr.

.. Respondents

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Ms.Bokaro with Mr.Vivek Sharma, Advocate for the Applicants.

Mr.Y.M. Nakhwa, APP for the Respondent - State.

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CORAM : PRAKASH D. NAIK, J.

DATED : JULY 07, 2021.

P.C. :

Pursuant to order dated 13th January, 2021, passed by co-ordinate Bench observing that, both the applications be heard by one Court to avoid diverse findings, directions were sought from Hon'ble Chief Justice and both the applications were clubbed together and placed before me.

2 The applicants in both these applications are seeking bail under Section 439 of Cr.P.C. in connection with C.R.No.275 of 2017, registered with Chaturshrungi police station, Pune, for the offences punishable under Sections 409, 420, 467, 468 and 120 - B read with 34 of Indian Penal Code ("IPC", for short) and under Sections 3 and 4 of The Maharashtra Protection of Interest of Depositors (in Financial Establishments) Act, 1999. ("MPID Act", for short) and Sections 3, 4,, 5 of Prize Chits Money Circulation Scheme (Banning) Act, 1978. Applicant in B.A.2959 of 2018 was arrested on 5th August, 2017. Whereas the applicants in B.A.2323 of 2019 were arrested on 27th March, 2019.

3 The case of the prosecution is that in the year 2013,

complainant was interested in investment in immovable property. During that period, she learnt from her colleagues that they have invested with the company, namely, Temple Rose Real Estate Pvt. Ltd. The said company was in the business of real estate and buying and selling land under various schemes. The agent of the company approached the complainant and explained her the scheme of investment. The complainant was induced to purchase the plots of land by investing the amount. Complainant then realized that the company has not made any development in the lands and that she has been deceived. FIR was registered on 23rd May, 2017. Investigation proceeded. Accused Sunil Gazi was arrested on 28th July, 2017. Keshav Idia was arrested on 5th August, 2017. Statements of investors were recorded. Charge - sheet was filed against arrested accused. The investigation was handed over to EOW, Pune. It is alleged that accused company is involved in misappropriation of 361 crores from 7200 investors. Several other persons were also induced to invest the amount and promises were not fulfilled. First Information Report ("FIR", for short) was registered. On completion of investigation charge-sheet was filed.

applicant in B.A.2959 of 2018, submitted that the applicant is in custody almost for four years, further custody is not necessary. There is no progress in trial. He has played a limited role. The applicant was allegedly involved in three cases. The other two cases are registered at Lashkar Police Station and Bhoiwada police station, Mumbai. The applicant is granted bail in other two cases. It is submitted that this Court has granted bail to the applicant in the case registered with Bhoiwada Police Station, investigated by EOW vide order dated 16th December, 2020. This Court while granting bail to the applicant in the said case i.e. C.R.No.11 of 2017, registered with Bhoiwada police station, has taken into consideration the fact that the applicant is in custody for a period of about 2 years 10 months. Notification issued by the Government under Section 4(1), 5 and 8 of M.P.I.D. Act mentions that the properties specified in the schedule are alleged to have been acquired by the applicant. Court has also considered the fact that the relatives of the applicant has filed Undertaking in respect of the properties viz. Plot of land bearing Survey No.385, Mouze Kadam Vasti, Loni, Haveli, District - Pune, row house bearing No.38, Amar Nagar on plot No.261/26/2, Solapur Road, Hadapsar, Pune, stating that they have no objection to auction proceedings to be undertaken under the provisions of

MPID Act for sale of properties. The applicant has also filed an Undertaking in respect to the present case as well as the case registered with Bhoiwada police station, stating that he has no objection for sale of the attached properties except the property which is ancestral house at Murbad road Nagcha Khadak House No.1179, Murbad, District-Thane. Learned counsel for the applicant, on instructions, submits that the applicant has no objection for making the attachment absolute and that the applicant would not raise any objection for sale of the properties, which are under the attachment and the properties mentioned in the Undertaking. It is submitted that the applicant has been granted bail in the case registered with Bhoiwada police station after taking into consideration the period of custody and the fact that properties are attached and undertakings executed by the applicant. In the case of ***Sanjay Chadra Vs. CBI¹***, it is observed that, the object of bail is to secure the appearance of the accused at trial by reasonable amount of bail. The object of bail is neither punitive nor preventive. Description of liberty must be considered a punishment unless it is required to ensure that, an accused will stand his trial when called upon. It is submitted that, at the most, the applicant had received salary, incentives/commission of Rs.2,19,21,376/-. Investigation is complete. The charge-sheet is

1 (2012) 1 SCC 40

filed. It is running into hundreds of pages. The trial is not likely to start immediately. The evidence is bulky and there are number of witnesses and chance of commencement and conclusion of trial in near future is bleak. Further custody is not required as it would amount to pretrial punishment. The applicant has spent considerable time in custody and fully co-operated with investigation. Co-accused Mustafa Rampurwala has been released on bail by order dated 29th September, 2017, by this Court. Co-accused Sunil Gazi has been granted bail by this Court vide order dated 22nd December, 2017, by observing that, without going to the merits of the matter, the said accused and his family members have given list of properties owned by their family along with undertaking that they would not object auction proceedings of said properties under provisions of MPID Act. The properties mentioned in Schedule-“A” enclosed with application are attached, which are standing in the name of applicant, which were purchased by applicant, for and on behalf of Temple Rose Companies. The applicant has no objection for auction of properties under provisions of MPID Act. The applicant has acquired in his name properties mentioned in Schedule-“B” annexed to application worth more than Rs.2 crores. The applicant has purchased land at mauje Ambegaon, District-

Thane, and mouje Antroli, District-Pune. He has gifted row house no.38 at Pune, to his family and open plot of land bearing Survey No.385 of Haveli, District-Pune, purchased in the name of his children Vishwas and Snehal, mentioned in Schedule-“C” annexed to the application. The ancestral house mentioned in Schedule-“D” of application be exempted from auction/sale. The applicant has filed undertaking of Snehal Thorat, Vishwas Thorat, Rebecca Thorat and Sagar Thorat stating that, plot of land bearing Survey No.385m mauje Kadam Vasti, Lone Haveli, District-Pune, Row House No.38, Amar Nagar, on a part of land bearing number 261/26/2, Solapur road, Hadapsar, Pune, are in their name and gifted by applicant and they give undertaking that they would not object to the auction proceedings to be undertaken under the provisions of MPID Act. Notification dated 2nd November, 2017, issued by Government of Maharashtra, regarding attachment of properties is placed on record. The applicant had tendered common undertaking in C.R.No.11 of 2017 and C.R.No.275 of 2017, which were subject matter of B.A. No.909 of 2020, and, B.A.No.2959 of 2018, before this Court. While arguing B.A.No.11 of 2017, stating that, the applicant has properties in his name viz. plot of land bearing Survey No.510, Mauje Amebgaon, Taluka Murbad and plot bearing Survey

No.111 Mauje Aantroli, Velhe, District-Pune. The applicant has no objection for sale of attached properties, except property which is ancestral house at Murbad road, Nagcha Khadak House No.1179, Murbad, District-Thane, under provisions of MPID Act.

5 Learned advocate Ms.Bokaro appearing for the applicants in B.A.2323 of 2019, submitted that the applicants are ladies. Applicant no.2 is mother of applicant no.1. They are in custody since March 2019, further detention is not necessary. The applicants are nominal directors and are not concerned with the affairs and management of M/s.Temple Rose Real Estate Private Limited. They have no nexus with crime. Accused Devidas Sajnani was arrested on 24th May, 2017. The applicants were arrested in C.r.No.100 of 2019, registered with Khadki police station, Pune. They were granted bail. The applicants have filed undertaking to surrender all the properties in their names to be auctioned by competent authority. The applicants have tendered undertaking that they give their consent for the properties to be sold and or make attachment absolute. They will not contest the same on their release from custody. The Undertaking dated 16th June, 2021, is taken on record. The properties are attached and the investments of the investors secured. The applicants are relying

upon the Notification about attachment of the properties dated 2nd November, 2017. It is submitted that the applicants have no objection for attachment of the said properties or auction/sale of the said properties. It is submitted that the applicants moved application for anticipatory bail in which interim protection was granted to them. It was subsequently rejected and they were arrested. They had not played any role in day to day affairs of the company. They were also arrested in another case registered with Bhoiwada police station, vide C.R.No.11 of 2017, in which they were granted bail.

6 Learned APP submitted that there are several investors who were induced to invest the amount. The prosecution has filed an affidavit-in-reply opposing bail to the applicant. It is submitted that huge amount was misappropriated by the accused. The applicants had played a vital role. The applicants in B.A.No.2323 of 2019, were directors of the company. Merely on the ground that trial has not proceeded, bail may not be granted to the applicant. Various schemes were introduced by the accused, inducing to invest the amount. Applicant in BA 2959 of 2018 has played active role. He was involved in activities relating to agricultural, real estate,

obtaining approval. He was responsible for selection of the location, exact site/land, conversion of agricultural land into non-agricultural land (NA) land and ascertaining the title of the land. He was also responsible for marketing of the products of M/s.Temple Rose Group of Companies. It is submitted that the said applicant was beneficiary of transactions. He had received huge amount, as commission. The defalcation/misappropriation of the amount is to the tune of Rs.364 crores. Investigation is in progress. Investors had approached the investigating officer and further investigation is conducted. Learned APP submitted that Forensic Audit Report today. Markas Yohan Thorat was director of M/s.Temple Rank Real Estate Private Limited. Deepa Sajnani was one of the Director of all companies taken over by Devidas Sajnani. She is daughter of Devidas Sajnani. She was earning commission. Vanita Sajanani is one of director of all companies taken over/incorporated by Devidas Sajnani. She had earned commission. Learned APP relied on preliminary findings of Forensic Audit and first interim report of Forensic Audit dated 9th January, 2018. The report states that aggregate amount of investment is about 400 corres. It is submitted that statements of some of the investors were recorded in the year 2019 and 2020.

7 Learned APP further submitted that the applicants in B.A.No.2323 of 2019, has also played active role. They were directors of the company. Huge amount is involved in the transaction.

8 Learned counsel for the complainant reiterated the submission of learned APP. Complainant has filed the affidavit-in-reply. It is submitted that huge amount was misappropriated. He further submitted that the applicants be directed to file an Undertaking that they would not raise any objection for making attachment absolute. They should abide by the Undertaking. They had played active role in the transactions.

9 Applicants are impleaded as accused being concerned with the company Temple Rose Real Estate Pvt. Ltd. The applicant in B.A.No.2959 of 2018, is aged about 67 years. He is in custody for almost about 4 years. Whereas, the applicants in B.A.No.2323 of 2019, are in custody for a period of about 2 years 3 months. The father and husband of the said applicants Devidas Sajnani, was director of the said company. Several properties were attached which is apparent from the Notification of attachment. The applicants in both these applications are on bail

in the other cases. They were arrested in the case registered with Bhoiwada police station, which was subsequently investigated by EOW Crime Branch. This Court, while granting bail to applicant Markas Yohan Thorat has taken into consideration the Undertakings executed by the said accused as well as his relatives, which are on record. The Undertaking is also executed by the applicants in B.A.No.2323 of 2019, that they are no objection for the auction or attached properties and they would not object for making the attachment absolute. In order dated 16th December, 2020, granting bail to Markas Yohan Thorat in C.R.No.11 of 2017, registered with Bhoiwada police station, Mumbai, for offences under Sections 409, 420, 120-B of IPC and Sections 3 and 4 of MPID Act, it was observed that the accused is in custody for two years and ten months. The order rejecting bail passed by Special Judge under MPID Act mentions that audit report prima facie shows that applicant Markas Yohan Thorat received salary, dividend and commission to the tune of Rs.2,19,21,376/-. Devidas Sajnani was granted temporary bail on medical ground vide order dated 16th October, 2019, in C.R.No.275 of 2017, Mustafa Rampurwala was granted bail by this Court by order dated 24th September, 2017, in present FIR. Sunil Gazi was granted bail by order dated 22nd December, 2017,

on the ground that his family has given undertakings that they would not object auction proceedings of said properties under MPID Act. Learned advocate for applicant has relied on decisions in the case of ***Sharad Kabra Versus Union of India***², ***Pravat Kumar Dash Versus CBI***³, ***Mehmood Muhammad Sayyed Versus State of Maharashtra***⁴ and ***Vivek Kumar Versus State of Uttar Pradesh***⁵. The Apex Court has considered period of custody of accused without commencement of trial, while granting bail.

10 It is pertinent to note that the FIR was registered on 23rd May, 2017. The applicants are in custody for substantial period of time. Sufficient time was granted to the prosecution to proceed with the investigation. The application was heard by this Court on 18th March, 2021, time was sought by the investigating agency on the ground that some investors had approached the investigating officer. Two months time was granted to investigating agency. Roznama of proceedings would indicate that the applications were adjourned on several occasions. B.A.No.2959 of 2019, is pending in this Court on 13th November,

2 2018 All M.r.(Cri.)1392;

3 2017 (3) SCC (Cri.) 639;

4 AIR 2002 SC 482;

5 AIR 2000 SC 3406

2018 and B.A.No.2323 of 2019, is pending since 16th August, 2019. There is no progress in trial. There are several witnesses. It is not clear as to when trial would commence and will be concluded. The applicants cannot be detained for indefinite period, and, in the light of the aforesaid circumstances, bail can be granted to them.

:: ORDER ::

- (i) Bail Application Nos.2959 of 2018 and 2323 of 2019, are allowed;
- (ii) Applicant in B.A.No.2959 of 2018, is directed to be released on bail in connection with C.R.No.275 of 2017, registered with Chaturshrungi police station, Pune,, on executing P.R. Bond in the sum of Rs.1,00,000/-, with one or more sureties in the like amount;
- (iii) Applicants in B.A.No.2323 of 2019 are directed to be released on bail in connection with C.R.No.275 of 2017, registered with Chaturshrungi police station, Pune, on executing P.R. Bond in the sum of Rs.50,000/-, each, with one or more sureties in the like amount;

- (iv) Applicants in both these applications are directed to attend the concerned police station once in three months on first Saturday of the month between 11:00 a.m. to 01:00 p.m., till further order;
- (v) Applicants shall deposit their Passport, if any, before the trial Court and shall not leave India without the permission of the trial Court;
- (vi) Applicants shall not tamper with the prosecution evidence and shall abide by their Undertakings executed before this Court;
- (vii) The relatives of the applicant in B.A.No.2959 of 2018, shall also abide by the Undertaking executed before this Court;
- (viii) Applicant in B.A.No.2959 of 2018, is permitted to furnish provisional cash bail in the sum of Rs.1,00,000/-, for a period of eight weeks, in lieu of surety;

- (ix) Applicants in both applications shall abide by their undertakings;
- (x) Applicants in B.A.No.2323 of 2019, are permitted to furnish provisional cash bail in the sum of Rs.50,000/-, each, for a period of eight weeks, in lieu of surety;
- (xi) Applicants in both applications shall file an Affidavit-Cum-Undertaking before the designated Court/trial Court that they have no objection for making the attachment absolute, except the ancestral house of the applicant in B.A.No.2959 of 2018;
- (xi) Bail Application Nos.2959 of 2018 and 2323 of 2019, stand disposed of accordingly.

(PRAKASH D. NAIK, J.)