IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

BAIL APPLICATION NO.542 OF 2022

MAHESH S/O KISAN MOTEWAR
VERSUS
THE STATE OF MAHARASHTRA

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Advocate for Applicant : Mr. Suresh Tripathy h/f Mr. Jarare Prasad D.
APP for Respondent-State : Mr. V. S. Badakh.
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CORAM : S. G. MEHARE, J.

RESERVED ON : 04.07.2022
PRONOUNCED ON : 26.07.2022

ORDER :-

1. The applicant is seeking bail under Section 439 of the Cr.P.C. in Crime No.163 of 2018 registered by Police Station Beed City for the offences punishable under Sections 420, 406 read with Section 34 of the IPC and under Section 3 and 4 of the Maharashtra Protection of Interest of Depositors (In Financial Establishment) Act, 1999.

2. It has been alleged against the applicant that he has formed one company Samruddha Jeevan Foods India Ltd. The applicant has promised to pay a double or triple return on the amount invested by the investors. He has collected rupees Five Crores from various investors. The applicant had changed the

name of his company. He closed his office at Sarda Capital at Beed. The applicant is the Director of the said company. The applicant cheated the investors under the false promise to return the amount on the invested amount double or triple. The applicant was arrested for the crime on 18.11.2021.

3. The learned counsel for the applicant Mr. Tripathy has vehemently argued that the Beed Police Station had no authority or power to investigate the crime against the applicant and his company. The Hon'ble Supreme Court in Public Interest Litigation had directed to make the investigation against the transaction and business of the applicant and his all companies. The investigation was entrusted to the CBI. The CBI Bhubaneswar and West Bengal did the entire investigation. The CBI attached the entire property, bank accounts and assets of the applicant and his company. Therefore, the Beed police had to refer the complaint to CBI. The Beed Police Station did not obey the directions of the Hon'ble Apex Court and acted in breach of the directions. The CBI conducted the investigation for the same period between 2010 to 2015, which covers the period of investment of the applicant. The applicant has companies throughout the country. The investigation was started before 2018. Beed

Police Station did not investigate till 2018. The FIR was registered in the year 2018. Filing the charge sheet against the applicant is double jeopardy. The Hon'ble Apex Court has released the applicant in most of the crimes registered against him. The CBI filed a comprehensive report in the year 2014 itself. The further detention of the applicant is not essential. He has referred to the final report submitted by CBI Kolkata and Bhubaneswar. He also referred to the orders of the Hon'ble Apex Court enlarging the applicant on bail. Learned counsel for the applicant also relied upon the bail orders passed at the principal seat at Bombay. He relied on the said orders to support his case that the applicant had been released on bail.

4. Learned APP has strongly opposed the application contending that CBI Bhubaneswar has recently informed the Superintendent of Police, EOW, Beed that CBI, EOB-VII has not taken the issue of investors of any other States except investors of Odisha. Therefore, the Beed Police Station has correctly investigated the crime and filed a charge sheet against the applicant. Since it is an independent investigation, there is no question of double jeopardy. Around 1232 investors have been cheated for worth rupees Twenty Crores. The police interrogated the witnesses. There is no force in the contention

of the learned counsel for the applicant that the Beed Police Station was supposed to transfer the investigation to CBI Odisha/West Bengal. There were no specific directions of the Hon'ble Apex Court as objected. The poor people have been duped. The offences have been registered against the applicant throughout the country. He may abscond; therefore, he cannot be released on bail.

5. It is not in dispute that a thorough investigation was done against the applicant by CBI Kolkata and Odisha, and the crimes have been registered against the applicant. The CBI, through its branches at Kolkata and Bhubaneswar, have submitted the final report before the learned Special CBI, Bhubaneswar. It has been alleged in the charge sheet that from 16.12.2013 to 01.08.2015, the applicant has illegally transferred the amount of Rs.7,56,60,000/- to his different accounts and misappropriated the money.

6. In the charge sheet filed by the CBI bearing No.34/S/2014-CBI/KOL, CBI ACP, Bhubaneswar, in paragraph No.16.5, it has been contended that the investigation reveals that M/s Samruddha Jeevan Foods India Ltd was formed initially by the applicant and was engaged in collecting deposits from general public under different schemes in the

garb of sale and purchase of live stock and approval of statutory and regulatory authority like SEBI and RBI. SEBI received the complaint and issued notice for preliminary inquiry regarding unauthorized business activities of Samruddha Jeevan Foods India Ltd. with mala fide intention. To avoid statutory and regularity compliances and to continue collecting the deposits illegally from the public, the applicant Mahesh with his associates formed a co-operative society in the name and style of 'Samruddha Jeevan Multi Purpose Co-operative Society Ltd.' with its head office at Pune which stands registered as CRCS, New Delhi with effect from 08.06.2012. The said society, i.e. M/s Samruddha Jeevan Multi Purpose Co-operative Society Ltd., was not authorized to collect the deposits from the public other than its members.

7. In paragraph No.16.9 of the above charge sheet, it is also contended that the area of operation of proposed co-operative society was initially confined to the State of Maharashtra, Karnataka, Gujarat and Madhya Pradesh, which was subsequently extended to 17 States. In paragraph No.16.10, it is contended that the investigation reveals that during the said period of legal actions initiated against M/s Samruddha Jeevan Foods India Ltd. by SEBI, the offices and branches of M/s

Samruddha Jeevan Foods India Ltd. continued collecting deposits from public, initially through M/s Prosperity Agro India Ltd., Pune and thereafter through M/s Samruddha Jeevan Multi Purpose Co-operative Society Ltd. The investors who were depositing under different plans i.e. single installment plan, monthly deposit etc. in Samruddha Jeevan Foods India Ltd. continued to deposits their regular installments with Samruddha Jeevan Multi State Multi Purpose Co-operative Society Ltd. In the said charge sheet, repeatedly there is a reference of M/s Samruddha Jeevan Foods India Ltd. and the depositors were continue to deposit the money with the said company though the SEBI had initiated the inquiry agianst the said company. It has been transpired in the said investigation that the present applicant has misappropriated Rs.9,46,40,761/-.

8. On the basis of what has been alleged in the said charge sheet, learned counsel for the applicant, Mr. Tripathy has vehemently argued that the present office registered at Beed has been covered in the said inquiry.

9. The learned counsel for the applicant has invited the attention of this Court to the orders passed by the Hon'ble Apex Court releasing the applicant on bail. By order dated

23.04.2019, the Hon'ble Apex Court released the applicant on bail in a charge sheet filed by CBI. He has referred to the order of the Hon'ble Apex Court in Petition(s) for Special Leave to Appeal (Criminal) No.1564 of 2019 (Arising out of impugned final judgment and order dated 29.01.2019 in BLAPL No.4828 of 2018 passed by High Court of Orissa at Cuttack) in the case of Mahesh Kisan Motewar Vs. Republic of India (CBI) with SLP (Criminal) No.1596 of 2019 (II-B) dated 23.04.2019. It has been observed in the said order in paragraphs Nos.2, 3 and 4 as follows :

> " When the petitioner knocked at the doors of the High Court insofar as bail was concerned qua a second chargesheet, filed on 19.07.2018, under the same provisions of the Indian Penal Code and the Prize Chits and Money Circulation Schemes (Banning) Act, 1978, with regard to the petitioner's role in a group company called Samruddha Jeevan Multi State Multi Purpose Co-operative Society Ltd., the High Court turned down bail stating that the bail granted insofar as the first case was concerned, was not a precedent which bound the High Court under Article 141 of the Constitution of India.
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> No doubt, the High Court is right that the bail order cannot be held to be a precedent because, in any case, it SLP (Crl.) No. 1564/2019 etc. lays down no law, but yet the High Court ought to have considered that the two chargesheets that have been filed are with regard to group companies where the petitioner is alleged to be the mastermind in which common evidence will be given.

> This being the case, we enlarge the petitioner on bail insofar as the second charge sheet case is concerned subject to the conditions to be laid down by the trial Court.
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> Since the investigation is on-going, the petitioner will cooperate with the investigation whenever required.
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> The special leave petitions stand disposed of."

10. The learned counsel for the applicant has referred to the order in Criminal Bail Application No.1734 of 2019 dated 23.08.2019 and pointed out the reproduced paragraph Nos.34 and 34-B of the Hon'ble Apex Court dated 09.05.2014 in Writ Petition (Civil) No.401 of 2013 and connected petitions. Those paragraphs are reproduced for reference. The Hon'ble Apex Court has directed the investigation of all cases registered against 44 companies mentioned in its order dated 26.03.2014. The CBI was also permitted to investigate all cases in which the charge sheets had already been filed. The liberty was also granted to the Joint Director, CBI, in charge of the State of West Bengal and Odisha, to seek further directions in relation to the transfer of any other case or cases that may require to be transferred for investigation to the CBI for a full and effective investigation into the scam. The applicant's company Samruddha Jeevan Foods India Ltd., was undisputedly among one of those 44 companies. Therefore, there appears to be a substance in the submission of learned counsel Mr. Tripathy

that the CBI was investigating the allegations of such investments and misappropriation done through and in the name of Samruddha Jeevan Foods India Ltd. In the light of these facts, it can safely be said that the CBI has investigated the allegations made in the FIR registered with Beed Police Station.

11. In view of the orders of the Hon'ble Apex Court releasing the applicant in the charge sheets filed by CBI and respectfully taking the same view since the applicant had been released on bail by the Hon'ble Apex Court. This Court is inclined to release the applicant on bail. Hence, the following order :

O R D E R

(i) The application is allowed.

(ii) The applicant **Mahesh Kisan Motewar** be released on bail on furnishing P.B. and S.B. of Rs.1,00,000/- (Rupees One Lakh only) with one solvent surety of the like amount in Crime No.163 of 2018 registered by Police Station Beed City, District Beed, on the following conditions :

(a) He shall not tamper with the prosecution witnesses.

(b) He shall not interfere with the investigation.

(c) He shall attend the Police Station as and when called by the police on written notice.

(S. G. MEHARE, J.)

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vmk/-