

IN THE HIGH COURT OF JUDICATURE AT BOMBAY,

NAGPUR BENCH, NAGPUR

CRIMINAL WRIT PETITION NO.993 OF 2019

- 1.Nagwaram Venkatachar Shrinivas,
Aged 67 years, r/o. A-1,
Wasudeo Nagar, Hingna Road,
Near SBI Colony, Nagpur-440036.
- 2.Mrs.Aruna wd/o. Ashok Desai,
Aged about 70 years, Occ. Retired
Teacher, r/o. 302, Tower 3, Supreme
Enclave, Mayur Vihar, Phase-1,
New Delhi – 91.
- 3.Mrs.Naumani w/o. Mukesh Tirpude,
Aged about 62 years, Occ. Retd.
Teacher, r/o. Plot No.724, Darpan
Villa, off Chhindwara Road,
Byramji Town, Nagpur-13.
- 4.Sunil s/o. Madhuklar Balbudhe,
Aged 56 years, Occ. Business,
r/o. 184, Nandanwan Colony,
Near Nandanwan Police Station,
Nagpur-440009.

5.Ashok s/o. Ninu Narkhede,
Aged 71 years, r/o. 32, Cosmos
Town, Jaitala Road, Nagpur.

6.Ms Poonam d/o. Late Arvind Bondre,
Aged about 43 years, Occ. Service.

7.Mrs.Prabha wd/o. Late Arvind Bondre,
Aged about 65 years, Occ.Household.

8.Neeraj s/o. Late Arvind Bondre,
Aged about 38 years, Occ. Service.

Petitioner Nos. 6 to 8 all r/o. B
17/18, Manav Seva Layout,
Seminary Hills, Nagpur-440 006. PETITIONERS

// VERSUS //

1.State of Maharashtra,
Through Department of Home,
Second Floor, Mantralaya, Madam
Cama Road, Mumbai 400 032.

2.Samata Sahakari Bank,
having it's registered Office at
Bhagwagar Layout, Dharampeth,
Nagpur, through its Liquidator. RESPONDENTS

Mr.Sunil Manohar, Senior Advocate assisted by Mr.Shantanu
Khedkar, Advocate for the petitioner.
Mr.S.M.Ghodeswar, A.P.P. for respondent no.1.

CORAM : SUNIL B. SHUKRE &
AVINASH G. GHAROTE, JJ.

DATE : 23.2.2021.

ORAL JUDGMENT (Per Sunil B. Shukre, J) :

1. **Rule.** Rule made returnable forthwith. Heard finally by consent.

2. Mr.Sunil Manohar, learned Senior Advocate for the petitioners does not press that part of the first prayer which seeks declaration that the provisions of the Maharashtra Protection of Interest of Depositors (In Financial Establishment) Act, 1999 (hereinafter referred to as “**the MPID Act**”) are not applicable to the respondent no.2/bank. He submits that separate petition seeking this relief will be filed by the petitioners/aggrieved persons. He also does not press prayer clause (iii) of the petition questioning constitutional validity of Section 4 of the MPID Act. Thus, learned Senior Advocate has confined his challenge in the present petition only to the legality and correctness of the order dated 2.8.2019 attaching properties of the petitioners under Section 4 of the MPID Act.

3. Learned Senior Advocate invited our attention to the relevant fact of filing of an affidavit by the Investigating Officer before the Supreme Court in Criminal S.L.P. No.4798 of 2008 which was for cancellation of anticipatory bail granted to various accused persons in this crime which included a lot of 14 accused persons, 4 of which are the present petitioners. He submits that, in this affidavit, two lists were submitted by the Investigating Officer to the Supreme Court and in one list, names of the accused persons were included, against whom there was existence of material showing their prima facie involvement and in the second list, the names of 14 accused persons were included, against whom there was not in existence any material showing their direct involvement in commission of the offences registered in the present crime. As regards the other two petitioners namely Sunil s/o. Madhukar Balbudhe (petitioner no.4) and Ashok s/o. Nanu Narkhede (petitioner no.5), the learned Senior Advocate submits that there is no material in existence showing their involvement in commission of the offences registered against them. He further submits that petitioner nos. 6 to 8 are not the accused persons and they are legal heirs of the original accused/deceased Arvind Bondre. The learned Senior Advocate submits that name of deceased Arvind Bondre figured in the second list of 14 accused

persons at Sr.No.5, in respect of whom a statement was made that there was no direct involvement of him and also other accused persons in the crime registered against them.

4. Mr.S.M.Ghodeswar, learned A.P.P., upon instructions, submits that a statement was indeed made on affidavit before the Apex Court that 14 accused persons named in the second list submitted to the Apex Court did not have any direct involvement in commission of the offences registered against them. This statement has been made by him after seeking instructions from the Investigating Officer, who is present before this Court. Upon a query made to the Investigating Officer Mr.S.S.Gaja, Deputy Superintendent of Police, it was informed by the said Investigating Officer that the statement made in the foot note of second list submitted to the Apex Court is correct and even till date, there is no material found showing direct involvement of any of these 14 accused persons, which includes 4 of the petitioners before this Court. For the sake of convenience, the statement made on affidavit before the Apex Court is re-produced thus :

“ Till this date in the investigation prima facie there is no direct involvement of the aforesaid 1 to 13 accused persons. As far as accused at Sr.No.14 is prima facie involved in the said scam. If any of the aforesaid 1 to 13 accused persons are found to be involved in the further investigation, the police authorities are found to be involved in the further investigation, the police authorities reserve their right to seek cancellation of anticipatory bail/custody of the concerned accused persons for necessary investigation. ”

5. If the present position is that there is no material available on record showing direct involvement of these accused persons including 4 petitioners namely petitioner nos. 1, 2 and 3 and deceased Arvind Bondre, the question of acquiring properties which have been attached in this case by using banks deposit would not arise. Therefore, so far as these petitioners are concerned, the order of attachment passed under Section 4 would not be sustainable. Then, the afore-stated statement has been made subject to reservation that if any material is found in future, further action as may be warranted under the law would be taken against these persons. This position has also been accepted by the Investigating

Officer who is present before this Court. Therefore, we have no hesitation to declare action taken under Section 4 of the MPID Act as invalid so far as petitioner nos. 1 to 3 and deceased accused Arvind Bondre is concerned. If this is so, this order would also have to be declared to be invalid to the extent it affects petitioner nos. 6 to 8, against whom also there is no material, as of now, showing their prima facie involvement and admittedly so.

6. Now the question would remain about validity of the order to the extent it affects rights of petitioner nos. 4 and 5. As pointed out earlier by learned Senior Advocate, there is no material in existence showing direct involvement of the petitioners in commission of the offences registered against them. We must say that the statement so made cannot be found to be incorrect when, the reply filed by the respondents does not bring out any material whatsoever showing involvement of petitioner nos. 3 and 4 in the present crime. Learned A.P.P. on being questioned by this Court on this aspect, has sought instructions from the Investigating Officer present in the Court and upon instructions, he informs that no material could be discovered so far showing direct involvement of petitioner nos. 4 and 5. If this is the position, we do not think that

the impugned order could be sustained even against these petitioners in the eye of law.

7. So far we have only considered the aspect of direct involvement of these petitioners in the crime registered against them. We have not addressed the other aspect of the matter which pertains to indirect involvement of the petitioners in the crime registered against them, if any. Even about this aspect, there is no material forthcoming from the investigation so far made and this is not disputed by the Investigating Officer present in the Court. Besides, the right to take action if warranted in future and as aforesaid has also been kept reserved by the Investigating Officer. There is also no material showing that all these properties, which are subject matter of attachment affecting the rights of the petitioners, have been purchased or acquired by the petitioners by using money of depositors.

8. In the circumstances, we are of the view that this petition deserves to be allowed partly for all the petitioners and it is partly allowed accordingly. The impugned order dated 2.8.2019 is hereby quashed and set aside insofar as it affects the petitioners.

It is made clear that if any new material is found against any of these petitioners, the Investigating Officer would be at liberty to take such action as he may deem appropriate in accordance with law.

Needless to say that as this petition has been finally decided, there has occurred merger of interim order passed earlier with this final order and so the interim order dated 20.12.2019 is now no longer in force.

JUDGE

JUDGE

[jaiswal]

Suraj
Jaiswal

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