

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

CRIMINAL APPLICATION NO.267 OF 2021

Dimple Alnesh Somji ..Applicant
V/s.
The State of Maharashtra ..Respondent

WITH

CRIM. INTERIM APPLICATION (ST) NO.206 OF 2022

IN

CRIMINAL APPLICATION NO.267 OF 2021

Maya Chawla ... Applicant/Intervenor

In the matter between :

Dimple Alnesh Somji ..Applicant
V/s.
The State of Maharashtra ..Respondent

WITH

CRIM. INTERIM APPLICATION (ST) NO.205 OF 2022

IN

CRIMINAL APPLICATION NO.267 OF 2021

Kiran Shankarrao Shetty ... Applicant/Intervenor

In the matter between :

Dimple Alnesh Somji ..Applicant
V/s.
The State of Maharashtra ..Respondent

Mr.Subhodh Desai a/w Kartik Garg, Ajay Vazirani and Sahil Nanavati i/b. Laxicon Law Partners for the Applicant.

Mr.S. R. Agarkar, APP for the Respondent/State.

Mr. Niranjan Mundargi a/w Hrishi Ghorpade for the Intervenor.

Mr.Satyavart Joshi for the Intervenor.

CORAM : C.V. BHADANG, J.

**DATE : 7th JANUARY 2022
(Through Video Conference)**

**SNEHA
NITIN
CHAVAN**

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P.C.

1. The Applicant was directed to be released on bail by the learned Special Judge under the Maharashtra Protection of Interest of Depositors Act ('MPID Act') by an order dated 27th November 2021 in Bail Application No. 7604 of 2021. By this application, the Applicant is seeking modification of condition Nos. 7(i) and 7(iv). In order to appreciate the submissions made, clause 7 of the said order is reproduced as under:

“7] Within 8 days from this order applicant shall file personal undertaking with affidavit that-

- i] Without prejudice to her rights and contentions, she will make repayment of invested amount of Maya Chawla and Kiran Shetty as per information given on this Court within 21 days after getting released on bail.*
- ii] Demand draft of Rs.10 lacs already drawn in the name of complainant towards his balance payment be given to him immediately.*
- iii] Without prejudice to her rights and contentions, she will solve the dispute regarding flat agreed to be given to Vijaykumar Chawla and repayment of amount of investment of Shailendra Sanghvi and Tutwik Sanghavi within three months after getting released on bail.*
- iv] She will make positive efforts within three months after getting released on bail to solve the dispute with intervener Nizar Mawani.*
- v] Intervener Mr. Vijaykumar Sanghavi gave no objection for giving bail to this applicant.*
- vi] in the event of default committed in observing these conditions IO is at liberty to*

move an application for cancellation of bail.”

2. I have heard the learned counsel for the Applicant as well as the learned counsel for the intervenors and the learned APP appearing for the Respondent – State.

3. It is submitted by the learned counsel for the Applicant that there is no admission of any liability to pay the amount, as observed by the learned Special Judge in paragraph 7 of the said Order. The learned counsel in this regard has referred to pursis dated 27th November 2021 filed before the learned Special Judge. It is submitted that thus, the condition No. 7(i) which proceeds on an erroneous assumption of admission of liability, deserves to be modified.

4. Insofar as clause 7(iv) is concerned, it is submitted that such a condition could not have been imposed as it is not within the powers of the Applicant to bring about settlement of dispute with Mr. Nizar Mawani. The learned counsel has expressed apprehension that the said condition may be misinterpreted to seek cancellation of the bail with the aid of condition No. 7(vi).

5. The learned counsel for the intervenors have submitted that the Applicant vide her pursis dated 27th November 2021 as well as in her reply to the application for intervention has shown willingness to deposit the amount under protest. It is submitted that after having availed of the bail order, the Applicant cannot now turn around and seek modification of the condition.

6. I have carefully considered the rival circumstances and the submissions made. First, with reference to condition imposed in paragraph 7(iv). All that the said condition requires, is that the Applicant shall file an undertaking that the Applicant shall make positive efforts within three months after getting released on bail, to “solve” the dispute with intervenor Mr. Nizar Mawani. It is clear that the said condition does not and cannot impose an obligation to bring about such settlement as it is not within the powers of any party to ensure that the settlement is brought about. Thus, even if, the Applicant is required to file an undertaking in terms of clause 7(iv), the possible failure to bring about the settlement of dispute cannot be read, as breach of the said condition. In my considered view this clarification would take care of the apprehension expressed on behalf of the Applicant.

7. Coming to clause No. 7(i), there are rival contentions made as to whether there is a statement or admission made on behalf of the Applicant to deposit or to pay the amount to Ms. Maya Chawla and Mr. Kiran Shetty. On behalf of the Applicant, reliance is placed on paragraph 2 of the pursis dated 27th November 2021, which reads thus:

“2. That, as far as Mr.Kiran Shetty and Mrs. Maya Chawla are concerned, the present Applicant is at the mercy of this Hon’ble Court and is willing to deposit any amount of money along with interest within a period of 22 days, provided this Hon’ble Court comes to a conclusion that this Applicant is liable for the said payment through Applicant is not liable for the same.”

It is submitted that the aforesaid paragraph does not spell out any admission of liability.

8. On the contrary, the learned counsel for the intervenors have pointed out the reply filed by the Applicant to the affidavit of Ms. Maya Chawla and Mr. Kiran Shetty on 22nd November, 2021, in order to submit that the Applicant had shown willingness to pay the amount under protest.

9. Today, the learned counsel for the Applicant on instructions states that Applicant is willing to deposit the principal amount before the learned Special Court within 60 days from today. It is submitted that thereafter, the learned Special Judge can decide on the liability of the Applicant or the entitlement of Ms. Maya Chawla and Mr. Kiran Shetty to receive the amount. The learned counsel has submitted that there is also an issue about the locus of Ms. Maya Chawla and Mr. Kiran Shetty to intervene in the matter.

10. Mr. Mundargi, the learned counsel for the Respondent-intervenor has submitted that in view of the statement made on behalf of the Applicant, this court may pass appropriate order, requiring the learned Special Court to decide on the liability and till that time the principal amount payable to Ms. Maya Chawla and Mr. Kiran Shetty which is respectively Rs.75,00,000/- and Rs.91,00,000/- may be invested by the learned Special Court.

11. In these circumstances, the following order is passed by consent of parties.

ORDER

The condition No. 7(i) of order dated 27th November 2021 is hereby modified as under:

7(i)(a). The Applicant shall deposit the principal amount payable i.e. Rs.75,00,000/- of Ms. Maya Chawla and Rs. 91,00,000 of Mr. Kiran Shetty before the learned Special Court within 60 days from today.

7(i)(b). On such deposit being made, it would be open for intervenor Ms. Maya Chawla and Mr. Kiran Shetty to apply for withdrawal of amount. If such an application is made, the learned Special Court shall decide the same on its own merits and in accordance with law after hearing the parties.

7(i)(c). In the event of failure to deposit the amount within 60 days, the order of modification would stand vacated without reference to the Court.

7(i)(d). The rival contention of parties are kept open.

7(i)(e). The learned Special Court shall make an endeavor to decide the application for withdrawal, if filed, as expeditiously as possible and within a period of six months from the date of its filing.

12. Criminal application is disposed of in the aforesaid terms. Interim applications stand disposed of.

(C.V. BHADANG, J.)