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

ANTICIPATORY BAIL APPLICATION No. 1124 OF 2019

Kailash Shreeram Agarwal	...Applicant
Vs.	
The State of Maharashtra	...Respondent

**WITH
CRIMINAL APPLICATION No. 815 OF 2019
IN
ANTICIPATORY BAIL APPLICATION No.1124 OF 2019**

Dilipkumar A. Nagpal	...Applicant
Vs.	
The State of Maharashtra and Anr.	...Respondents

**WITH
CRIMINAL APPLICATION No.1024 OF 2019
IN
ANTICIPATORY BAIL APPLICATION No. 1124 OF 2019**

Spectrum Trimpex Pvt. Ltd. Thorough Director Anil Chokani	...Applicant
Vs.	
The State of Maharashtra and Anr.	...Respondents

.....

Mr. Rizwan Merchant a/w. Mr. Kiran Jain a/w. Ish Jain a/w.
Kush Dhawan i/b. Kiran Jain & Co. for Applicant
Mr. Pradeep Gharat, Spl. P.P. a/w. Rutuja Ambekar, APP for
the State/Respondent
Mr. Maitreya G. Shukla for Intervenor in APPP No. 815 of
2019.

CORAM: SARANG V. KOTWAL, J.
DATE : 18th JANUARY, 2022
(Through Video Conferencing)

P.C. :

1. Applicant is seeking anticipatory bail in connection with C.R. No. 79 of 2019 registered with Byculla Police Station, Mumbai under sections 409, 420, 120 B of the Indian Penal Code and under section 3 of the Maharashtra Protection of Interest of Depositors (In Financial Establishments) Act, 1991 (MPID Act).
2. The FIR is lodged by one Dilipkumar Nagpal. He has stated that he and his brother were having business of financial consultancy. In the year 2010, the informant got acquainted with one Sachin Wagh, who in turn, informed the informant about the business of M/s. Varun Industries Ltd. and M/s. Varun Jewels Pvt. Ltd. The informant was told that Varun Industries was a listed company and the prospect of the company was very good. Sachin told the informant that the companies wanted to expand their

business and they were in need of financial assistance and for that purpose they were accepting the investments from the investors and were offering attractive interest rate on the investments. The informant showed his interest. Accordingly, a meeting was arranged. The FIR mentions that the informant met the present Applicant in the companies' office at Byculla. The informant went there on 17th June, 2010 at about 2.00 p.m. The Applicant was introduced to one Kiran Kumar Mehta as the chairman and managing director and the present applicant was introduced to the informant as the joint managing director of the company. Other persons were introduced as other directors of these companies. The present applicant and Kiran Kumar Mehta showed balance-sheet of the company to the informant. Both of them represented to the informant that their company was in the business of steel industry and they had business of uranium mines in Madagascar and they had business in diamonds and petroleum and that they wanted to expand their business and for that purpose,

they were in dire need of finance. They further told the informant that they were accepting the money from the investors and were offering attractive rate of interest on the investments. They told that the company had steel sheet factories at Jodhpur, Vasai and Palghar. He was told that they had firms in Rajasthan and Tamilnadu. They told that they also had pressure cooker factory at Nasik, Petrol mines in Karnataka. They further represented that their Petrol and Gas division office was in Govandi. Similarly, the companies were dealing in diamonds in foreign countries. The informant was impressed and he decided to invest money in those companies. The informant was informed that there were 60 to 70 investors in the companies. The Informant was appointed as a Financial Broker for both the companies. Board resolutions were passed to that effect to appoint the informant as the financial broker.

3. The Applicant and Kiran Kumar Mehta asked the informant to bring the investments from the investors.

They had offered the interest at the rate of 18% per annum to the investors. The investors were given the bills of exchange and post-dated cheques as a security. The informant and his brother invested their personal money. They were to get 3% commission on investments and 5% incentive, if the turnover increased. The informant brought 54 persons/investors, who had deposited funds in M/s. Varun Industries Ltd. and 51 depositors who deposited funds in M/s. Varun Jewels Pvt. Ltd. The FIR mentions that the bills of exchange and post-dated cheques were signed by Kiran Kumar Mehta and the present Applicant. The accused paid regular interest to their depositors between June 2010 to April, 2013 and after that they did not pay anything. The investments were not returned. The post-dated cheques were not honoured. The investors filed proceedings under the provisions of the Negotiable Instruments Act. Thus the Informant and the other investors were cheated to the tune of Rs.7,14,75,000/-. On these allegations, the FIR is lodged.

4. Heard Mr. Rizwan Merchant, learned counsel for the Applicant, Mr. Pradeep Gharat, Special P.P. for the State and Mr. Maitreya Shukla, learned counsel for the Intervenor.

5. Learned counsel for the Applicant submitted that section 3 of the MPID Act is wrongly applied as the investment made in this case does not fall within the definition of "Deposit", as the investment made in the present case is excluded from the term 'deposits' under Section 2 (c) (i) of the MPID Act. He submitted that even the offence under section 409 of IPC is not made out. The dispute basically is of civil nature, which can be seen from the fact that the winding up proceedings were initiated against the companies, which resulted in appointment of a liquidator. Other proceedings under the provisions of the Negotiable Instruments Act were also initiated. In addition, the proceedings under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI

Act) were initiated and private properties were seized by the Authorities. There was no personal gain to the applicant. There was no false inducement. The interest was regularly paid between the years 2010 to 2013. It was only after recession, when the companies had suffered loss, the interest was not paid and therefore, the proceedings were initiated for winding up of the companies and, therefore, no criminal offence is made out. The companies were wound up in the year 2016 itself. He submitted that the Applicant is on interim protection since 2019. He has cooperated with the investigation. Therefore, his custodial interrogation is not necessary. He further submitted that a Division Bench of this Court in a case of **Mr. Ashish Mahendrakar Vs. State of Maharashtra in Criminal Writ Petition No. 3228 of 2019 decided on 13th September, 2019** has held that inter-corporate deposit/loan cannot fall within the scope and ambit of MPID Act. He finally submitted that the Applicant has fully cooperated with the

investigation and, therefore, his custodial interrogation is not necessary.

6. Learned counsel for the intervenor opposed the present application for anticipatory bail. He submitted that the present Applicant has issued bills of exchange by putting his signature. This act on the part of the Applicant is itself shows his direct involvement. The offences under IPC are made out because there are false inducements and misappropriation of money.

7. Learned Special Public Prosecutor has strongly opposed this application. He submitted that the Applicant's company did not have the business as represented by the applicant. The company did not have any business at various places as mentioned in the FIR. All the inducements are false. He submitted that the Applicant was a joint managing director and it was clearly told to the informant in the first meeting itself. The bills of exchange and the post-dated cheques were actually signed by the present Applicant as a joint managing

director of the company. The Applicant was not in India in the years from 2013 to 2016. Thereafter, the informant and other victims did not get their money back. They filed the FIR in the year 2019. He submitted that for all these transactions involved money laundering. To find out where the money has gone, the custodial interrogation of the Applicant is necessary. He submitted that civil proceedings will not show where the money has gone. It's a case of serious criminal offences.

8. I have considered these submissions. As far as the first argument that the amount invested with a company does not fall within the definition of "Deposit", is concerned, I am unable to accept this contention. Section 2(c) (i) of MPID Act reads as under:

"2(c) "deposit" includes and shall be deemed always to have included any receipt of money or acceptance of any valuable commodity by any Financial Establishment to be returned after a specified period or otherwise, either in cash or

in kind or in the form of a specified service with or without any benefit in the form of interest, bonus, profit or in any other form, but does not include-

(i) amount raised by way of share capital or by any way of debentures, bond or any other instrument covered under the guidelines given, and regulations made by the SEBI, established under the Securities and Exchange Board of India Act, 1992 (15 of 1992)."

According to Mr. Merchant, the words "any other instrument" refers the bills of exchange and, therefore, it is excluded from the definition. However, this is not correct reading of section. The instrument covered under regulations of SEBI is excluded. This is not the case in the present facts before this Court. The investments made in this case will not be excluded under the definition of "deposit" under section 2(c) (i) of the MPID Act. Therefore, the offence under the provisions of MPID is

clearly made out. The ingredients of section 3 are borne out from the allegations.

9. As far as the offence under the provisions of the Indian Penal Code is concerned, the same are revealed by the investigation, as the inducements are based on false promises. The company did not have business as was projected to the informant. Therefore, right from the inception, the Applicant and the other accused had only intention to misappropriate the investments. Some interest was paid only for a period of three years and thereafter there was misappropriation of huge amount. As rightly submitted by the Special Public Prosecutor that, in this case, thorough investigation is necessary in respect of money transactions and to find out where the huge money has gone. Therefore, custodial interrogation of the applicant is necessary. Merely because winding up proceedings were initiated and proceedings under section 138 of the Negotiable Instruments Act were initiated, that itself is not a ground to wipe out the allegations made in

the FIR. The amount involved is huge and without custodial interrogation, the answers of all these questions will not be found.

10. As far as the reference to **Ashish Mahendrakar's** Judgment passed by the Division Bench is concerned, that judgment is not applicable to the facts of the present case because that case is in respect of inter-corporate deposits, which is not the subject matter of this case.

11. Hence, in this view of the matter, no case for protection is made out by the Applicant. The Application is rejected.

12. At this stage, the learned counsel for the Applicant prays for continuation of the interim order operating in his favour since 20th May, 2019. The learned Special Public Prosecutor does not have objection if the interim order is extended for a period of ten days from today. The learned counsel for the intervenor strongly opposed continuation of the interim relief.

13. Considering the fact that the Applicant was on interim protection since 20th May, 2019, the interim order operating in his favour is extended only for a period of two weeks from today.

14. In view of the disposal of the anticipatory bail application No. 1124 of 2019, nothing survives in Criminal Application No. 815 of 2019 and Criminal Application No. 1024 of 2019. The same are also disposed of accordingly.

(SARANG V. KOTWAL, J.)