IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

CRIMINAL APPLICATION (BA) NO. 37/2021

Shri Mahendra @ Raju S/o Tulsiram
-**VERSUS-**
State of Maharashtra & anr

Office notes, Office Memoranda of Coram, appearances, Court's orders or directions and Registrar's orders.	Court's or Judge's Orders

Shri S. P. Dharmadhikari, Sr. Advocate assisted by Shri U. P. Dable, Advocate for applicant.
Mrs. S. S. Jachak, APP for State/respondents.

CORAM : VINAY JOSHI, J.
CLOSED FOR ORDER : 03.05. 2021
DATE OF PRONOUNCEMENT : 07.05.2021

Hearing was conducted through Video Conferencing.

2. The applicant/accused was arrested in crime No. 105/2020 registered with the Police Station Sonegaon, Nagpur for the offence punishable under Sections 406, 409, 420 read with Section 34 of the Indian Penal Code, and Section 3 and 4 of the Maharashtra Protection of Interest of Depositors (In Financial Establishments) Act, 1999 ('MPID Act'). Besides usual grounds it is contended that entire transaction is of civil nature. The applicant had executed sale-deed in pursuance of agreement and there was no element

of cheating. Moreover, it is argued that neither the provisions of MPID Act would apply, nor the essential ingredients to constitute the offence punishable under Section 409 of the Indian Penal Code would emerge. Lastly, it is submitted that already investigation is complete hence detention of applicant/accused in custody is no more required.

3. The State resisted bail by filing reply-affidavit. The contents of First Information Report (FIR) have bee reproduced. It is stated that the applicant has intentionally deceived several persons for valuable consideration. The applicant never intended to plant Aloe Vera saplings. The applicant gave false promise of higher returns and duped several for huge amount. Considering seriousness of the offence, the application is prayed to be rejected.

4. At the instance of report, lodged by one of Deshmukh dated 04.08.2020, the crime was registered. The applicant is Director of two companies namely Shri Govinda Developers and Infrastructure Pvt. Ltd. and M/s. Superior Agro Farming and Cultivators Pvt. Ltd. It is alleged that a scheme was floated to sell small pieces of land with understanding to plant Aloe Vera saplings. It

was assured that the investors would get handsome returns of Rs. 2,16,000/- annually. The informant contended that in pursuance of the assurance, he had purchased a small piece of land from Shri Govinda Developers and Infrastructure Pvt. Ltd. There was an agreement in between M/s. Superior Agro Farming and Cultivators Pvt. Ltd. with the informant to plant Aloe Vera saplings. It was assured that the applicant would get higher returns. It was the grievance that though informant purchased the land as well as paid cultivation and development charges, Aloe Vera saplings were not planted at all.

5. It is matter of record that initially there was an agreement dated 02.02.2013 between first company and informant. In pursuance of said agreement, a small piece of land was purchased by the informant vide sale-deed dated 06.03.2013. The learned Senior Counsel for applicant has pointed out that the sale-deed itself bears recital that already Aloe Vera saplings were planted in the land. On the point cultivation agreement dated 02.02.2013, it has been argued that there are specific clauses in the agreement by which the Company has clarified that it is not responsible for paying assured early returns.

6. The learned Senior Counsel for the applicant would submit that though the cultivation agreement bears a clause to appoint a joint monitoring committee for inspection, however no such steps were taken. It is his submission that it was purely civil transaction. According to him, there is no material to infer that since inception there was dishonest intention. In order to attract the provisions of MPID Act, it is essential to establish that the applicant has fraudulently defaulted repayment of investment. The submissions that the provisions of MPID Act does not apply conceives substance, but it is matter of trial. It is pertinent to note that the Company has very much executed sale-deed in favour of informant. It is not a case that the money was accepted under guise of executing sale-deed, but no transaction took place. It appears that there was an agreement to plant Aoe Vera crop and to pay assured annual income from yield. Prima facie, it appears that there was breach of the obligation which requires consideration in the trial whether since inception. there was intention to deceive.

7. Though, it has been contended by the prosecution that there is possibility of the applicant

tampering with the witnesses, however no material is placed in support of said contention. It is not a case that mere presence of applicant at large woud intimidate the witnesses. Nature of offence no where indicate that there are chances of repetition. Reply-affidavit discloses that already the property of applicant and of the Company was attached. Morevoer, bank accounts were also attached. One another co-accused namely Nischay Shelke who was also Director has already been released on bail by the Sessions Court. The investigation is complete and charge-sheet has been filed.

8. Grant or refusal to grant bail lies with the discretion of Court. The primary purpose of bail is to release accused from pre-trial detention unless it is must. Having regard to all theses facts, further detention of the applicant/accused in custody is no more required. In the circumstances, applicant can be released on bail on imposing certain conditions, hence following order:-

(I) The applicant/accused Shri Mahendra @ Raju S/o Tulsiram Gavai be released on bail on his furnishing P.R. Bond of Rs. 1,00,000/- with one or two sureties in the like amount.

(II). The applicant shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case, as also shall not tamper with the evidence.

(III) The applicant shall deposit his pass-port if any, with the Investigating Officer. In case, he does not have pass-port, he shall file affidavit to that effect.

(IV). The applicant shall not leave the country without permission of the Trial Court.

(V) The applicant shall attend the Investigating Agency as and when required.

(VI) The applicant shall attend the proceedings of the Trial Court on each and every date.

JUDGE

Gohane.