

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

CRIMINAL BAIL APPLICATION NO. 914 OF 2020

Johnson Christopher Raichur ... Applicant

Versus

The State of Maharashtra ... Respondent

WITH

CRIMINAL BAIL APPLICATION NO. 1141 OF 2021

Shoukat Miraso Karim ... Applicant

Versus

The State of Maharashtra ... Respondent

WITH

CRIMINAL BAIL APPLICATION NO. 2787 OF 2021

Sukhdev Ramchandra Shendage ... Applicant

Versus

The State of Maharashtra ... Respondent

Mr. Tushar Sonawane a/w Mr. Rupesh A. Zade, for the Applicant in
BA No. 914/2020.

Mr. Majon Mohan Gadkari, for the Applicant in BA 1141 of 2021.

Mr. Kuldeep Nikam, for the Applicant in BA 2787 of 2021.

Mrs. Anamika Malhotra, APP, for the State-Respondent.

CORAM : V. G. BISHT, J.

RESERVED ON : 14th December, 2021.

PRONOUNCED ON : 20th January, 2022.

PC:-

. The present applications have been moved by the applicants under Section 439 of the Code of Criminal Procedure in Crime No. 505 of 2019 registered with Sangli City Police Station, District-Sangli, for the offences punishable under Sections 406, 409, 420 r/w 34 of the Indian Penal Code (IPC) and Section 3, 4 of Maharashtra Protection of Interest of Depositors (In Financial Establishments) Act, 1999 (MPID Act).

2 It is the case of prosecution that the accused Mohanrao Bhalchandra Nimbalkar, Sanjay Bhagwan Bhore and Johnson Christopher Raichur (applicant in BA No. 914/2020) formed and established a company, namely, M/s Food Bird Agro Private Limited, at Laxminagar, Ringroad, Phaltan, District-Satara. The said company advertised about their scheme ‘Kadakhnath Kombadi Palan’ which was allegedly a scheme of providing 220 Kadakhnath chick hens and food medicines and other required material for growing the chicks for around 10 months on depositing Rs.75,000/- per unit. The prosecution alleges that there was an

assurance of purchase of 8500 eggs worth Rs.2,38,000/- and 120 hens for Rs.38,000/- within one year. However, as per the schedule if one invested Rs.75,000/- in the company in one unit in a year, the investor may earn Rs.2,38,000/- and may get income of Rs.1,75,000/- The applicant in BA No. 1141 of 2021 was working as Managing Director of the company.

3 According to prosecution, the informant purchased two units, total 440 chicks, by paying Rs.1,50,000/- to the company and upon payment thereof he was supplied 440 chicks as agreed. The company also supplied for food for the initial two months, however, on 10/08/2019 the company stopped providing food for chicks. The informant approached the office of the company at Sangli but found that the office was closed. Even the phone calls were not responded as the same was switched off. The prosecution alleges that the other investors allegedly visited the office and made phone calls but to no avail. The main office of the company at Phaltan was also closed. Thus, the informant felt cheated and accordingly lodged the First Information Report (FIR).

4 Mr. Sonawane, learned Counsel for the applicant in BA No. 914 of 2020, submits that the applicant, at the relevant time, was one of the Director. There was due agreement between the parties. Even the company initially gave the services as assured but later on for some reasons could not continue. There was no criminal intention on the part of the applicant. In the facts and circumstances of the case, Section 3 of the MPID Act will not be applicable. Moreover, investigation is completed. No useful purpose will be served by keeping the applicant behind the bars. There are no criminal antecedents. Hence, the applicant deserves to be enlarged on bail, argued learned Counsel.

5 Mr. Gadkari, learned Counsel for the applicant in BA No. 1141 of 2021, offered the same line of submissions and further submits that merely because the informant and others did not receive the expected benefit from the chick business, it can not be said or presumed that the applicant committed any fraud. According to learned Counsel, Section 3 of MPID Act will come into picture only when the company had fraudulently failed to render the services on promise. Even the very FIR admits that the

company had provided the food for chicks for two months and this being so the ingredients of Section 420 of IPC cannot be made applicable. Moreover, the dispute between the parties appears to be of civil nature. Investigation is over. No useful purpose will be served by keeping the applicant in jail.

6 Mr. Nikam, learned Counsel for the applicant in BA No.2787 of 2021, apart from adopting the above submissions, submitted that the applicant was merely an employee of the company and has nothing to do with the allegations made in the FIR.

7 Ms. Malhotra, learned APP, on the other hand, opposed the submissions and invited my attention to the affidavit filed by Investigating Officer. According to learned APP, the applicants along with others defrauded in all 140 investors to the tune of Rs.1,92,78,000/-. According to learned APP, the provisions of MPID Act are very much applicable inasmuch as the depositors were lured to deposit their valuable savings in the company and failed to get assured interest on their deposits. Having regard to the gravity of the offence, there is no merits in the applications and

the same are liable to be rejected, argued learned APP.

8 Perused the investigation papers.

9 There is no dispute that pursuant to the advertisement of the scheme, the informant and others entered into an agreement with the company. It is also not in dispute that necessary services were rendered to the informant and others alike for some time and thereafter those services were discontinued. On the face of these material facts, it cannot be said that there was *mens rea* since beginning on the part of the applicants. It is also not in dispute that the informant and others have received the chicks against the payment of money invested by them. Whether the said money would come within the meaning of 'deposit' as defined in Section 2(c) of the MPID Act appears to be doubtful.

10 Also to be kept in mind is that there was due agreement between the parties which was also complied with albeit for a shorter period. The company was thus not able to adhere to its assurances so given. Merely because of breach of some contractual

agreement, the same would not enable the informant to resort to criminal prosecution. Even assuming it be so then also the fact remains that everything has been seized by the Investigating Officers during the course of investigation. The investigation is also over. Charge-sheet has been filed. No criminal antecedents are brought on record against the applicant. This being so, I do not see any necessity to keep the applicants behind the bars.

11 For the aforesaid reasons, I am inclined to allow the application. Hence, the following order.

ORDER

(i) Applicants- Johnson Christopher Raichur (Bail Application No. 914 of 2020), Shoukat Miraso Karim (Bail Application No.1141 of 2021) and Sukhdev Ramchandra Shendage (Bail Application No. 2787 of 2021) shall be released on bail in C.R. No. 505 of 2019 registered with Sangli City Police Station, District-Sangli, on their executing P. R. bond in the sum of Rs.25,000/- each, with one or more sureties in like amount.

(ii) The applicants shall not tamper with the prosecution evidence and shall attend the trial regularly.

(iii) The observations made herein-above are prima-facie in its nature for the purpose of deciding the bail application only. The trial Court shall not be influenced by the observations while deciding the case on merits.

(iv) Bail before the trial Court.

(v) Parties to act on copy of this order duly authenticated by the Sheristedar of this Court.

(vi) The application is allowed in the aforesaid terms.

(V. G. BISHT, J.)

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