

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

BAIL APPLICATION NO.2046 OF 2021

Kartick Mohan Prasad

...Applicant

Versus

The State of Maharashtra

...Respondent

....

Mr. Samir Vaidya with Ms Pradnya S. Matkar, Mr. Dilip Shukla, Faizaa Shaikh with Mr. Vishal Bhogale i/b. M/s. Yash Associates for the Applicant.
Mr. Sandeep R. Karnik, Spl. PP. with Mr. N.B. Patil, APP for Respondent-State.

CORAM : SMT. ANUJA PRABHUDESSAI, J.

DATED: 5th MAY, 2022.

P.C.:-

1. This is an application under Section 436-A and 439 of Cr.P.C. filed by the aforesaid Applicant, who is facing trial in MPID Special Case No.8 of 2017 pending on the file of learned Special Judge, M.P.I.D. Act, Mumbai, for offences punishable under Sections 120-B, 406, 409 and 420 of the IPC and Sections 3 and 4 of the Maharashtra Protection of Interest of Depositors (in Financial Establishments) Act, 1999.

2. Mr. Samir Vaidya, learned counsel for the Applicant states that maximum punishment for offences punishable under Section 3 of the MPID Act is of 6 years and that the Applicant is in custody since 27/02/2017 and having undergone more than half the sentence he is

entitled for bail under Section 436-A of Cr.P.C. Learned counsel for the Applicant further submits that charges are yet to be framed and the trial is not likely to be concluded within a reasonable period. He submits that Forensic Audit Report reveals that the total amount involved was Rs. 17.62 crores. He submits that the Applicant has refunded an amount of Rs.7 crores and that if released on bail, he is willing to deposit Rs.9.40 crores, which is due and payable to the depositors. He has relied upon decision of this court in *Sanjiv Shankarrao Khade vs. Republic of India (CBI)* in *Special leave to appeal (cri) No.4265 of 2021* and the decision of this Court in *Mayur Ashok Agarwal vs. The State of Maharashtra , Bail Application No.3014 of 2019*.

3. Per contra, Mr. Sandeep Karnik, learned Spl. PP for the Respondent-State submits that the Applicant is also charged for offence punishable under Section 409 of the IPC, which is punishable with imprisonment for life or with imprisonment for either description for a term which may extend to 10 years. He has relied upon Government of India guidelines dated 27/09/2014 to contend that the life imprisonment should be considered as 20 years. He has relied upon the decisions of the Hon'ble Supreme Court in *Deepak Shrikant Aggarwal vs. The State of Maharashtra* in *Criminal Appeal No.302 of 2022*, and of this Court in

Shriram Suhas Samudra vs. The State of Maharashtra, Bail Application No.438 of 2019 and Harshad Purshottam Mehta vs. The State of Maharashtra, 2021 ALL MR (Cri) 2088

4. Learned Spl. PP further states that the Special Court had passed an order to release the Applicant on bail on depositing the amount as undertaken. The Applicant did not deposit any amount and sought modification of the order, which request has been rejected by the trial Court, this Court and Hon'ble Supreme Court.

5. The FIR lodged by Kedar Ganla prima facie reveals that the Applicant and his family members had induced him and other depositors to invest an amount of 35 crores by fraudulently offering high rate of interest (180%). The Applicant and the other co-accused neither paid the assured interest nor refunded the principle amount.

6. The Applicant had earlier filed an application under Section 439 of Cr.P.C., which was allowed by the Special Court in view of an undertaking that he would deposit an amount of Rs.32,52,80,000/- within a year. The records indicate that the Applicant did not deposit the amount and thus failed to comply with the said undertaking. As a result,

the Applicant continued to remain in jail.

7. The application for modification of the said condition/undertaking was rejected by the Special Court and the appeal against the said order was dismissed by the Division Bench of this Court and challenge to which is also rejected by the Supreme Court.

8. The Applicant has now filed application under Section 436 A of Cr.P.C. on the premise that he has undergone more than half the sentence. It is to be noted that the Applicant is facing trial not only for the offence under Section 3 of the MPID Act but also for offence under Section 409 of the IPC, which is punishable with imprisonment for life or with imprisonment of either description for a term which may extend to ten years. The maximum sentence provided under this Section is of life imprisonment. In the case of **Harshad Mehta** (supra) this Court has held that “.....*first proviso of Section 436 A enables the Court to refuse to release the applicant on bail though he had undergone detention for the period extending upto one-half of the period of sentence specified for that offence under the law. In the case in hand, offence charged against the applicant is one under Section 409 of the IPC for which punishment prescribed is punishment for life or imprisonment which may extend to*

10 years. The Ministry of Home Affairs, Government of India on 27th September, 2014 issued guidelines on reckoning half-life of the time spent in judicial custody of under-trial prisoners under Section 436 A of the Cr.P.C. in terms whereof it is stated that where the maximum period is life imprisonment for an offence committed by the undertrial prisoner then under Section 57 of the IPC, life imprisonment should be considered to be 20 years imprisonment for which half-life would be 10 years under Section 436A of the Cr.P.C.”

9. In the instant case as noted above, apart from Section 3 of the MPID Act the Applicant is also facing trial for offence under Section 409 of the IPC, punishment for which is life imprisonment or imprisonment, which may extend to 10 years. Since life imprisonment should be considered to be 20 years, half of the sentence would be of 10 years. Since the Applicant has not undergone sentence of 10 years, he is not entitled for bail under Section 436-A of Cr.P.C.

10. Under the circumstances, the application has no merits and is accordingly dismissed.

(SMT. ANUJA PRABHUDESSAI, J.)