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

CRIMINAL APPLICATION (BA) NO. 867 OF 2021

(Vitthal Damuji Mehar ..vs.. State of Maharashtra, through PSO, PS Kotwali, Nagpur and another)

Office Notes, Office Memoranda of Coram, appearances, Court's orders of directions and Registrar's orders	Court's or Judge's orders

Mr. S.P. Dharmadhikari, Senior Counsel assisted by Mr. Uday Dable, Counsel for the applicant,
Mr. N.S. Rao, Addl.P.P. for the non-applicants.

CORAM : ROHIT B. DEO, J.
DATED : 13-10-2021

The applicant is seeking bail in connection with Crime 217/2019 registered with the Kotwali Police Station, Nagpur for offences punishable under Sections 409, 420, 467, 468, 471 and 120-B of the Indian Penal Code (IPC) and Section 3 of the Maharashtra Protection of Interest of Depositors (in Financial Establishments) Act (MPID Act).

2. The two victims of the crime Mr. Manik Sarve and Mrs. Archana Sarvy have preferred Criminal Application 1715/2021 for permission to assist the prosecution. However, the learned Counsel for the said victims is not present. Nonetheless, I have considered the application, which according to the victims, be treated as reply to the bail application.

3. In brief, the case of the prosecution, as is discernible from the charge-sheet, is that accused

Khemchand Meharkure is the President of Jai Shriram Urban Credit Co-operative Society Limited (society) and he, in connivance with the co-accused, misappropriated amount of Rs.79,54,26,963/- (Rupees Seventy Nine Crore Fifty Four Lac Twenty Six Thousand Nine Hundred Sixty Three). The allegation in the charge-sheet is that the statements of 798 depositors further reveal that their deposits aggregating Rs.29,06,18,748/- (Rupees Twenty Nine Crore Six Lac Eighteen Thousand Seven Hundred Forty Eight) were not returned and the amount was misappropriated. The financial irregularities are categorized by the prosecution under twenty-three different heads. The crime is registered pursuant to directions issued by the learned Magistrate in exercise of jurisdiction under Section 156(3) of the Criminal Procedure Code, 1973 (Code). I am restricting the reference to the prosecution case to the role attributed by the prosecution to applicant-Vitthal Mehar. In all fairness, the learned Additional Public Prosecutor Mr. N.S. Rao submits that the applicant is implicated in the crime on the premise that he is a co-conspirator.

4. Adverting to the conspiracy theory, the prosecution case is that the applicant is a close friend of the alleged mastermind Khemchand Meharkure. The applicant deposited an amount of Rs.2,38,39,071/- (Rupees Two Crore Thirty Eight Lac Thirty Nine Thousand Seventy One) with the society, in his name and in the names of the family members. The prosecution

case, as stated in the charge-sheet, is that the applicant was paid an amount of Rs.9,67,28,500/- (Rupees Nine Crore Sixty Seven Lac Twenty Eight Thousand Five Hundred), as financial assistance, which he did not repay. While the charge-sheet refers to the said amount of Rs.9,69,28,500/- (Rupees Nine Crore Sixty Nine Lac Twenty Eight Thousand Five Hundred) as loan, the loan theory is not pressed by the learned Additional Public Prosecutor Mr. N.S. Rao, who rests with the submission that the said amount was withdrawn from the society and paid to the applicant, as directed by the alleged mastermind Khemchand Meharkure. Mr. N.S. Rao has invited my attention to two statements to buttress the submission that the material *prima facie* establishes conspiracy. The two statements are of Prashant Sawai and Anil Nagdeve, who are the employees of the Society, and who vouch for the payment made to the applicant, on the directions of the alleged mastermind. While, no positive finding need be recorded on the sufficiency of the said material to establish conspiracy, which issue will be addressed by the trial Court, after the evidence is adduced, in my prima facie opinion, it is extremely debatable whether such material is sufficient to establish conspiracy.

5. It is not even the case of the prosecution that the applicant was involved in inducing the investors to deposit money with the society. Nor does the prosecution alleged that the applicant was involved in the affairs of

the society or that he is responsible for the irregularities categorized under twenty three heads. It has come on record that the applicant deposited a sizable amount and was assured monthly interest of Rs.3,25,000/- (Rupees Three Lac Twenty Five Thousand). That apart, the submission of the learned Senior Counsel Mr. S.P. Dharmadhikari is that the applicant and accused Khemchand Meharkure had business relationship. The applicant allegedly financed Khemchand Meharkure and both were partners in a layout development venture. The material in the charge-sheet, holistically considered, does not exclude the possibility of the amount paid on the directions of the alleged mastermind, to be the amount due and payable by Khemchand Meharkure to the applicant. The fact that accused Khemchand Meharkure withdrew the amount from the society and paid the said amount to the applicant may not necessarily establish conspiracy. Accused Khemchand Meharkure appears to have spent the money of the investors in multifarious ways including on the so called Babas or Godmen. That he misused the funds of the society to pay certain amount to the applicant, in the absence of any additional material to show complicity of the applicant, may not necessarily be decisive.

6. The nature of the accusations and the material on record apart, the applicant is in custody since 28-4-2021. It is not the case of the prosecution that if released on bail, the applicant will be in a position to

influence the witnesses or to otherwise subvert the trial. It is further not the case of the prosecution that the applicant has criminal antecedents or that he poses a flight risk. In such a situation, further detention will be in the nature of a pre-trial punishment.

7. A case for bail is made out. The application is allowed.

8. The applicant be released on bail in connection with Crime 217/2019, registered with Police Station Kotwali, Nagpur, for offences punishable under sections 409, 420, 467, 478, 471, 120-B of Indian Penal Code, Section 3 of the Maharashtra Protection of Interest of Depositors (in Financial Establishments) Act, on executing PR bond of Rs. 16,000/- (Rupees Sixteen Thousand) with one solvent surety of the like amount.

9. The applicant shall attend Economic Offences Wing, Nagpur as and when required by the Investigating Officer.

10. The applicant shall not, directly or indirectly, make any attempt to influence the witnesses or otherwise tamper with the evidence.

11. The applicant shall not leave the country without the permission of the trial Court.

JUDGE

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