IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

903 ANTICIPATORY BAIL APPLICATION NO.638 OF 2022

SONIYA W/O. SOMNATH RAUT
VERSUS
THE STATE OF MAHARASHTRA

Mr. H.D. Deshmukh, Advocate for applicant;
Mr. V.M. Kagne, A.P.P. for respondent

CORAM : S. G. MEHARE, J.

DATE : 23rd June, 2022

P.C.

1. By this application under Section 438 of the Code of Criminal Procedure, the applicant seeks his release on bail in C.R. No.1046 of 2021, registered with Tophkhana police station, Ahmednagar, for offence punishable under Sections 420, 406 read with Section 34 of the Indian Penal Code and under Section 3 of the Maharashtra Protection of Interest of Depositors (In Financial Establishments) Act, 1999 (for short “MPID Act”).

2. Heard the learned Counsel for the applicant and the learned A.P.P. for the respondent.

3. The learned Counsel for the applicant would submit that the applicant is the wife of the main accused. She is the sleeping director. She never acted as the Director of the company, a financial establishment where the depositors have invested money. He also added that the husband brought the applicant in problem. She was unaware of the business of her husband. The material on record does not reveal that the applicant has played active role. She had never the control over the business run by her husband. The company by name “Fund Pay” is a proprietary firm and her husband is the sole proprietor of the firm. There were no transactions with the company of which the present applicant is a director. Therefore, she cannot be connected with the alleged offence.

4. The learned Counsel for the applicant relied on the judgment of this Court in the matter of **Archana Salaskar vs. State of Maharashtra, 2021 All.M.R. (Cri.) 254** and vehemently argued that the allegations leveled against the applicant are not specific. The main representation was made by the husband of the applicant. He prayed to allow the application and release the applicant on anticipatory bail.

5. Per contra, the learned A.P.P. has vehemently argued that this is an economic offence. The “Fund Pay” company is a sister concern of the company “Big Me” of which the applicant is a director. A huge amount of more than 7 Crore has been misappropriated under the false promise to return the deposited amount with lucrative returns. The modus operandi of the applicant was to pay exorbitant returns in short time and instigate the depositors to invest more and more money and lastly stop paying returns. The accused fled away with the deposits of the investors. Till this time there is no response from the accused-husband, where he has invested the money. Police are not getting any clue in that respect. There is a great possibility of purchasing the property in the name of the present applicant or her close relatives. He would submit that the offence is economic. The Honourable Supreme Court in the case of **Nimmagadda Prasad vs. Central Bureau of Investigation, 2013 AIR (SC) 2821** has taken a strict view that the offenders in economic offences should be dealt with strictly for the reasons that, that poses a serious threat to the financial health of the country.

6. That apart, severity of the punishment should also be

considered. While dealing with the grant of bail, Court should satisfy, whether there is genuine case against the accused and the prosecution is able to produce sufficient evidence in support of the charge. It is not expected at the stage of bail to have evidence establishing guilt of the accused beyond the reasonable doubt.

7. The applicant has not disputed that she is the director of the company, namely, “Big Me”. The averments in the first information report reveal that under the lucrative promises of returns, a huge amount was collected by the said company. It has been transpired in the investigation that “Fund Pay” company is a sister concern of “Big Me”. This sister concern is a proprietary firm run by the husband of the applicant. Huge amount has been siphoned from collecting the same from the depositors under the false promise of huge returns. Apparently, this is an economic offence and it would certainly threat the financial health of the country and it may cause huge loss to the public funds. Cheating such a way to the innocent investors should be viewed seriously and considered as grave offences affecting the economy of the country as a whole. The learned A.P.P. relying on the case of Nimmagadda (supra), has rightly pointed out the view to

be taken by the Court while considering bail applications in economic offences.

8. As far as the responsibility under the MPID Act is concerned, Section 3 is very specific that every person including the promoter, partner, director, manager or any other person or an employee responsible for the management of or conducting of the business or affairs of such financial establishment fraudulently commits default in repayment of the deposit on maturity along with any benefit in the form of interest, bonus, profit or in any other form as promised or fraudulently fails to render services as assured against the depositors are guilty of the economic offences. The applicant has a defence that she was a sleeping director. However, considering the words of Section 3 of the MPID Act, every person including director shall be responsible for the fraudulent defaults, the applicant has no case that any time before she has resisted the business done by her husband, being the co-director of the company and she has resigned.

9. After having gone through the first information report, it is clear that the company of the applicant has made impractical and

commercially not viable promises in the form of returns on the deposits. Considering the ratio laid down by the Honourable Apex Court in the case of Nimmagadda (supra) and section 3 of the MPID Act along with the admitted position of accepting the deposits under impracticable and commercially not viable promises, there appears no ground to consider the prayer of the applicant for anticipatory bail.

10. As far as the case law relied by the applicant is concerned, the facts of that case were altogether different. It was an application for regular bail under Section 439 of the Code of Criminal Procedure. Hence, the case cited by the applicant's counsel would not help the applicant.

11. For the reasons stated above, this Court is of the view that there is no substance in the application. Hence, the application stands rejected.

(S. G. MEHARE, J.)

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