

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

29 BAIL APPLICATION NO.1861 OF 2022
WITH APPLICATION/4363/2022 IN BA/1861/2022

VANDANA W/O. CHANDRAKANT PALVE
VERSUS
THE STATE OF MAHARASHTRA

...
Advocate for Applicant : Mr. Rahul R. Karpe
APP for Respondent : Ms. V. S. Choudhari
...

32 BAIL APPLICATION NO.1919 OF 2022
WITH APPLICATION/4364/2022 IN BA/1919/2022

SHALMON DAVID GAIKWAD
VERSUS
THE STATE OF MAHARASHTRA

...
Advocate for Applicant : Mr. Narayan B. Narwade
APP for Respondent : Ms. V. S. Choudhari
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CORAM : S. G. MEHARE, J.

DATE : 19-12-2022

PER COURT :-

1. Mr. Hange, the learned counsel for the complainant states that since the Board was already prepared, the applications to assist P.P. was not accepted. Hence, he could not file the application to appear for the complainant. Leave granted to file the application in the office today itself.

2. Heard the learned counsel for the applicants, learned A.P.P. for the respondent/State and learned counsel for the complainant.

3. Applicant – Vandana w/o. Chandrakant Palve was allegedly the Chief Executive Officer. Applicant – Shalmon David Gaikwad, was the Business Manager of the company.

4. Applicant – Vandana has a case that before the alleged incident happened, she had resigned. She was called by the police under the notice, but immediately on the next day, she has been arrested. However, after resignation she was rendering her services as an Expert. She had no concern with the management and policy decisions of the Board of Directors. She has referred to her bank statement and submit that the so-called bank entries are of small and meager amounts. It can not be said that the applicant has shared the duped amount. The applicant is languishing behind bar for about six months. The chargesheet has been filed. She is having ten years son. She has to look-after him.

5. The learned counsel for the applicant – Shalmon would also argue that he was just executing the policies of the management. He was never the part of the management. Initially, he was appointed as Sales and Promotion Executive and then promoted as Business Manager. Before presenting the first information report, the applicant and the co-accused had made representation to the Superintendent of Police that indirectly the main accused also duped them. They had no concern with the business of the

company. The employees never made promise at their own. They were just executing policy of the management. The bank entry shows the meager amount of Rs.260 & 933. He has received no share in the alleged duped money. Nothing is to be investigated from him.

6. The learned A.P.P. opposed the application. She would argue that considering the position of the both the applicants, they were part of the management. Hence, they cannot escape from the responsibility to fulfill the promises made by the company. Huge amount more than Rs.44 Lakhs was transferred to her bank account. However, it is not part of the chargesheet. She also argued that considering the gravity of the offence the applicants are not entitled to bail. Their detention is required for attachment of their properties.

7. The learned counsel for the complainant has vehemently argued that applicant - Vandana has deliberately resigned as C.E.O. after knowing the complaints of the investors that they are not getting the benefits. The company has played systematic fraud. The company was digitally displaying the money transferred to the accounts of the investors, but they never got the benefit as promised. The conduct of the applicants reflects that since inception they were the part of the fraud played with the poor investors. The huge amount was transferred to her account.

That goes to show that she was associated with the business and management of the company. The sufficient material is available against both the applicants. The investigation is still in progress. Small and poor investors have been duped for around Rs.7 Crores. The offence is serious. Hence, they may not be granted bail at this juncture.

8. Perused the chargesheet and the papers referred to by the respective learned counsel for the parties. It reveals that at the initial stage, the applicants were not the part of the management. They were appointed employee. The prosecution has no evidence that the applicants were part of the policy making. They were paid the honorarium for the services rendered in executing the policies and decisions of the company. In the circumstances, whether they would be held responsible for the acts as contemplated under Section 3 of the M.P.I.D. Act is a matter of evidence before the trial Court. Few amount appears to have been deposited in the account of applicant- Vandana. However, she has explained that after tendering the resignation, she was rendering services to the company on honorarium. The prosecution has right to attach those accounts, if not yet attached. For attachment of property, applicants are not required.

9. Considering the role attributed to the applicant and their length of behind bar along with material investigation against

them, the Court is of the view that no purpose would be served keeping them behind bar. The request of the learned counsel for the complainant that the applicants were directed to be deposit the amount cannot be considered at this juncture. Hence, the following order :-

- i) Applications are allowed.
- ii) Applicant - Vandana Chandrakant Palve in B.A.No.1861 of 2022 and applicant - Shalmon s/o. David Gaikwad in B.A.No.1919 of 2022, be released on bail, on furnishing PB and SB of Rs.1,00,000/- each, with one or two solvent sureties of the like amount, in C.R.No.1046 of 2021 registered with Tofkhana Police Station, District Ahmednagar, for the offence punishable under Sections 420 and 406 read with Section 334 of the Indian Penal Code and Section 3 of the Maharashtra Protection of Interest of Depositors (in Financial Establishments) Act, 1999, on the conditions that,
 - (a) They shall not tamper with the prosecution witnesses.
 - (b) They shall surrender their pass-ports, if any.
 - (c) They shall keep informed the Investigating Officer their residential address with cell phone numbers.
 - (d) They shall not involve in the similar crime in future.
- iii) Criminal Application Nos. 4363 and 4364 of 2022 stand disposed of.

**(S. G. MEHARE)
JUDGE**

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