IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

INTERIM APPLICATION NO.1119 OF 2023

ALONG WITH

INTERIM APPLICATION NO.1121 OF 2023

ALONG WITH

INTERIM APPLICATION NO.1630 OF 2023

ALONG WITH

INTERIM APPLICATION NO.1631 OF 2023

IN

CRIMINAL WRIT PETITION NO.612 OF 2023

Shrichand Aswani,	]
Pimpri, Pune	] .. Applicant
Vijay Gopichand Ramchandani,	]
Pimpri, Pune	] .. Applicant
Jyoti Premchand Gidwani,	]
Pimpri Camp, Pimpri, Pune	] .. Applicant
Bhisham Hiralal Pahuja	]
Pimpri Camp, Pimpri, Pune	] .. Applicant

In the matter between

Amar Sadhuram Mulchandnani,	]
Pimpri, Pune	] .. Petitioner

Versus

1. Deputy Director,	]
Directorate of Enforcement, Mumbai.	]
2. Assistant Director,	]
Directorate of Enforcement, Mumbai	]
3. State of Maharashtra,	]
Through Pimpri Police Station, Pune	]
4. Commissioner of Co-operation and	]
Registrar of Co-operative Societies, Pune	] .. Respondents

Mr. Aabad Ponda, Sr. Advocate, with Mr. S.S. Bedekar and Ms. Ilsa Shaikh, i/by Mr. S.R. Phanse, for the Petitioner in WP/612/2023.
Mr. R. Sathyanarayanan, with Mr. Neeraj Yadav, Ms. Deepa Punjabi and Ms. Minal Chandnani, for the Applicant-Intervener in IA/1119/2023.
Mr. Vineet Naik, Sr. Advocate, with Mr. Amod Eklaspur, i/by Mr. Zoheb Merchant, for the Applicants-Interveners in IA/1121/2023; IA/1630/2023 and; IA/1631/2023.
Mr. Zoheb Merchant for the Applicants-Interveners in IA/1630/2023 and IA/1631/2023.
Mr. Anil C. Singh, ASG, with Mr. H.S. Venegavkar, Mr. Aditya Thakkar, Mr. Aashish Chavan, Mr. Aayush Kedia, Mr. Shreeram Shirsat, Mr. Manuj Borkar and Mr. V. Joshi, for Respondent Nos.1 and 2 – Enforcement Directorate.
Mr. Praduman Sharma, Assistant Director – ED, with Mr. Atul Jaiswal, Dy. Director – ED and Mr. Rimit Rukriwal, EO-ED, are present.
Ms. A.S. Pai, P.P., with Ms. S.D. Shinde, APP, for the Respondent Nos.3 and 4 - State.

CORAM : SUNIL B. SHUKRE & M.M. SATHAYE, JJ

RESERVED ON : 26TH APRIL, 2023.

PRONOUNCED ON : 3RD MAY, 2023.

ORDER : { Per Sunil B. Shukre, J. }

1. Heard.

2. These Interim Applications are filed by the individuals, who contend that they are victims of crime involved in the present matter, which is in the nature of a big Banking Scam, wherein there is involved swindling of hard-earned

money of the depositors' to the extent of Rs.439.61 crores by the Ex-Chairman of Seva Vikas Co-operative Bank, Pune and its family members.

3. Mr. Vineet Naik, learned Senior Advocate appearing on behalf of the applicants-interveners in Interim Application Nos.1121 of 2023, 1630 of 2023 and 1631 of 2023 submits that these applicants fall within the definition/expression of the term "victim", as defined under Section 2(wa) of the Code of Criminal Procedure, 1973 *(hereinafter referred to as "**Cr.P.C.**" for short)*. He further submits that a huge amount of money belonging to the depositors of the bank has been misappropriated by the ex-chairman of the bank and his family members, as a result of which the depositors of the bank have suffered huge loss and not only that, the bank, as an entity, has suffered loss, because of which even the shareholders of the bank have become victims of crime.

4. Mr. Naik, learned Sr. Advocate further submits that the applicant in IA/1121/2021, who has now been framed in this scam, in fact, is a person who is interested in ensuring that the real culprits are brought to the book and justice is rendered as early as possible and that was the reason why he was required to carry this matter to the Supreme Court. He submits that this applicant's presence, along with other applicants, as respondents in this case would be of great assistance to this court and at this juncture, these applicants only want to assist the court by placing on record relevant material, which will help the court find out the truth of the matter. He also submits that the Bank's

Scam is, in fact, a commercial fraud of enormous nature and, therefore, assistance to the court coming from the depositors and the shareholders of the bank would be of great value.

5. Mr. Naik, learned Sr. Advocate further submits that the law now has evolved, especially with the case of *Jagjeet Singh and Ors. Vs. Ashish Mishra @ Monu and Anr. (2022) 9 SCC 321*, because of which now it is settled that a "victim" of crime, as defined in Section 2(wa) of the Cr.P.C., has unrestricted participatory rights from the stage of investigation till the culmination of proceedings in an appeal and revision. He also submits that, even otherwise, the applicants have their stakes in the investigation for the reason that some of the provisions of the Prevention of Money-Laundering Act, 2002, *(hereinafter referred to as "**PMLA**" for short)*, especially those contained in Chapter III like attachment of property involved in money-laundering, making of adjudication of the properties of a person, who is believed to have committed an offence under Section 3 of the PMLA to be the properties involved in money laundering and confiscation of the property in the money-laundering, are basically civil in nature, creating rights in person, who has fallen victim to the offence of money laundering and as such, these applications, being Interim Application Nos.1121 of 2023, 1630 of 2023 and 1631 of 2023, deserve to be allowed.

6. Mr. R. Sathyanarayanan, learned counsel for the applicant in Interim Application No.1119 of 2023 has made more or less the same arguments as Mr. Vineet Naik, learned Senior Advocate for the applicants in Interim

Application Nos.1121 of 2023, 1630 of 2023 and 1631 of 2023. In addition to that, Mr. R. Sathyanarayanan, learned counsel submits that the applicant in IA/1119/2023 is a person who is a shareholder of the bank, who himself had made a complaint earlier against the present accused persons, whose statement was recorded and who fulfills the criteria of the term "victim" given in Section 2(wa) of the Cr.P.C.

7. Mr. Ponda, learned Senior Advocate for the petitioner, opposing these interim applications, submits that the applicants-interveners have not approached this court with clean hands. He submits that the applicant in IA/1119/2023, Shrichand Aswani, had filed a petition for issuance of writ to the Enforcement Directorate for completion of investigation of the offences pertaining to the Bank Scam as expeditiously as possible and impartially, but this petition was withdrawn by this applicant and, therefore, it was dismissed as withdrawn. He further submits that the applicant has concealed this fact from the court and, therefore, he is not entitled to any relief. He also submits that, even otherwise, the applicant is a shareholder of the bank and, therefore, has lost his individuality qua the bank, which is a registered entity, as held in the case of *Daman Singh and Ors. Vs. State of Punjab and Ors., (1985) 2 SCC 670*. Mr. Ponda also submits that some of the relevant facts are not pleaded by this applicant and, therefore, now his contention that he is a victim of crime cannot be accepted by this court, as held in the case of *Bharat Singh and Ors. Vs. State of Haryana and Ors., (1988) 4 SCC 534,* and *Rajasthan Pradesh Vaidya Samiti*

Sardarshahar and Anr. Vs. Union of India and Ors. (2010) 12 SCC 609. The learned Senior Advocate further submits that the complaint filed by the applicant in IA/1119/2023 was to the Prime Minister's office and not to the police and, therefore, it is of no consequence so far as the question of the applicant being a victim of crime is concerned. He also submits that the applicant in IA/1121/2021 himself is an accused in the present crime and, therefore, he is not covered by the definition of "victim" of crime.

8. Learned counsel for the petitioner assisting Mr. Aabad Ponda in Writ Petition No.612 of 2023 makes his submission on similar lines as Mr. Aabad Ponda, learned Senior Advocate. In addition, he submits that the FIR has been filed by one of the depositors and the crime accordingly has been registered against the present accused persons at the behest of the depositors and that would mean that the depositors have already availed of the remedy provided to them under the law and as such, now their applications for intervention in the present matter cannot be allowed.

9. All said and done, the issue involved in these interim applications has to be considered and resolved by examining it from the perspective of a victim of crime. The reason being that the rights of victim of a crime have been expanded after the term "victim" came to be specifically defined by insertion of clause (wa) to Section 2 of the Cr.P.C. and the wide interpretation of this clause by the Apex Court in *Jagjeet Singh (supra)*. This clause introduced by Amendment Act

5 of 2009, which came into force with effect from 31st December 2009 defines the term "victim" as follows :-

> "2(wa). "victim" means a person who has suffered any loss or injury caused by reason of the act or omission for which the accused person has been charged and the expression "victim" includes his or her guardian or legal heir."

10. The term "victim" has been given its widest connotation by the Supreme Court in the case of *Jagjeet Singh (supra)*. The Apex Court has held that such a "victim" has unlimited participatory rights from the stage of investigation till the culmination of all kinds of criminal proceedings. The relevant observations of the Supreme Court, as they appear in paragraph 24, are reproduced below for the sake of convenience :-

> "24. A 'victim' within the meaning of Cr.P.C. cannot be asked to await the commencement of trial for asserting his/her right to participate in the proceedings. He/She has a legally vested right to be heard at every step post the occurrence of an offence. Such a 'victim' has unbridled participatory rights from the stage of investigation till the culmination of the proceedings in an appeal or revision. We may hasten to clarify that 'victim' and 'complainant/informant' are two distinct connotations in criminal jurisprudence. It is not always necessary that the complainant/informant is also a 'victim', for even a stranger to the act of crime can be an 'informant', and

> similarly, a 'victim' need not be the complainant or informant of a felony."

11. It would be clear from the above elucidation of the meaning of the term "victim" that a victim has every right to take part in a criminal case the moment criminal law is set in motion upon registration of the crime and continues to have such right of participation till the case comes to an end in an appeal or revision. It also clarifies that there is a distinction between a person who is complainant or informant and a person who is victim of crime and that it is not always necessary that the complainant or the informant must be a victim and vice-a-versa, for, even a stranger to the act of crime can be an "informant" and conversely a "victim" need not be the complainant or informant of the crime.

12. In our view, the law so laid down by the Apex Court in the case of *Jagjeet Singh (supra)* clinches the issue in favour of the applicants, who are the depositors of the bank, and this way, we are of the view that the applicants in IA/1630/2023 and IA/1631/2023, both, would be eligible to be called as "victims" of crime, being depositors of the bank. But the question is whether this court should allow both of them to take part in this proceedings or direct one of them to be a party-respondent in this matter as a representative of all the depositors and stakeholders of the bank. Answer to this question, we find, can be appropriately given, after we consider the remaining two interim applications with a view to decide their fate and record our decision in respect of them.

13. The remaining two applications are Interim Application Nos.1119/2023 and 1121/2023. In our considered view, one of these applications cannot be allowed for the reasons stated in the ensuing paragraphs.

14. Insofar as Interim Application No.1121 of 2023 is concerned, although it is true that this applicant had carried the substantive writ petition to the Apex Court, the issue involved in this application would have to be answered by this court on the touchstone of the concept of "victim", introduced to the Code by Amendment Act 5 of 2009. We have already seen that a "victim" means a person who has suffered any loss or injury caused by reason of the act or omission for which the accused person has been charged and the expression "victim" includes his or her guardian or legal heir. That means, in order to qualify to be a victim, a person must have suffered some loss or injury resulting from the act or omission of another and that this another person must be the accused person, who faces the charge of causing loss or injury to that person. This would necessarily show that a "victim" would be the person different from the one who is an accused person. In IA/1121/2023, the applicant is one of the accused and, therefore, strictly speaking, he cannot be a "victim" of crime, as defined under Section 2(wa) of the Cr.P.C. But, it is the contention of this applicant that he is really not the accused person, but a person who has suffered loss; who is a victim of crime and who has been falsely implicated in the present crime. These contentions fall in the realm of defence of the accused and, therefore, a matter of evidence, something to be decided on

the basis of preponderant probabilities arising from the evidence recorded by the trial court. Till that happens, we do not think that it would be proper on our part to treat this applicant as the victim of crime and, therefore, permit him to take part in these proceedings. The Interim Application No.1121 of 2023 is, therefore, rejected.

15. As regards Interim Application No.1119 of 2023, we find that though there has been stiff opposition made to this application by Mr. Ponda, learned Senior Advocate for the petitioner in Writ Petition No.612/2023, this applicant could be treated, being a shareholder of the bank, also as a person who has suffered loss, because his bank has suffered loss and, therefore, he would be covered by the definition of the "victim" of crime, given under Section 2(wa) of the Cr.P.C. Although it is submitted that there is no pleading in his application that he is the victim of crime, we could infer that he is the victim of crime from his contention that he is one of the shareholders of the bank. So the cases of *Bharat Singh (supra)* and *Rajasthan Pradesh Vaidya Samiti Sardarshahar (supra)* relied upon by the petitioner on this issue, in our humble opinion, would have no application to the facts of this application. Once we find that this applicant is covered by the definition of "victim" in Section 2(wa) of the Cr.P.C., the principle of law laid down by the Supreme Court in *Daman Singh (supra)* would have no application to this case. This is all the more so because the principle of law therein has emerged from a different set of facts. The question involved in that case was whether the provisions made in Section 13(8),

Sections 9 and 10 of Punjab Co-operative Societies Act, 1961, not requiring issuance of notice to the members of the concerned co-operative societies, were violative of principles of natural justice or not, which issue is not involved here. So, the applicant here would be the victim of crime but, again a question would arise as to whether this applicant can also be allowed to take part in these proceedings or not, which question we have already posed in respect of two applicants involved in IA/1630/2023 and IA/1631/2023. Let us now deal with this question.

16. In our opinion, there are such factors as protection of interest of victims, protection of rights of accused, convenience of parties and court and the desired dispatch in speedy disposal of the proceedings, which are required to be considered so that proper balance between rights of victims, rights of prosecution and rights of accused, interest of justice and convenience of court, is achieved. If this is not done, as rightly submitted by learned Sr. Advocate for the petitioner, flood gates of these proceedings would lay open and there would be many more applications in future as there are several hundreds of depositors. The best way of achieving the balance between the interest of justice, convenience of court, the rights of the parties and orderly disposal of the proceedings with promptitude is by allowing one of the three eligible applicants to represent interests of all depositors and stakeholders for assisting this court in the capacity as a party-respondent. We find that, from among these three applicants, that applicant who himself is a depositor and who maintains an

account with the bank would be the most suitable person to do represent all depositors and stakeholders and, accordingly, we allow Mr. Bhisham Hiralal Pahuja, applicant in Interim Application No.1631 of 2023, who fits into this criterion, to take part in these proceedings.

17. We, therefore, pass the following order :-

(i) We direct the petitioner to amend the cause-title of Writ Petition No.612 of 2023 by adding Mr. Bhisham Hiralal Pahuja, applicant in IA/1631/2023, as party-intervenor to the petition with right of hearing only.

(ii) We further direct the petitioner to join Mr. Bhisham Hiralal Pahuja as party-intervener in the array of respondents with liberty to only address this court and file documents, if any, for the purpose of rendering assistance to the cause of justice.

(iii) It is made clear that the newly added party-intervener Mr. Bhisham Hiralal Pahuja will have no right to file reply in the matter.

18. Interim Application No.1631 of 2023 is allowed in the above terms.

19. Interim Application Nos.1630 of 2023 and 1119 of 2023 are disposed of in the above terms.

20. Interim Application No.1121 of 2023 is rejected.

[M.M. SATHAYE, J.] **[SUNIL B. SHUKRE, J.]**