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

CRIMINAL APPLICATION (ABA) NO. 655/2021

(Rajesh Tarachand Bansod Vs. State of Maharashtra)

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 the applicant.
Shri M. J. Khan, APP for non-applicant/State.
Shri S. G. Karmarkar, Advocate for assisting to the prosecution.

CORAM : VINAY JOSHI, J.
DATE : 29.10. 2021.

Heard.

2. The applicant is seeking pre-arrest bail in terms of Section 438 of the Code of Criminal Procedure in Crime No. 317/2021 registered with the Police Station Sitabuldi, Nagpur for offence punishable under Sections 406, 409, 420 read with Section 34 of the Indian Penal Code, Section 3 of the Maharashtra Protection of Interest of Depositors (In Financial Establishments) Act, 1999 ('MPID Act') and Section 45 of the Reserve Bank of India Act. Beside usual grounds, bail is claimed

by stating that the provisions of MPID Act, would not apply since the applicant's proprietary concern cannot be termed as 'Financial Establishment' nor the advances can be construed as 'deposit' within the meaning of the said Act. Inasmuch as, it is canvassed that the applicant has raised business loan from the informant and like others. Since the business went into losses, the applicant could not refund the returns as assured, hence there was no intention to deceive or chit.

3. To support said contention, several documents are produced to impress that it was a genuine business concern in which steps were taken to run the fishing business. It is contended that the applicant has entered into various agreements with a Fishery Department as well as Societies by which undertook the plots for breeding and rising of the fish.

4. State has strongly resisted the bail by filing reply-affidavit. In sum and substance, it is

contended that though the applicant has started business activities, however it was used as a tool to induce and allure the depositors. The applicant was not intending to carry business faithfully as he himself withdrew from some project and by misrepresenting his business at large scale, accepted huge amount from various investors. According to the State, the applicant has approximately accepted deposits of Rs. 10 crores from the depositors who are left at lurch. Considering the seriousness of the crime, bail is prayed to be rejected.

5. At the instance of report, lodged by one of the investor Mr. Saksena, a crime was registered. The informant a resident of Mumbai, was introduced with the applicant through one Rajnishkumar. The applicant was running a proprietary concern in the name and style as 'Fortune Fishery' and 'Vision Fishery' under which he was doing a work of breeding fish seeds. Applicant's proprietary concern was indulging into

process of rising fish and farm commercially in a controlled environment which is called as ‘cadge culture’. The applicant by distributing pamphlets and by use of social Media induced investors to invest money in the project on the promise of high returns. The police report indicates the assured chart of high returns on investment.

6. It is informant’s case that after coming across the applicant’s lucrative proposal and promise of high returns, he visited office of Fortune Fishery. The applicant made him to understand the entire cadge culture business. Applicant also took informant to the site and shown the installed cadges in the tank. Moreover, the applicant has shown documents to vouch that he had entered into agreement with fishery department which has leased various fishing tanks for the period of 7 years. Moreover, certain agreements made with the Cooperative Societies about undertaking fishing business have been shown.

7. Believing on the assurances of high returns, the informant invested total amount of Rs. 48,85,000/- with the applicant for fishery business. The informant stated that he got monthly returns only for initial 4 months and thereafter, the applicant did not pay single rupee. Time and again, informant enquired with the applicant but in vein. The informant came to know that like him, there were several investors from whom the deposits were accepted, but no refund. Therefore, the report for cheating forgery and fraud.

8. Learned senior counsel for the applicant had endeavored to impress that it was a genuine business undertaken by the applicant, however unfortunately, he could not succeed. According to him, the money advances was purely towards business loan. Several agreements entered with different societies as well as fishery department were produced to state that in the year 2017, fishing business has commenced. Not only that

the applicant has produced several GST Tax Invoices to show that in order to run business, the applicant had purchased raw material and thus, investment was of 11 crores. It is the submission that there was no empty promise at all. The applicant took genuine steps, commenced fishing business but it went into losses. Therefore, according to the applicant, there was no intention to deceive at all. Moreover, it is contended that in the year 2020, due to natural calamities and sudden rise in dam water, the cadges were destroyed. The applicant has produced the copy of Panchanama, showing losses to the tune of Rs. 11 crores. In order to show bonafides, it is submitted that the applicant has even entered into an agreement of sale with one of the investor toward settlement.

9. In resistance, the learned APP has pointed that the applicant was permitted to install 240 cadges only, however he misrepresented that he has erected 1200 cadges. In this regard, certain

correspondence letters with the fishery department were shown. Besides, that learned APP has shown letters from case diary that after one year, the applicant himself has withdrawn from one of the project and discontinued the lease. My attention has been drawn to some statements to show that due caution was given by the department about the expected flood therefore, the applicant had already removed his cadges. Moreover, it is contended that the Panchanama about the losses is tainted one which requires investigation. It is submitted that with deceitful intent, the applicant has painted rosy picture by stating that he has installed 1200 cadges whilst he was permitted to installed only 240 cadges. The entire endevour was to impress that, by attracting people by show of good business, deposits were received.

10. Learned senior counsel has submitted that since it was a business loan, the provisions of MPID Act, could not have been invoked. Perusal

of term ‘financial establishment’ as defined under Section 2(d) of the Act, reveals that acceptance of deposit under any scheme or arrangement can be termed as ‘financial establishment’. Moreover, the term ‘deposit’ includes receipt of money to be returned after a specific period or otherwise. Prima facie, the requirements are met since amount was received on the promise of high returns. It is not in dispute that the applicant has received crorers of rupees from various depositors.

11. During the course of investigation, the Police have recorded statement of several investors who have deposited the money and the process is going on. Pertinent to note that the applicant was authorized to install 240 cadges. He appears to have represented that he has installed 1200 cadges, obviously to show large scale business transaction to allure the investors. As per the police report, the assured interest was refunded only for initial 4 months in the year 2017. Though the natural calamity occurred much latter in the

year 2020, there is no justification as to why till that time, the assured returns were not refunded. When the applicant had accepted huge amount from the investors, he was under obligation to continue business instead of waiving one of major site.

12. Learned senior counsel appearing for the applicant has submitted that in order to invoke jurisdiction in terms of Section 438 of the Code of Criminal Procedure, there is no requirement of making out exceptional case. In this regard, reliance is place on the decisions of the Supreme Court in cases of **Sushila Aggarwal and others Vs. State (NCT of Delhi) and another, (2020) 5 SCC 1** and **Shri Gurbaksh Singh Sibbia and others Vs. State of Punjab, (1980) 2 SCC 565**. There can be no dispute about said proposition, however it is a factual aspect to decide on various circumstances whether a case is made out to grant pre-arrest protection. Right balance has to be struck in between the right of liberty of individual vis-a-vis

to right of the Investigating Agency to investigate the matter.

13. It appears that though the applicant has commenced the business, however barring few initial months, he did not pay the returns at all. It is not out of place to state that the business establishment has been used to gain the confidence of investors to get more and more investment. There is possibility of more investors coming forward with their grievances. Crores of rupees of the investors are at stake.

14. Investigation is at preliminary stage. The Police have seized various documents and are in the process of verifying the documents tendered by the applicant. Forensic audit is yet to be carried. Having regard to all above circumstances and the huge money involved in the entire episode, it is not a fit case to grant pre-arrest protection. Hence, application stands rejected.

JUDGE

Gohane.