IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO. 1171 OF 2021

Eknath Namdev Dhage ...Applicant

Versus

The State of Maharashtra ...Respondent

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Mr. Ashok B. Tajane for the Applicant.
Mrs. M. M. Deshmukh, APP for the Respondent -State.

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CORAM : V.G.BISHT, J.

RESERVED ON : 17TH DECEMBER, 2021

PRONOUNCED ON : 3RD FEBRUARY, 2022

PC:-

1. The present application has been moved by the applicant under Section 439 of the Code of Criminal Procedure in Crime No. 204 of 2017 registered with Economic Offence Wing, Solapur City, Solapur (earlier registered with Faujdar Chawadi Police Station, Solapur) for the offence punishable under Sections 406, 409, 417, 420 read with 34 of the Indian Penal Code (the IPC) and Sections 3 and 4 of the Maharashtra Protection of Interest of Depositors (in Financial Establishments) Act, 1999, (for short, "the MPID Act").

2. It is the case of prosecution that a company named Seven Hills Realities Private Ltd, Head Office at DVG Road, Near Junior College, Adarsha Nagar, Malur, Dist. Hosur, Karnataka State of

which the applicant was the director had commenced its office at Navi Peth, Mobile Galli, Solapur. The said company collected the amounts during the period from 2012 till December, 2015 from informant Shri.Santosh Vasantrao Shirke and other 173 investors therein under different schemes, namely, Seven Hills Realities Private Ltd and Seven Hills Vividhosha Sohardar Yojana under different seven schemes viz. Pigmi Yojana, Recurring Deposits, Fixed Deposits, Kalyan Yojana, Vidya Yojana, Damduppat Yojana, Monthly Income and Suvarna Yojana and thus induced the investors to deposit the amount assuring them handsome returns thereon.

3. Prosecution alleges that before making repayment of amounts to the investors, the company closed the main office itself. Similarly, by closing the branch office of the company at Solapur from December, 2015 onwards, they stopped the repayment of amounts of deposits and maturity amounts to the investors and thereby cheated on them. Accordingly, the First Information Report (FIR) came to be lodged.

4. Mr.Tajane, learned Counsel for the applicant, submits that no specific accusations are made against the applicant. All that is

alleged is that the applicant induced the depositors. According to learned Counsel, properties of the Chairman and other higher officials have been attached and liquidator is appointed. Learned Counsel also invited my attention to the affidavit of brother-in-law of applicant, namely, Dnyaneshwar Vithoba Mahadik thereby giving an undertaking that he will not dispose of his agriculture land worth Rs. 21,72,800/- till the disposal of case against the applicant. Investigation is over. Charge-sheet has been filed. In such circumstances, no purpose would be served by keeping the applicant behind the bars and therefore, the applicant may be enlarged on bail, urged learned Counsel.

5. Mrs.Deshmukh, learned APP, on the other hand, vehemently opposed the submissions by submitting that applicant himself was the director and not only he convened various meetings with the help of agents from time to time but also induced the investors to invest the amount only to cheat them later on. Learned APP also invited my attention to the affidavit in reply of investigating officer and more particularly, paragraph Nos. 11 and 18 of the reply. At paragraph No. 11, all the antecedents of the applicant are given whereas in paragraph No. 18, the investigating officer denied that

the security so given by brother-in-law of applicant can be accepted on behalf of the applicant. Having regard to the nature and gravity of the offence, the applicant does not deserve to be enlarged on bail, argued learned APP.

6. Perused investigation papers.

7. There is no dispute that applicant was the director of the said company. I have also gone through the statements of prosecution witnesses relied on by prosecution.

8. First such statement is that of Malgankar Chandrashekhar Shreemantrao, Chartered Accountant. According to him, Seven Hills Vividhosha Sohardar being a co-operative society, the members only were permitted to deposit the amounts and not the general public at large. The applicant and others committed illegality by accepting deposits from general public.

9. Next statement is that of Buddhabhushan Siddheshwar Shirsat. According to this witness, applicant being the director of the said society, opened a branch at Solapur. This witness was the agent. According to him, some of the investors, who had invested the amount did not get return.

10. It may not be out of place to mention here that applicant admittedly was the director of the company and the said society. He was not the chairman or the managing director, that is to say, that he was not at helm of affairs but was one of the implementing authority of decision taken by the management.

11. I have also gone through the affidavit in reply filed by investigating officer. Paragraph No. 15 of the reply shows that an amount of Rs. 20, 98,860/- was transferred to the account of applicant by cheques from Canara Bank Account No. 2477201000364 by Seven Hills Realities Pvt. Ltd. through RTGS.

12. The applicant in his rejoinder affidavit has clarified that the said amount was transferred by the company towards travelling, lodging and other miscellaneous expenses to which there is no denial from the side of prosecution.

13. It is also relevant to note from the affidavit of brother-in-law of applicant that he is owner of agriculture land admeasuring 1H 94 R situated at Mouje Bathan, Taluka Mangalwedha, Dist. Solapur and the present valuation of the said land is Rs. 21,70,800/-. He

gives undertaking that he shall not create third party right and shall not dispose of the said land till the decision of MPID Special Case No. 2 of 2018.

14. Investigating officer in his affidavit in reply has not denied valuation of the said amount. However, according to him, such kind of security cannot be taken on behalf of the applicant.

15. To counter this contention, learned Counsel for the applicant, during the course of argument, relied on the order of this Court **(Coram : Revati Mohite Dere, J.)** dated 20th April, 2016 in Criminal Bail Application No. 1883 of 2015 wherein also the father and brother-in-law of applicant No. 2, who were the owner of immovable property had filed affidavit stating therein the market value of the said land and same was accepted and taken on record by the Court.

16. I also do not find any difficulty if the said affidavit of applicant's brother-in-law is taken on record.

17. As far as the antecedents at paragraph No. 11 are concerned, the affidavit in rejoinder shows that in all those cases, the applicant has been granted bail.

18. Affidavit of reply of the investigating officer has also raised twofold concerns. First, the resolution register, proceeding books and other documents are yet to be seized and second, if the applicant is released on bail, possibility cannot be ruled out that he would contact the wanting accused and would help them to abscond.

19. As far as second concern is concerned, that is not substantiated by any concrete and convincing material. As far as various documents which are yet to be seized are concerned, the applicant can be directed to attend the concerned police station and render co-operation in investigation.

20. Apart from above, it is also worth mentioning here that there is no direct *prima facie* evidence to show that the applicant personally induced any particular investor and was having *mens rea* while doing so. What is alleged is that he used to conduct meetings with the help of agents and induced investors to invest the amount in the company, is a very generalised and omnibus statement. Even otherwise, investigation is over. No purpose would be served by keeping the applicant behind the bars.

21. In view of above, I am inclined to allow the application. Hence, the following order :

ORDER

(i) Applicant- Eknath Namdev Dhage shall be released on bail in C.R. No. 204 of 2017 registered with Economic Offence Wing, Solapur City, Solapur on his executing P.R. Bond in the sum of Rs. 1,00,000/- (Rupees One Lakh only) with one or two surety/ sureties in like amount.

(ii) The applicant shall attend the office of Economic Offence Wing, Solapur City, Solapur on last Monday of every month in between 12.00 noon to 2.00 pm till the conclusion of the trial.

(iii) The applicant shall not tamper or attempt to influence or contact the complainant, witnesses or any person concerned with the case.

(iv) The applicant shall inform their latest place of residence and mobile contact number immediately after being released and/or change of residence or mobile details, if any, from time to time to the Court seized of the matter and to the Investigating Officer of the Economic Offence Wing, Solapur City, Solapur.

(v) The applicant shall co-operate in the conduct of the trial.

(vi) If there is breach of any of the aforesaid conditions, the prosecution shall be at liberty to seek cancellation of the applicant's bail.

(vii) Bail before the trial Court.

22. The application is allowed in the aforesaid terms and stands disposed of accordingly.

23. It is made clear that the observations made herein are *prima facie* and the trial Court shall decide the case on its own merit, in accordance with law, uninfluenced by the observations made in this order.

24. Parties to act on copy of this order duly authenticated by the Sheristedar of this Court.

(V.G.BISHT, J.)