IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO. 577 OF 2022

Javeed Mumtaaz Khan ...Applicant
vs.
The State of Maharashtra ...Respondent

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Mr. Ramakant Paranjpe a/w Adv. Vivek Joshi a/w Adv. Swapnil Ovalekar - Advocate for the Applicant
Mr. H. J. Dedhia - APP for the Respondent-State
Mahesh Shikhare, Liasoning Officer

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CORAM : S. M. MODAK, J.

DATE : 27th JUNE, 2023

<u>P. C.</u> :-

1. Heard learned Advocate for the Applicant and learned APP.

2. The affidavit-in-reply is already filed on 07/05/2022 duly affirmed by the Police Inspector attached to the Economic Offences Wing, Mira Bhayander Vasai Virar Police Commissionerate, District Thane. For the last few days, grievance is made that the matter is not argued even though affidavit is filed. <u>Hence certain directions were given since 03/05/2023 and on 13/06/2023 and today the matter is kept.</u>

3. Even I have called Liasoning Officer, Mahesh Shikhare.

After telephoning concerned officials, he instructed learned APP that investigating officer Parad is transferred.

4. On the last date, learned APP Shri Kamkhedkar was having certain difficulty. Whereas the investigating officer PSI Anand Parad was on leave, hence matter is kept today. Today also no one is present on behalf of the Economic Offences Wing.

5. So I inquired with learned APP Shri Dedhia about manner of the communication. He submitted that in the title clause of the application, there is reference of the Naya Nagar Police Station and not about Economic Offence Wing and hence their office used to send intimation to the Naya Nagar Police Station. Even though he may be true, but the affidavit is filed by Economic Offences Wing and there is also letter dated 13/06/2023 written by the ACP of the Economic Offences Wing thereby asking for adjournment on the last date. So I am having no alternative but to hear this matter on the basis of the available record. This is particularly when there is a grivance that the matter is not taken up.

6. With the assistance of both the sides, I have read averments in the F.I.R.. It is filed by one Dr. Sajida Adam Shariff on 03/02/2020. She has visited the office of the M/s Goldsmyth Group,

near Ratnagiri Hotel Mira Road, East. She met the deceased accused- Tuphel and present Applicant and they have explained to her the various schemes and they have assured good returns if amount is invested. The deceased accused- Tuphel was a doctor by profession and hence she trusted him.

7. On various occasion, she has invested total amount of Rs. 11,50,000/- in her name and in name of her husband. Out of them, an amount of Rs. 1,48,000/- was returned. Certain cheques were issued for certain amounts however on the presentment, they were dishonoured.

8. She also claims that she had seen few of the investors when she visited the office of the M/s Goldsmyth group and she got information that few of them have also invested certain amounts. Accordingly, she lodged a complaint with the Naya Nagar Police Station and offence came to be registered under Section 420 read with 34 of the Indian Penal Code and under Section 3 of the Maharashtra Protection of Interest of Depositors (In Financial Establishments) Act.

9. The investigation is transferred to the Economic Offences Wing and they have filed the charge-sheet. Accused No. 1-Dr. Tuphel

expired. The contention is raised that the present Applicant has done all the alleged acts on the basis of the instructions given by the employer Dr. Tuphel and hence he cannot be held responsible. Further contention is raised that even though receipts for the amounts received from the investors are signed by this Applicant, there are no materials to show that all these amounts are deposited in his personal account.

10. My attention is invited to page no. 67 of the chargesheet. It gives the description of the certificates and the documents which are displayed in the Office of the M/s Goldsmyth Group. It is part of the spot panchnama, at page no. 60. My attention is also invited to the notice issued under Section 138 of the Negotiable Instruments Act on page no. 55. It was issued by the first informant Dr. Sajida Shareef. It is dated 07/11/2019. The present Applicant and deceased accused are shown as Directors of the M/s Goldsmyth Group.

11. It is true that the first informant was aware that the deceased-accused was looking after day to day administration and cheque was issued by him. The relevant cheque is on page no.58. Certain bank statements are collected during investigation and they are on page no. 567 onwards.

12. Learned APP submitted that all these bank statements belonging to the account of the investors.

13. Even though it may be true that the present Applicant is described as a person who has explained the investor about the scheme, no documents are pointed out that all this amount is credited to the personal account of the Applicant. No bank statement from his personal account is brought to my notice. Furthermore, no bank statements are shown to me to the effect that the present Applicant is a beneficiary of certain pecuniary advantages either received from the Company or from the investors. Ultimately, this materials need to be collected during investigation and investors may not be aware about the same.

14. Learned APP read over the provisions of **Section 3** of the Maharashtra Protection of Interest of Depositors (In Financial Establishments) Act and according to him even employee looking after day to day administration of the financial establishment can be prosecuted. There cannot be dispute about this proposition of law. In this case, we have got statement of the witnesses and the receipts alleged to be issued by this Applicant but no document is pointed out whether money is transferred to his bank account. So case for bail is

made out. He deserves to released on bail. Hence the Order :

ORDER

(i) Bail application is allowed.

(ii) Applicant-Javeed Mumtaaz Khan arrested in connection with C.R. No. 29 of 2020 registered with Naya Nagar Police Station for the offence punishable under Section 420 read with 34 of the Indian Penal Code and under Section 3 of the Maharashtra Protection of Interest of Depositors (In Financial Establishments) Act, be released on bail on furnishing Personal bond and surety bond in sum of Rs. 25,000/-.

(iii) Applicant not to leave the territorial limits of the State of Maharashtra without obtaining the permission from the concerned Court.

(iv) Applicant shall not threaten the prosecution witnesses.

(v) The Applicant shall regularly attend the proceedings before the trial Court.

(vi) Needless to say, violating of the condition above will make the Applicant liable for cancellation of bail after notice.

15. It is made clear that the these are my prima facie observations and the trial Court shall decide the case on its own

merits without influenced by the observations made in this order.

16. Application is disposed of in the aforesaid terms.

17. All the parties to act on an authenticated copy of this order.

[S. M. MODAK, J.]