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

CRIMINAL APPLICATION (BA) 913 OF 2021
(Faizi s/o. Moin Sheikh and anr..vs..State, thr PSO, PS Tahsil District Nagpur)

Office Notes, Office Memoramda of Coram, appearances, Court's orders of directions and Registrar's Orders.	*Court's or Judge's orders.*

Mr. S.I. Ghatte, counsel for applicants.
Mr. N.S. Rao, APP for non-applicant /State.

CORAM: ROHIT B. DEO, J.
DATE: 23.11.2021.

Heard.

2. The applicants are seeking bail in connection with Crime 94/2020, registered with Police Station Tahsil, District Nagpur, for offences punishable under sections 406, 409, 420, 120-B read with section 34 of Indian Penal Code ("IPC") and section 3 of Maharashtra Protection of Interest of Depositors (In Financial Establishments) Act, 1999 ("MPID Act").

3. The prosecution case is that applicant 1 Faizi Moin Sheikh is a Director of Apang Bahuuddeshiya Seva Sahkari Sanstha Maryadit ("Society") and applicant 2 Rizwana Parvin Mohd Isak is the Secretary.

4. The complainant is Mr. Satyanarayan Malu. The complainant needed loan to restart his paper mill. He was induced to believe that the Society would be in a position to extend loan of Rs. 38,00,00,000 (Thirty Eight Crores). Lured, the complainant submitted an application to the Society seeking financial assistance of Rs. 38,00,00,000 (Thirty Eight Crores).

5. The applicants asked the complainant to deposit Rs. 48,50,000/- (Rupees Forty Eight Lacs Fifty Thousand) in the account of the Society and to make cash payment of Rs. 6,00,000/- (Rupees Six Lacs) to the office bearers. The complainant alleges, and there is substantial material on record to support such allegation, that he paid Rs. 54,50,000/- (Rupees Fifty Four Lacs Fifty Thousand) to the applicants and was issued a communication purporting to be Loan Sanction Order.

6. As was expected, and as was intended, as the material prima facie suggests, the Society did not

extend the loan and when the complainant demanded refund of Rs. 54,50,000/- (Rupees Fifty Four Lacs Fifty Thousand) which he paid, he was handed over three cheques for Rs. 10 lacs (Rupees Ten Lacs) each, which bounced.

7. The complainant lodged report and during the course of investigation, it transpired that apart from the complainant, several gullible persons were defrauded of their hard earned amount. Culmination of investigation led to submission of final report in the jurisdictional Court for offences punishable under sections 406, 409, 420, 120-B read with section 34 of IPC and section 3 of the MPID Act.

8. Before adverting to the submission canvased, it may be noted that apart from the amount of Rs. 54,50,000/- (Rupees Fifty Four Lacs Fifty Thousand) which the complainant Mr. Satyanarayan Malu was induced to pay, the applicants allegedly induced the investors and depositors to part with Rs. 2,36,15,500/- (Rupees Two Crores Thirty Six Lacs

Fifteen Thousand Five Hundred).

9. The first submission of the learned counsel is that in view of the 97th constitutional amendment, the bye-laws of the Society stood amended with effect from 28.10.2013 and the Society started the business of lending money and it was only in view of the notice dated 18.4.2019 issued by the Deputy Registrar of the Cooperative Societies directing the Society to stop disbursing loans, that the Society could not disburse loan to Mr. Satyanarayan Malu.

10. The submission that the complainant Mr. Malu could not be disbursed loan in view of the notice issued by the DDR is falsified from record. Mr. Malu was induced to prefer an application seeking financial assistance of Rs. 38,00,00,000/- (Rupees Thirty Eight Crores)in October, 2018, if not earlier. Mr. Malu deposited an amount of Rs. 3,50,000/- (Rupees Three Lacs Fifty Thousand) with the Society on 29.10.2018, and thereafter, deposited or paid in cash, at the insistence of the applicants various amounts

aggregating Rs. 54,50,000/- (Rupees Fifty Four Lacs Fifty Thousand). Mr. Malu realized that he was taken for a ride much prior to the letter or show cause notice issued by the DDR, to which the learned counsel is making a reference. It is revealed from the chargesheet that the complainant addressed letter dated 11.2.2019 withdrawing the request seeking financial assistance.

11. Ordinarily, I would not have minutely evaluated the material on record while deciding the entitlement to bail. However, the persistent submission of the learned counsel that the Society was indeed empowered in law to grant loan, that the Society did disburse crores of rupees as loan and that the problems are created only because the Society was directed to stop the disbursement of loan, impels me to consider the material in some detail. Having done so, I am satisfied that the Society was not entitled under the bye-laws which are pointed out by the learned counsel to even contemplate granting loan to Mr. Malu for restarting the mill. The primary object of the Society is to work for the welfare of the differently abled, as is

apparent from the very name of the Society. Bye-law 5 deals with the objects of the Society. Bye-law 7 stipulates the eligibility of membership of Society and the basic eligibility is that a proposed member must be working to achieve the objectives of the Society within its territorial jurisdiction. Considering that the complainant Mr. Malu is a businessman, who was seeking financial assistance to restart mill, he could not have been admitted to the membership nor could the Society have promised him financial assistance of Rs. 38,00,00,000/- (Rupees Thirty Eight Crores). The submission of the learned counsel that bye-laws 8 and 9 permit disbursement of loan, is recorded only as a courtesy to the learned counsel. It is apparent that the reference to financial assistance in bys-laws 8 and 9 is a limited financial assistance to the members and the youth for whose upliftment the multi-purpose society is formed.

12. Prima facie, I am satisfied, that a conspiracy to defraud Mr. Satyanarayan Malu was hatched. The applicants could not have and indeed, had no intention

of extending any financial assistance to Mr. Malu much less financial assistance to Rs. 38,00,00,000/- (Rupees Thirty Eight Crores).

13. I posed a query to the learned counsel for the applicants to disclose the expendable amount in the account of the Society on the basis of which the applicants promised Mr. Malu that loan of Rs. 38,00,00,000/- (Rupees Thirty Eight Crores) shall be disbursed. The learned counsel is not in a position to answer the query. However, the learned APP Mr. N.S. Rao invites my attention to the bank account statements of the Society which reveals that when the complainant Mr. Malu was "sanctioned" loan of Rs. 38,00,00,000/- (Rupees Thirty Eight Crores), the Society did not have more than Rs. 1,18,000/- (Rupees One Lac Eighteen Thousand) in its coffers. This is sufficient to prima facie hold that the complainant Mr. Malu was lured into parting with Rs. 54,50,000/- (Rupees Fifty Four Lacs Fifty Thousand) by the applicants, by promising loan of Rs. 38,00,00,000/- (Rupees Thirty Eight Crores), when the Society did not

have more than Rs. 1,18,000/- (Rupees One Lac Eighteen Thousand) in its bank account.

14. The next submission of the learned counsel is that considering that the accusation is the commission of economic offence, no purpose will be served by continued incarceration of the applicants. The extension of the submission is that if granted bail, the applicants can make effort to return the amount of the depositors.

15. It is true that the offence can be classified as an economic offence. However, the modus operandi is not restricted to the usual promising of high returns and then leaving the investors high and dry. Apart from the fact that the members and depositors are induced to invest in the Society, what I find from the material in the chargesheet, is that right from the inception and with a fraudulent intention, gullible persons like the complainant Mr. Satyanarayan Malu have been induced to part with substantial amounts, taking advantage of their financial need. The

applicants have sufficient time to demonstrate their bonafides. The submission that if bail is granted, the applicants shall make effort to return the amount cannot be given credence for two reasons. The offence is not failure to return the amount per se, the accusation is the commission of serious fraud and return or refund of the amount would not dilute the gravity of the offence. Moreover, I am satisfied that the submission lacks in bonafides.

16. The learned counsel submits that if bail is not granted, the incarceration shall amount to pre-trial punishment. If the trial culminates in conviction, the maximum punishment could be life imprisonment considering that the prosecution is invoking section 409 of IPC. The period of incarceration is not necessarily decisive in the factual matrix. It would suffice to notice the following observation of the Hon'ble Supreme Court in ***State of Bihar and Another vs. Amit Kumar alias Bachcha Rai, (2017) Vol. 13 SCC 751.***

> *"8. A bare reading of the order impugned discloses that the High Court has not given any reasoning while granting bail.*

> *In a mechanical way, the High Court granted bail more on the fact that the accused is already in custody for a long time. When the seriousness of the offence is such the mere fact that he was in jail for however long time should not be the concern of the courts. We are not able to appreciate such a casual approach while granting bail in a case which has the effect of undermining the trust of people in the integrity of the education system in the State of Bihar."*

17. The final submission of the learned counsel is that co-accused Nasrin who was the President of the Society is granted bail, and therefore, there is no reason why the applicants deserve a different treatment. Nasrin was granted bail since on scrutiny of the material in the chargesheet, this Court found that although she was the President on record, the witnesses have attributed the prominent role to the present applicants and that the submission of her counsel that a conservative Muslim wife did what her husband applicant 1 herein asked to her to do, cannot brushed under the carpet. What further weighed with this Court while granting bail to Nasrin was that applicant 1 and Nasrin have three children and the youngest child is 7 years old. Discretion was exercised in favour of

Nasrin since the High Court deemed it appropriate that at least one of the parents is available to lookafter the three children. In so far as applicant 1 is concerned, the submission on the basis of principle of parity, cannot be accepted. The role attributed to Nasrin, who is released on bail and the role attributed to the applicant-1 cannot be compared. In inducing Mr. Malu to pay Rs. 54,50,000/-(Rupees Fifty Four Lacs Fifty Thousand) Nasrin had hardly played any role and all that is alleged against her in the chargesheet is that she alongwith other Directors visited the paper mill of the complainant ostensibly as a part of the valuation process.

18. While the role attributed to the applicants Faizi and Rizwana are broadly similar, I am inclined to grant bail to accused 2 Rizwana since she is a woman. It is well settled, that discretion can be exercised in favour of a woman notwithstanding the existence of a strong prima facie case in an offence which may be punishable with capital sentence or life imprisonment. The learned counsel further submits that she acted

under the influence of applicant 1 Faizi and has her aged parents to support.

19. The application is partly allowed.

20. The application is dismissed in so far as accused 1 Faizi Moin Sheikh is concerned.

21. Applicant 2 Rizwana Parvin Mohd. Isak be released on bail in connection with Crime 94/2020, registered with Police Station Tahsil, District Nagpur, for offences punishable under sections 406, 409, 420, 120-B read with section 34 of IPC and section 3 of MPID Act, on executing PR bond of Rs. 16,000/- (Rupees Sixteen Thousand) with one solvent surety of the like amount.

22. The applicant 2 shall not, directly or indirectly, make any attempt to influence the witnesses or otherwise tamper with the evidence.

23. The applicant 2 shall not leave the country

without the permission of the trial Court.

Judge

Belkhede