



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

BAIL APPLICATION NO. 919 OF 2023

MILIND BALASO GADAVE	..APPLICANT
VS.	
STATE OF MAHARASHTRA	..RESPONDENT

Mr. Aabad Ponda Senior Advocate i/b Mr. Kuldeep Nikam and Mr. Om N. Latpate, for the applicant.
Mr. N. B. Patil, APP for the State.
API-dNYANDEO Wagh, EOW, Sangli present.

CORAM : M. S. KARNIK, J.

DATE : OCTOBER 06, 2023

P.C. :

- 1.** Heard learned counsel for the applicant and learned APP for the State.
- 2.** This is an application for bail in respect of the offence punishable under sections 420, 406 read with 34 of the Indian Penal Code, 1860, under section 3 of the Maharashtra Protection of Interest of Depositors (In Financial Establishments) Act, 1999, ("MPID Act", for short) registered on 24/08/2022 vide C.R. No.368 of 2022 with Vishrambag Police Station, Sangli.
- 3.** The applicant was arrested on 13/09/2022. There are in all 3

accused. The applicant is the accused no.1. As per the accusations of the prosecution, the applicant is the Director of the company SS Smart Trade. The Company accepted the deposits from various investors but failed to pay the promised returns. There are 3 victims viz. Aniket Mansingh Shinde, Shivaji Rajaram Patil and Aleena Oil & Food Co. It is alleged sum of Rs. 8 lakhs, 5 lakhs and 29 lakhs was paid by the victim but the promised returns was not paid. It is the accusation of the prosecution that the amount involved in the present case so far as SS Smart Trade is concerned, is Rs. 2,04,45,500/-. In respect of Trade Planet, the amount involved is Rs. 1,26,01,934/-. So far as S.M.Global is concerned, the amount involved is Rs.1,08,73,594/-. From the record it appears that the applicant is the Director of SS Smart Trade. So far as Trade Planet is concerned, one Shri Avinash Patil who is the co-accused is the proprietor. Insofar as S.M.Global is concerned, it is the contention of the learned APP that the Director and Promoter is the brother of the applicant but it is the applicant who is running, conducting and looking after the affairs of S.M.Global. The accusation of the prosecution is that the amount involved is Rs.4,39,31,023/-.

4. Learned APP while opposing the application for bail has placed

reliance on the Audit report submitted by the auditors. Learned APP has also placed reliance on the compilation of the documents which relates to the transactions in the virtual account pertaining to MRT Traders Private Limited with which the present applicant is concerned. Learned Senior Advocate opposed the stand of learned APP when it came to furnishing said compilation relating to the transactions in the virtual account as according to Senior Advocate the same is not the part of the charge-sheet.

5. So far as the charge-sheet is concerned, even as per the prosecution, total amount in respect of which accusations are made is Rs.4,39,31,023/-.

6. Learned Senior Advocate relied upon the decision of the Supreme Court in the case of ¹**Sanjay Chandar Vs. Central Bureau of Investigation**, more particularly, paragraphs 21 and 22 which read thus :

“21. In bail applications, generally, it has been laid down from the earliest times that the object of bail is to secure the appearance of the accused person at his trial by reasonable amount of bail. The object of bail is neither punitive nor preventative. Deprivation of liberty must be considered a punishment, unless it is required to ensure that an accused person will stand his trial when called upon. The courts owe more than verbal respect to the principle that punishment begins after conviction, and that every man is deemed to be

1 (2012)1 Supreme Court Cases 40

innocent until duly tried and duly found guilty.

22. From the earliest times, it was appreciated that detention in custody pending completion of trial could be a cause of great hardship. From time to time, necessity demands that some unconvicted persons should be held in custody pending trial to secure their attendance at the trial but in such cases, 'necessity' is the operative test. In this country, it would be quite contrary to the concept of personal liberty enshrined in the Constitution that any person should be punished in respect of any matter, upon which, he has not been convicted or that in any circumstances, he should be deprived of his liberty upon only the belief that he will tamper with the witnesses if left at liberty, save in the most extraordinary circumstances."

7. Learned Senior Advocate also relied upon the decision in ²**Chidambaram Vs. Directorate of Enforcement** more particularly on paragraphs 19, 20, 22, 23 thereof. It is submitted that Sanjay Chandar Vs. Central Bureau of Investigation is referred in Chidambaram (supra). Learned Senior Advocate submitted that so far as the property mentioned in the communication dated 03/10/2022 tendered by learned APP which is taken on record is concerned, the same is worth 1.78 Crores. Learned Senior Advocate makes a statement that the same shall not be dealt with in any manner or transferred or any charge created thereon till the trial concludes. Statement is accepted as an undertaking to this Court. It is open for the prosecution to make an appropriate application for attachment of

2 (2020) 13 Supreme Court Cases 791

the property to which learned senior advocate on instructions submitted that the applicant shall have no objection.

8. Learned Senior Advocate on instructions of the applicant's father further submitted that the immovable property in the form of a house property which is in the name of the applicant's father will be furnished as a security. According to learned Senior Advocate the valuation is Rs.30 lakhs. Learned Senior Advocate submitted that within 1 week from today, an affidavit to that effect will be filed by the applicant's father that the said property shall not be sold, third party interest or charge created or disposed of during the pendency of the trial. Statement so made is accepted as an undertaking to this Court. Affidavit to be filed before the release of the applicant.

9. Learned APP submitted that looking to the magnitude of the offence and as more and more investors are coming forward, it may not be appropriate to enlarge the applicant on bail. It is further submitted that the applicant should be called upon to furnish adequate security over and above the amount which is involved in the offence. Learned APP submitted that there are 9 offences registered against the applicant. The applicant has been enlarged on bail in 5 of the offences registered against him.

10. The investigation is complete. The charge-sheet has been filed. Learned counsel for the applicant submits that apart from the above properties, the applicant has no other movable or immovable property standing in his name. Learned Senior Advocate on instructions makes a statement that in the event it is found that the applicant has any movable or immovable property which belongs to him, the applicant shall have no objection for the attachment of the said property. Statement is accepted.

11. The applicant is in custody for more than one year. The maximum punishment for the offence under section 420 is imprisonment for a term which may extend to 7 years. The applicant will face the consequences of the trial if found guilty. The applicant does not appear to be a flight risk. The applicant has roots in Sangli. Considering the nature of the accusations, I propose to enlarge the applicant on bail by imposing stringent conditions. It is the submission of learned APP that more investors who have been cheated are coming forward to register their grievances. It is always open for the prosecution to proceed against the applicant in accordance with law if that is the case. Hence, the following order :-

ORDER

- (a) The application is allowed.
- (b) The applicant-Milind Balaso Gadave in connection with C.R. No.368 of 2022 registered with Vishrambaug Police Station, Sangli shall be released on bail on his furnishing PR. Bond of Rs.1,00,000/- with one or more sureties in the like amount.
- (c) The applicant shall attend the investigating officer of Vishrambaug Police Station, Sangli twice in a month on every first and third Monday of the month between 10.00 a.m. and 12.00 noon commencing from November 2023.
- (d) The applicant shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing the facts to Court or any Police Officer. The applicant shall not tamper with evidence.
- (e) On being released on bail, the applicant shall furnish his contact number and residential address to the Investigating Officer and shall keep him updated, in case there is any change.
- (f) The applicant shall not leave the country without permission of the trial Court.

(g) The applicant to abide by the statements made hereinabove.

(j) The applicant shall surrender his passport, if any, to the investigating officer.

12. The application is disposed of.

(M. S. KARNIK, J.)