IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.551 OF 2018

Pradnya Neelkanth Samant & Anr. .... Applicants

versus

Suneel M. Ghatpande & Anr. .... Respondents

…....

- Mr. Bharat Ghadavi a/w Krupanshu Nandu i/b. Tejesh Dande & Associates, Advocate for Applicant.
- Mr. Chandansingh Shekhawat a/w Yashovardhan Deshmukh i/b. Parinam Law Associates, Advocate for Respondent No.1.
- Mr. S. R. Agarkar, APP for the State/Respondent No.2.

CORAM : SARANG V. KOTWAL, J.
DATE : 11th OCTOBER, 2022

P.C. :

1. This is an application for cancellation of bail granted to Respondent No.1 vide order dated 27/07/2018 passed by the learned Special Judge, Pune, under the Maharashtra Protection of Interest of Depositors (In Financial Establishment) Act, in Criminal Appeal No.2460 of 2018.

2. Heard Mr. Bharat Ghadavi, learned counsel for the Applicant, Mr. Chandansingh Shekhawat, learned counsel for

Respondent No.1 and Mr. S. R. Agarkar, learned APP for the State/Respondent No.2.

3. The Applicants herein are the investors who had invested their hard earned money in a scheme introduced by one Deepak Sakharam Kulkarni. Learned counsel for the Applicants submitted that the charge-sheet shows that about 45000 depositors have invested around Rs.1083 Crores believing that the company was in profit and the partnership firms started by Deepak Kulkarni, were part and parcel of DSK Company. The Respondent No.1 was the external auditor and he had painted very positive picture of these entities causing the investors to invest in these entities. Ultimately the company did not return the depositors the amounts as promised. The company was always in a bad financial position. The Respondent No.1 was responsible for presenting this positive picture of these entities and hence was a conspirator.

4. Learned counsel for the Applicant submitted that the learned Judge while granting bail to the Respondent No.1 did

not consider these issues in proper perspective. He submitted that there are allegations that the Respondent No.1 had entered into conspiracy to with the accused. His role is clearly established through documentary evidence in the form of auditor's report. All these factors were not properly considered by the learned Judge.

5. Learned APP submitted that though he has supported the learned counsel for the Applicant, the State of Maharashtra itself has not preferred any application for cancellation of bail.

6. Learned counsel for Respondent No.2 on the other hand submitted that it was only with the efforts of the Respondent No.1 the correct financial position was uploaded on the official website of the stock exchange which ultimately led to registration of the FIR. He submitted that the Applicant was not a beneficiary of the fraud. He relied on the order passed by the Hon'ble Supreme Court in Special Leave to Appeal (Cri) No.10065 of 2021 in B.A. No.3471 of 2019 dated 26/07/2022

whereby the Hon'ble Supreme Court granted bail to the main accused Deepak Sakharam Kulkarni in respect of the same subject matter. He submitted that since the main accused is granted bail, there was no propriety in cancellation of bail of the Respondent No.1.

7. I have considered these submissions. The Respondent No.1 was granted bail by learned Judge in connection with C.R.No.347/2017 registered at Shivaji Nagar police station u/s 406, 409, 420, 411, 465, 467, 468, 471, 120(b) r/w 34 of the Indian Penal Code and u/s 3 and 4 of the Maharashtra Protection of Interest of Depositors (In Financial Establishment) (for short 'MPID Act'). Subsequently the investigation was taken over by the EOW. The allegations in the charge-sheet are that the main accused Deepak Kulkarni misappropriated huge amounts by misleading several investors and siphoned off crores of rupees from the money that was invested by consumers for purchasing flats, several amounts were received by way of fixed deposits by assuring that the depositors would get handsome

returns. A public limited company 'DSKDL' was formed. Besides that, many other entities were floated. They were controlled by DSKDL and his family members. They were used for siphoning off the funds of the depositors without giving them returns. Thus, the main allegations are directed against Deepak Kulkarni and his family members. The allegation against the Respondent No.1 was that he was an external auditor and he did not point out all the liabilities of the company. The allegations were that he had not shown the correct financial position when the loans were obtained from the bank.

8. Learned counsel for the Applicant submitted that the Respondent No.1 had falsely shown the interest on the loan as capital of the company. He wrongly showed that the company was in profit. He did not present the correct picture to the bank when loans were sanctioned in favour of DSKDL. He was and external auditor between 2006 to 2017 and he has signed auditor reports upto 2017. During that period amounts were received as deposits and they were used by DSKDL.

9. Learned counsel for Respondent No.1 on the other hand relied on the uploaded status as mentioned earlier which was dated 30/05/2017. In that communication, the Respondent No.1 had specifically mentioned his opinion that there was significant doubt on the company's ability to continue as a going concern. He had opined that the company would be able to continue as a going concern only if it was able to raise working capital for its business and if it meets its obligations relating to payment of statutory liabilities and servicing of its debts and if it was able to comply with the provisions of the Real Estate Regulation Act, 2016.

10. Thus, even before registration of FIR on 28/10/2017, the Respondent No.1 had pointed out the weak financial position of the company. Learned trial Judge in paragraph No.12 of his impugned judgment has observed that the Respondent No.1 had no concern with the transactions between the depositors and the prime accused DSKDL company. The

Respondent No.1 had not received any amount from the depositors. No amount was entrusted by the depositors with the Respondent No.1. He had not cheated the depositors. The Respondent No.1 had co-operated with the investigating agency and his further custody was not necessary. I do not find that these observations are perverse. It is a possible view that is taken by the learned Judge. This has to be looked at from the angle of grant of bail to the main accused Deepak Kulkarni by the Hon'ble Supreme Court. Thus, as of today, the alleged beneficiary is on bail. There are no allegations that the Respondent No.1 had got any benefit out of any of these transactions. In view of this, I do not see any reason to interfere with the impugned order granting bail to the Respondent No.1. With these observation, the application is rejected.

(SARANG V. KOTWAL, J.)