IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

BAIL APPLICATION NO.1259 OF 2022
WITH APPLN/3223/2022 IN BA/1259/2022

JUNAID KHAN JAVED KHAN
VERSUS
THE STATE OF MAHARASHTRA

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Advocate for Applicant : Mr. Jadhav Satej S. a/w Mr. A. H. Qureshi, Mr. Niraj Chudiwal.
APP for Respondent-State : Mr. S. B. Narwade.
Adv. for intervener to assist APP : Ms. Rashmi S. Kulkarni.
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CORAM : S. G. MEHARE, J.
DATE : 18.08.2023

PER COURT :-

1. Heard the learned counsel for the applicant, learned APP for the respondent-State and the learned counsel for the interveners.

2. The applicant seeks bail in Crime No.458 of 2019, registered with City Chowk Police Station, Aurangabad, for the offences punishable under Sections 406, 420 read with Section 34 of the I.P.C. and Sections 3 and 4 of the M.P.I.D. Act.

3. Learned counsel for the applicant would submit that an advertisement of the applicant's Company on Television made a mess. The advertisement strip of the applicant's Company was

running below news on the Television about the fraud played by one Ansar Capital Solution. The investors considered that the Company of the applicant had played a fraud; hence, all the investors started demanding money invested with his Company as per terms of investments. Since he had invested money, he could not arrange to repay the amount. However, to maintain the confidence of the investors, he returned the money to many investors. But that misunderstood news was rapidly spread among the investors. The first informant had lodged a report, so to maintain the trust and confidence of the investors, he returned his invested amount of Rs.25 lacs, and they settled the dispute. However, his bad luck did not give up, and his bail was cancelled. He was behind bars. Whenever he was granted temporary bail. He tried his level best and returned Rs.20,75,000/- and deposited Rs.5,00,000/- in the Court. As per M.O.U, he never denied returning the money, even to the present intervenors. But, they are demanding exorbitant money.

4. He would argue that the applicant never intended to cheat or commit a criminal breach of trust. He had secured a good reputation in the business, but his entire business strategy collapsed due to one mistake in the advertisement strip

running below the news of a fraud played by Ansar Capital Solution. He never intended to cheat and was never run away from his responsibilities. The entire immovable property and assets of his Company have been attached. He is running a small business, which has no high returns. Hence, due to the situation, he is unable to repay the money at once. But still, he is ready to pay the returns to the investors, which may require some time. Many of the investors who had contacted him. He has paid them the money. His relatives also helped him, but they also had their limitations. The applicant is a good entrepreneur. He has been languishing in jail for about one year. His entire property and assets have been attached under the M.P.I.D. Act, and it is likely to be auctioned. The charge sheet has been filed. Nothing is to be recovered from him. Keeping him behind bars would serve no purpose. Hence, he may be released on bail.

5. Learned APP and the learned counsel for the intervener have strongly opposed the application. Learned counsel for the intervener would submit that since inception, the applicant intended to cheat the investors. He had no registration of his companies. The interveners had to rush to the High Court for directions to the Investigating Officer to make the appropriate

investigation. He had played a fraud with the Court while obtaining the earlier bail orders. Hence, his bail was correctly cancelled. The applicant had opened a number of units to show his business was flourishing and growing fast. He was investing the money of one unit in another unit and pretending that the Company was profiting. Learned APP would submit that the land belonging to him, which is attached, is already mortgaged with the bank against the loan of Rs.1.5 crore when its market value is not more than Rs.25,00,000/-. This is also fraud in itself. He promised to pay the investors handsome returns and executed the memorandum of understanding. The cheques he issued were dishonoured, and he is facing proceedings under Section 138 of the N.I.Act.

6. Learned counsel for the intervener also submits that the civil suits for recovery of the amount are also pending against the accused. The conduct of the applicant is doubtful. He secured the temporary bail to show his bonafide, but he could not. He has deposited the nominal amount against the huge dues of more than two crores. The offence under Section 406 of the I.P.C. is serious. The applicant has deliberately cheated the poor investors. Therefore, the applicant has no case for bail.

7. In reply, the learned counsel for the applicant would submit that it is not the case that the applicant did not pay returns as promised to any of the investors. He had given the returns as promised by him. It is also not the case that he had suppressed the facts from the investors. The terms and conditions were opened for the investors to go through. The applicant never persuaded any investors to invest. The investors have voluntarily invested the amount hoping for high and speedy returns. The investors themselves were satisfied with the projects launched by the applicant, and against the postdated cheques, they had invested the money. The cheques were the security for the investors and proof of their investments. In fact, when there was a memorandum of understanding, he was not supposed to issue the postdated cheques. But, to show his bonafide, he also issued the postdated cheque to the investors. So, considering his conduct, it cannot be said that Sections 420 and 406 of the I.P.C. would attract.

8. The M.P.I.D. Act has been enacted to protect the interest of the depositors in financial establishments and the matters relating thereto. Section 4 has been inserted to guarantee the

depositors the recovery of their deposits by attaching the assets and properties of the Company or the financial establishment. That empowers the Government or the competent Authority to attach the properties of the defaulting Company or the financial establishment. The Designated Court has the powers regarding the attachment of the properties and the assets of the Company. The procedure has been laid down in the Act itself for the attachment of the assets and properties of such defaulting company/establishment. The Court is empowered to make the attachment absolute and issue such directions as may be necessary for the realization of the assets and properties attached and for equitable distribution among the depositors of the money out of the properties attached. In view of the object of the Act, the property belonging to the applicant has already been attached, and the process is under consideration. Distributing the money realized out of the attachment of the property with equitable distribution to the investors/depositors is one thing, and conviction for violating the Law is another thing. The attachment of assets and property for equitable distribution to the depositors is in addition to the Penal provisions contemplated under the M.P.I.D. Act. The question that arises here is what purpose would be served by keeping him behind bars when the alternate remedies for attachment of the properties and assets have been done?

9. The applicant approached this Court under Section 439 of the Cr.P.C. The Law is well settled that the Court shall record the reasons for granting bail, and it should be done without discussing the merits and demerits of the evidence. Expressions of reasons for granting bail should be kept distinct from giving reasons for a decision. The gravity of the offence, the possibility of tampering with the prosecution witnesses, fleeing away from Justice, and the past of the accused are the factors to be considered while dealing with the bail applications. The very purpose of bail is to secure the presence of the accused for the trial. It is also the Law that the accused shall be presumed innocent till held guilty by the Court after trial. There shall be no pre-trial conviction.

10. Herein the case, the Court has discussed the object of the M.P.I.D. Act. The provisions laid down for attachment in the said Act have already been put into operation to secure the interest of the depositors. The applicant showing his bonafide has repaid the money to the first informant and a few depositors and also deposited Rs.5,00,000/- in this Court.

Hence, his conduct reveals that he is still interested in protecting his business and maintaining the investors' trust. Whether he had an intention to cheat the investors and had he breached the trust, is a matter of merit to be tested on the touchstone of the evidence before the learned trial Court. The possibility of collapsing the business due to sudden demand for deposits can also not be ruled out. The investigation into the crime has been completed. The trial may take its time. Though many crimes have been registered against the applicant at the instance of different investors, the sole cause is his failure to repay the deposits at once to all investors. He has roots in Aurangabad. He has immovable property in Aurangabad. He is regularly attending the trials. Considering the facts and circumstances, the Court is of the opinion that no purpose would be served in keeping the accused behind bars at the pre-trial stage. Considering the bonafide shown by the applicant, completion of the investigation and his roots in the town, the Court is of the opinion that there appears no possibility of fleeing away from the Justice. The allegations and counter-allegations against each other are a matter of investigation. Investors who have a fear of losing their money may be aggravated. Hence, there may be reports against each other. Every report lodged is subject to fact-finding. The Court dealing with bail shall not assure the recovery of the investor's money, and failure to pay money is not a ground to decline the bail.

11. For the above reasons, the accused deserves bail. Hence, the following order:

ORDER

(i) Bail Application is allowed.

(ii) Applicant **JUNAID KHAN JAVED KHAN** be released on bail on executing P.B. and S.B. of Rs.5,00,000/- (Rupees Five Lakh only) with one or two solvent sureties of Rs.2,50,000/-(Two lac fifty thousand) each, in Crime No.458 of 2019, registered with City Chowk Police Station, Aurangabad, for the offences punishable under Sections 406, 420 read with Section 34 of the I.P.C. and Section 3 and 4 of the M.P.I.D. Act, on the following conditions :

(a) The applicant shall attend the trial on each effective date.

(b) He shall not sell his property if any other than the properties and assets attached and bonafide place the details of such other properties or assets before the M.P.I.D. Court that may help the Court assure the depositors of the return of their deposits.

(iii) Criminal application No.3223 of 2022 for assisting the learned APP is allowed.

(S. G. MEHARE, J.)

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