IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO. 1096 OF 2023

HRISHIKESH ASHOK BARTAKKE ..APPLICANT
VS.
THE STATE OF MAHARASHTRA ..RESPONDENT

WITH
INTERIM APPLICATION NO. 1946 OF 2023
IN
BAIL APPLICATION NO. 1096 OF 2023

DURGA RANJIT JAGTAP AND ORS. ..APPLICANTS
VS.
STATE OF MAHARASHTRA AND ANR. ..RESPONDENTS

WITH
INTERIM APPLICATION NO. 1800 OF 2023
IN
BAIL APPLICATION NO. 1096 OF 2023

AABASAHEB DATTAJIRAO DESHMUKH ..APPLICANT
VS.
STATE OF MAHARASHTRA ..RESPONDENT

Adv. Aniket Nikam i/b Mr. Gaurav Parkar for the Applicant.

Mr. Aniket Vagal for the Intervener in IA/1946/2023.

Mr. Vaibhav Gaikwad i/b Atharva Bhingardeve for the Intervener in IA/1800/2023.

Ms. Veera Shinde, APP for the State.

CORAM : M. S. KARNIK, J.

DATE : SEPTEMBER 26, 2023

P.C. :

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

2. This is an application for bail in respect of the offence punishable under Sections 406, 420 read with 34 of the Indian Penal Code (hereafter 'IPC' for short) and Sections 3 and 4 of the Maharashtra Protection of Interest of Depositors (In Financial Establishments) Act, 1999, ("MPID Act", for short) of the registered on 03/10/2022 vide C.R. No.477 of 2022 with Vita Police Station, Sangli.

3. The incident is dated 03/10/2022. The applicant was arrested on 07/10/2022. The applicant is accused No.1. Initially there were 4 accused. Accused Nos. 3 and 4 have been exonerated. So far as the present applicant is concerned, it is the accusation that the applicant had executed an agreement dated 18/02/2020 by which the applicant agreed to pay an amount of Rs.1,59,00,000/- towards principal and Rs.50,00,000/- by way of interest to the complainant. It is the case of the prosecution that in respect of the property which was owned by the accused

No.4, the present applicant along with the accused No.2 induced the informant to invest in the property for the development purpose. Accordingly, an amount of Rs.1,51,00,000/- was obtained from the complainant and another sum of Rs.1,77,50,000/- was obtained from the other 12 investors totalling Rs.3,28,50,000/-. The applicant promised that within a period of 3 months, the returns of one and half times the amount invested will be made over to the investors. The applicant also promised that a luxury car would be gifted to the investors.

4. Learned APP as well as learned counsel for the complainant vehemently opposed the application. Learned counsel for the complainant and learned APP submitted that the complainant and the investors had invested their hard-earned money on the inducement and on the promise made by the applicant which later turned out to be false. The applicant has taken substantial sums of money from the complainant and investors amounting to Rs. 3,28,50,000/- and thereby cheated them. It is further submitted that there are several criminal antecedents reported against the applicant. It is submitted that the applicant is in the habit of cheating investors. It is pointed out that offences of similar nature are registered against the applicant.

5. Learned counsel for the applicant submitted an affidavit indicating the manner in which part of the amount can be secured. It is the contention of the learned counsel for the applicant that it is the accusation that a sum of Rs.2,70,00,000/- was paid in cash whereas a sum of Rs.61,50,000/- was paid by cheque. Learned counsel for the applicant submitted that at the highest, assuming without admitting the accusations are true, the liability of the applicant is only Rs.61,50,000/-. It is then submitted that during the course of negotiations, with a view to settling the matter, the applicant had informed the complainant that he was willing to settle the matter for a sum of Rs. 1,87,00,000/-. The applicant has filed an affidavit with a view to secure some part of the amount. An additional affidavit was filed on behalf of the applicant duly affirmed by him which records thus:-

> "2. In the earlier affidavit filed by the applicant it is stated that, subsequent to the registration of the FIR, the investigating agency during the course of

investigation, seized bank accounts, property owned by myself and my wife, total to Amount Rs. 1,25,42,154.

3. Following is the chart of Property and Bank Account Amount Seized by the Investigating agency;

	Details	Amount (In Rupees)
A	Seized Amount	61,24,951
B	Seized Property (Alibag Flat)	35,00,000
C	Vehicle (Ford Endeavour) 2016 Purchased. In possession of complainant Since Oct 2018	28,88,108
D	Total (A+B+C)	1,25,42,154

4. Applicant further submits that in the lieu of return of vehicle Ford Endeavour (MH 12 NP 0006) given to the informant along with original Registration certificate (RC) to applicant, the applicant undertakes to deposit an amount of Rs. 15,00,000/- in the registry of this honorable court within a period of one Month from date of return of Vehicle to the Applicant.

5. I undertake that I and My Wife will not prefer an Application before the Hon'ble Trial Court or any other court seeking de-freezing of my bank account or my wife's bank account.

6. I further say that, I do not hold any other bank account and any other immovable property in my name or in the name of my wife. All my Bank accounts and immovable property are currently seized by the investigating agency other than mentioned in the present affidavit.

7. I say that, the Flat at Alibag was purchased in the year 2016 by my wife before marriage, at that time the valuation of the Flat was Rs. 22,50,000/-. Today the valuation of the Flat is Rs. 35,00,000/- as per the Government approved valuer.

8. I undertake that I and My Wife (Priyanka Bartakke) will not prefer any Application before the Hon'ble Trial Court or any other Court seeking a relief to release my property that is seized by the investigating agency pending the trial against CR No. 477 of 2022 registered with Vita Police Station.

9. I say that, the said Flat is registered in the name of my wife Priyanka Bartakke. I say that on the said flat my wife has taken the loan and outstanding Amount as on date is Rs. 7,37,184/-. My wife is paying timely EMI's till date and I and My wife undertake to pay further installments on time till the loan amount is cleared.

10. I say that, as I am currently lodged in jail, I have deputed my wife (Priyanka Hrishikesh Bartakke) to arrange the aforementioned amount of Rs. 45,00,000/-. As the bank accounts & property owned by my wife are also seized by the investigating agency, my wife is left with no choice but to raise funds from commercial organizations, relatives & friends.

11. I say that, the present amount is a hefty amount. Thus, considering the fact that all my bank accounts and property are seized, without prejudice to my defense, I beg to deposit the aforesaid amount of Rs. 45,00,000/- in 3 installments. The details of installments are as follows;

Sr. No.	Amount in Rupees	Date
1	20,00,000/- (Twenty Lakhs)	One Week (On or before 30.09.2023)
2	15,00,000/- (Fifteen Lakhs)	3 Months (On or before 15.12.2023)
3	10,00,000/- (Ten Lakhs)	3 Months (On or before 15.03.2024)

”

6. Learned counsel for the applicant, on instructions, submits that all the statements made in the affidavit will be duly abided by him. Learned counsel for the applicant submits that the affidavit is voluntarily filed and in paragraph No.12 it is stated that the same has been executed without any undue influence or coercion from any person whatsoever. The affidavit is accepted as an undertaking to this Court and the statements made therein shall be duly abided by.

7. So far as paragraph No.4 of the said additional affidavit is concerned, it is made clear that the Ford Endeavour bearing No. MH-12-NP-0006 will be handed over to the applicant by the complainant only upon the payment of Rs.15,00,000/- and the said payment shall be made within a period of 8 weeks from today. Learned counsel for the complainant- Aabasaheb Deshmukh makes a statement that on receipt of the payment of Rs.15,00,000/-, the complainant will hand over the Ford Endeavour vehicle along with the RC Book and all other documents pertaining to the vehicle.

8. Despite the serious opposition of the learned APP and learned counsel for the complainant for enlarging the applicant on bail, I am inclined to enlarge the applicant on bail in view of the statements made in the affidavit which the applicant submits that the same will be duly honoured and in view of the fact that the applicant is in custody for more than 11 months. Under the provisions of the MPID Act maximum punishment provided for the offence under the aforesaid sections is 6 years of rigorous imprisonment. The trial is likely to take a long time to conclude, however, in the facts and circumstances of the present case, the applicant can be enlarged on bail. There are criminal antecedents against the applicant of a similar nature in which he is enlarged on bail. However, the same need not deprive the applicant the facility of bail in the present C.R. considering the length of his custody as an undertrial and the security offered. Hence, the following order:

<u>O R D E R</u>

(a) The application is allowed.

(b) The applicant- Hrishikesh Ashok Bartakke in connection with C.R. No. 477 of 2022 registered with

Vita Police Station shall be released on bail on his furnishing P.R. Bond of Rs.1,00,000/- with one or more local sureties in the like amount.

(c) The applicant shall attend the Investigating Officer of Vita police station twice in a month, every first and third Saturday of the month between 10.00 a.m. and 12.00 p.m. till the conclusion of the trial.

(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 attend the trial regularly.

(g) The applicant shall surrender his passport, if any, with the trial Court.

(h) The amount of Rs.45,00,000/- as mentioned in paragraph No.10 of the additional affidavit to be deposited with the trial Court in terms of the schedule mentioned in paragraph No.11 of the said affidavit and if any application is made for refund of the money the same to be decided by the trial Court in accordance with law. Learned counsel for the applicant, on instructions, states that the applicant shall have no objection to the complainant withdrawing money.

(i) If there is any breach of the statements made in the affidavits or default, it is open for the complainant and prosecution to file an application for cancellation of bail.

(j) The applicant to be abide by the statements made in the affidavits.

9. The bail application is disposed of. All interim applications also stand disposed of.

(M. S. KARNIK, J.)