IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO.3471 OF 2019
WITH
INTERIM APPLICATION NO.1753 OF 2021
AND
INTERIM APPLICATION NO.1754 OF 2021

1) Deepak Sakharam Kulkarni; and
2) Hemanti Deepak Kulkarni .. Applicants

Versus

State of Maharashtra
(Through ACP, EOW Pune) .. Respondent

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Mr.Aashutosh Srivastava a/w. Mr.Retesh Yeolekar, Advocate for the Applicants.

Mr.P.P. Chavan, Spl. P.P. a/w. Mr.R.M. Peth, APP for the Respondent–State.
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CORAM : PRAKASH D. NAIK, J.

DATED : AUGUST 17, 2021.

P.C. :

The applicants have preferred these applications for bail in connection with C.R.No.347 of 2017, registered with Shivaji Nagar Police Station, Pune, on 28th October, 2017, for the offences punishable under Sections 406 and 420 read with 34 of Indian Penal Code (“IPC”, for short) and Sections 3 and 4 of The Maharashtra Protection of Interest of Depositors (In Financial

Establishments) Act (MPID Act", for short). Subsequently, Sections 409, 465, 467, 468, 471, 477 A, 120–B and 34 of IPC as well as Sections 3, 4, 5 and 6 of Prize Chits and Money Circulation Schemes (Banning) Act, were also invoked. Applicants were arrested on 17th February, 2018.

2 The complaint was lodged by Jitendra Mulekar alleging that D.S. Kulkarni Group of Companies Limited had published an advertisement in the local newspapers inviting the investments. It was represented that in the event the senior citizen invest the amount, they would earn an interest of about 12.5 percent. The complainant approached the office of the accused. He was appraised with the investment schemes. The complainant agreed to invest. The complainant and other family members invested an amount of Rs.11,50,000/-. The investment was done with the companies of DSK Group *viz.* D.S. Kulkarni and Brothers, D.S. Kulkarni and Sons from 2014 to 2015. The complainant was expecting interest of Rs.4,31,232/-. He received an amount of Rs.1,40,585/-. However, from 28th February, 2027, onwards, the complainant did not get any interest on the investments made by him and his family members. On approaching them, excuses were given to him. Cheques were

issued to him which were dishonoured when deposited with the bank. Supplementary statement of the complainant was recorded on 22nd November, 2017, wherein he gave further details of the investments made in the company. Several investors had invested huge amount and the promises made to them were not fulfilled.

3 The applicants had intially preferred application for anticipatory bail before the Court of Sessions at Pune. The said application was rejected.

4 Both the applicants preferred application for anticipatory bail before this Court *viz.* Anticipatory Bail Application No.1953 of 2017. Vide order dated 10th November, 2017, interim protection was granted to them. The applicants had filed affidavit before this Court stating that an amount of Rs.50 crores will be deposited in the Registry of this Court within 15 days. By order dated 4th December, 2017, it was made clear that if the applicants fail to deposit the said amount within stipulated period, the interim relief granted by order dated 10th November, 2017, shall stand automatically vacated without reference to the Court. The period to deposit the amount will not be extended. The applicants had approached the Hon’ble Apex Court and by order

dated 22nd December,2017, the time to deposit amount was extended by four weeks. The application was adjourned from time to time as the applicants assured that attempt is made to deposit the amount. On 16th February, 2018, it was observed that, investigating agency is free to take action against applicants as there is no protection. The amount could not be deposited. The application was disposed of vide order dated 22nd March, 2018. The applicants were arrested on 17th February, 2018. Charge–sheet was filed against the applicant on 17th May, 2018. On conducting further investigation, supplementary charge–sheet was filed against him on 10th August, 2018.

5 Applicants had preferred an application for bail before the Special Court constituted under the MPID Act at Pune. The said application was rejected vide order dated 29th November, 2019.

6 Bail Application No.3471 of 2019 is jointly preferred by both the applicants for bail. Interim Application No.1753 of 2021 is preferred by applicant Deepak Kulkarni and Interim Application No.1754 of 2021 is preferred by Smt.Hemanti Kulkarni for enlarging the applicants on interim bail. In the

interim applications for bail, apart from merits, it is contended that, there is spread of corona virus (Covid–19), causing fear of loss of life. The Hon’ble Supreme Court in *suo motu* Writ Petition No.1 of 2020, issued directions for necessary measures to protect prisoners in jail. In pursuant to order of Apex Court, High Power Committee was constituted and guidelines were issued with regards to grant of interim bail on the ground of Covid–19. There is risk for applicants getting infected with virus of Covid–19. The Bail Application No.3471 of 2019, is taken up for hearing alongwith interim applications.

7 Learned advocate for the applicant Mr.Ashutosh Shrivastava made several submissions in support of grant of bail, which can be summarised as under:

(i) The applicants are in custody from 17th February, 2018. The period of custody is around 3 and ½ years. Investigation is completed and the charge–sheet is filed. Further detention of the applicants is not necessary. The applicants cannot be incarcerated in custody for indefinite period. The trial has not commenced. Even if the trial commences, it is not clear as to when it would be concluded.

(ii) Applicant no.1 is around 71 years old and applicant no.2 is a lady aged about 60 years. Applicant no.2 is the wife of applicant no.1.

(iii) Several properties of the companies which was involved in transactions were attached during the course of investigation. The documents relating to the attachment of properties are annexed to the interim applications. It is submitted that the value of the properties mentioned in the documents at page nos.107 to 122 annexed to interim application is around 465 crores. The list of properties attached during the course of investigation, which are at page nos.154 to 166 of interim application are valued at Rs.430 crores. The value of these properties is mentioned in the said documents. The value of policies is reflected in the tabular statement annexed at page no.145 of interim application. It is submitted that these documents form part of charge–sheet. It is further submitted that several LIC policies of applicants were seized and the value of the said policies is around 5.18 crores.

(iv) The amount lying in the bank was frozen and the details are provided in the documents which form part of charge–sheet. The amount frozen is around Rs.4.32 crores. Reference is made to page nos.146 to 153 of interim application.

(v) There is variation with regards to actual amount invested by the investors in the company and allegedly misappropriated by the applicants. In the complaint filed by the Enforcement Directorate, it is stated to be Rs.290 crores whereas in the affidavit filed by the investigating agency, it is stated that the amount involved is about Rs.2091 crores. It is not clear as to how the investigating agency has arrived at the said quantum of alleged misappropriation.

(vi) The forensic audit was not conducted inspite of repeated request made by applicants, and, therefore, the actual amount invested could not be determined.

(vii) There was no intention to cheat. The statement of investors states that, at the initial stage they have received the returns and it is only at the subsequent stage, they stopped getting the returns. The situation had arisen due to financial crises. Applicant no.1 had met with an accident. His driver died in the said accident, and, there was panic in the market and insecurity in the minds of investors, who wanted to withdraw their investment, which created crises. It was not possible to meet the demands of the investors.

(viii) The applicants were initially granted interim protection by this Court in an interim bail application preferred by the applicant on a condition that the applicants are willing to deposit an amount of Rs.50 crores within stipulated time. Applicants had made attempts to comply the affidavit filed before this Court. On account of the circumstances beyond their control, the amount could not be deposited. Applicants tried to sell their properties, but, the investigating agency had instructed the office of Registrar of Stamps not to register any documents submitted by the company of the accused.

(ix) Learned counsel for the applicants also drew my attention to the details reflected in provisional attachment order which form the part of charge–sheet. The table refers to unsecured loan from general public accepted by D.S.Kulkarni and Company and it is reflected that the amount received from the investors is around Rs.20,81,46,71,910/-, and the amount paid to the investors is Rs.19,97,90,90,632/-, and the balance amount remaining is Rs.5,63,48,36,447/-. The documents also refers to the FD collected by the partnership firms, which indicate that the FD amount collected is Rs.9,86,87,85,643/-, and, the amount repaid is Rs.4,20,90,30,374/-, and, the balance remaining is Rs.5,65,97,55,269/-.

(x) It is submitted that the investments of the investors is secured by the properties which are under attachment. The fact that amount was repaid back to the investors would also indicate that there was no dishonest intention to cheat.

(xi) Section 409 of IPC was invoked subsequently to increase the gravity of the offence. The Passport of the applicants are with the investigating machinery, and, there is no likelihood that the applicants would flee from justice.

8 Learned Special P.P. Mr.Pravin Chavan submitted that huge amount was misappropriated by the applicants. False promises were made to the investors to invest the amount. The liability *qua* the amount collected exceeds the value of the property under attachment. The offence is of serious nature. Several investors had invested the amount. Huge loss is caused to them. He relied upon the affidavit–in–reply filed by the Assistant Commissioner of Police, Special Branch and Additional incharge EOW, Pune. In the affidavit, it is stated that applicant no.1 was Chairman and MD of DSKDL and applicant no.2 was the President of the Group of Companies. The affidavit provides the position of the applicants and the other accused in the DSK Group of companies. The misappropriation of funds of DSKDL under garb of purchase of land through close relatives is Rs.184.45 crores. The amount of depositors i.e. Rs.1083/- crores were collected in eight partnership firm has been siphoned off.

The applicants–accused were involved in misappropriation of Rs.2091 crores. The funds of the company were diverted in the account of close relatives. All the accused had acted in connivance with each other. The accused had purchased land in the name of individual as well as in the name of firm with an intention to siphoned the funds. Reversal of development expenses was an eye wash. The funds utilised for making payment by individuals were initiated by DSKDL. The affidavit also provides summary of misappropriation of money by adopting various modes. It is alleged that the misappropriation related to land purchased by DSKDL is Rs.180 crores. Loan amount misappropriation is to the tune of Rs.711 crores. The members of public were induced by advertising and through their agencies to invest the huge amount without obtaining appropriate permission from SEBI and RBI. The deposit amount collected and siphoned off is Rs.1043 crores. Rs.154 crores were diverted to the account of accused Shirish Kulkarni through the account of applicant no.2. Funds were diverted through her account. The phone number, fax number, office address of SDKDL and the phone number, fax number, office address of partnership firm is similar. E-mail ID of DSKDL was provided to the investors. The logo on receipt of deposit is similar to the logo of DSKDL. The partnership firm were never a profit generating business entities. The said firm had never earned profits. Investors were promised high returns by way of interest. Several cheques issued by the accused company were dishonoured. Co-accused Shirish Kulkarni purchased land from funds of DSKDL and depositors money. Investigation is going on to identify key persons if any other than accused responsible for situation.

9 Learned Special P.P. further submitted that considering the special nature of crime, where all the directors had colluded against public interest and the offence is of economic nature, committed in a calculated manner, the accused are not entitled for bail. It is the case of large magnitude affecting the large number of people.

10 Learned Special P.P. submitted that the trial would commence shortly. The trial Court is hearing the parties on issue of framing of charge. Although, the charge–sheet appears to be voluminous, the prosecution intends to examine vital witnesses, and, therefore, it is expected that the trial should be over within short span of time.

11 Learned Special P.P. relied upon the statements of witnesses/aggrieved person recorded during investigation and submitted that although the witnesses have categorically stated that they were promised high returns, and that the promises were not fulfilled resulted in huge loss to them. Reliance is placed on statement of witnesses who were working with DSKDL who had referred to role of accused. The submission that the offence under Section 409 of IPC is not attracted it cannot be considered at this stage as *prima facie* the offience is made out and it would be matter of evidence. It is submitted that the applicants had preferred application for anticipatory bail and had agreed to deposit an amount of Rs.50 crores in this Court. The amount was not deposited. It is also submitted that the application preferred by the co-accused Kedar Prakash Vanjpe was rejected by this Court vide order dated 14th January, 2019. The wife of the said accused had also preferred an application for bail in B.A.No.2329 of 2018, which was also rejected vide order dated 14th January, 2019. However, it is fairly submitted that subsequently, the said accused Mrs.Sae Kedar Vanjpe was granted bail by this Court. The other accused Vinaykumar Raghuvendra Badgandi had also preferred application of bail which was withdrawn on 17th September, 2018. Thereafter, he preferred another application for

bail before this Court, which was also withdrawn vide order dated 8th January, 2021. Another co-accused Dhanajay Rajabhau Pachpor had also preferred an application for bail which was rejected by this Court vide order dated 6th February, 2019. The said accused had approached the Apex Court for bail and the Special Leave Petition was withdrawn at that stage vide order dated 8th July, 2019.

12 In rejoinder, learned counsel for the applicant submits that while the applicant had preferred application for bail before the MPID Special Court, similar submission that the trial would be concluded shortly was advanced by the prosecution, however, although the said application was rejected vide order dated 29th November, 2019, there is no progress in the trial.

13 I have perused the documents on record. It is apparent that several investors had invested the amount. The promises of returns were made to them. The promises were not fulfilled. Statements of several investors were recorded during the course of investigation. According to prosecution, huge amount is involved and allegedly misappropriated by the accused in the present case. Learned counsel for the applicant had harped

upon the fact that the amount is secured which is evident from the valuation of the properties under attachment. The accused have also refunded part of the amount to the inverters. It is also contended that on account of financial crises created on account of the situation as referred to by him, the returns could not be paid to the investors. Investigation is complete, and, charge–sheet is filed. The applicants are in custody for substantial period of time.

14 The case of prosecution is that accused hatched conspiracy and collected deposits from public, with an assurance of returns. Accused no.1 formed company DSK Developers Ltd. (DSKDL). He had formed partnership firms and misappropriated funds. Under the garb of purchase of land at Fursungi, loans were obtained from Banks and amount was allegedly siphoned off. The land at Fursungi was purchased by accused no.1 at less price in name of close relatives and within short span of time it was transferred to DSKDL at higher rate.

15 Applicant no.1 is the Chariman of DSKDL. Applicant no.2 is his wife. Applicant no.1 has played major role in the transactions. The affidavit–in–reply filed by respondents primarily

revolves around the overt act of applicant no.1 D.S. Kulkarni. The son of the applicants is Shirish Kulkarni and brother of applicant no.1 is Makarand Kulkarni. D.S. Kulkarni Developers Limited was formed in 1991. The affidavit–in–reply mentions the names of Directors of the company. Some of directors had retired. The applicant no.1 is Chairman. Applicant No.2 is concerned with subsidiary companies of firm of DSKDL. Applicant no.2 had allegedly transferred amount into account of son Shirish Kulkarni. It is alleged that applicant no.2 is one of the conspirator in alleged misappropriation. The role attributed to applicant no.1 and as reflected in paragraph 18 of the affidavit–in–reply is that he is directly concerned and was in collusion with other accused in organising in a systematic manner a conspiracy in furtherance of common intention for misappropriation of huge amount. Considering the overt act attributed to the applicant no.1, and, nature of offence, bail cannot be granted to him. In the light of evidence/material on record, the submissions of learned counsel for applicant cannot be accepted for granting bail to applicant no.1. He is also not entitled for interim bail on the basis of High Power Committee guidelines. Considering his role in the crime, I am not inclined to exercise discretion of bail to applicant no.1 on the basis of said guidelines. Applicant no.1 is the main accused.

16 Applicant no.2 is the wife of applicant no.1. Applicant no.1 was Chairman of the DSK Group of companies. The charge–sheet is already filed. The applicant no.2 is a lady. She is in custody for a period of 3 and ½ years. She is aged aound 60 years. Her role can be distinguished from applicatn no.1. In the light of the submissions advanced by the learned APP, it is expected that the trial would proceed expeditiously.

:: ORDER ::

(i) Bail Application No.3471 of 2019, is partly allowed;

(ii) Applicant No.2 Hemanti Deepak Kulkarni, is directed to be released on bail in connection with C.R.No.347 of 2017, registered with Shivaji Nagar Police Station, Pune, and investigated by EOW Pune, on executing P.R. Bond in the sum of Rs.2,00,000/-, with one or more sureties in the like amount;

(iii) Applicant no,2 Hemanti Deepak Kulkarni shall report concerned police station once in three month on first Saturday of the month between 11:00 a.m. to 01:00 p.m., till further orders;

(iv) Applicant no.2 Hemanti Deepak Kulkarni shall not tamper with the prosecution evidence;

(v) Applicant no.2 Hemanti Deepak Kulkarni shall attend the trial Court regularly on the date of hearing unless exempted by the Court;

(vi) Applicant No.2 Hemanti Deepak Kulkarni shall not leave India without the prior permission of the trial Court;

(vii) Applicant no.2 Hemanti Deepak Kulkarni, shall deposit the Passport before the trial Court, if not deposited with investigating agency;

(viii) Bail Application No.3471 of 2019 qua applicant no.1 Deepak Sakharam Kulkarni, stands rejected;

(ix) Interim Application No.1753 of 2021, stands rejected;

(x) Interim Application No.1754 of 2021 is disposed of, in view of order passed in Bail Application No.3471 of 2019;

(xi) Bail Application No.3471 of 2019, stands disposed of accordingly.

(**PRAKASH D. NAIK, J.)**