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

BAIL APPLICATION NO. 1547 OF 2022

Vitthal Ankush Kolpe

...Applicant

vs.

The State of Maharashtra

...Respondent

Adv. Aniket Ujjwal Nikam a/w Adv. Piyush Toshnival a/w Adv. Amit
Icham i/by Mr. Vivek Arote - Advocate for the Applicant
Mr. Y. Y. Dabke – APP for the State

CORAM : S. M. MODAK, J.

DATE : 24th JANUARY, 2023

P. C. :-

1. Heard learned Advocate Shri Nikam and learned APP
Shri Dabke on the last date and today also.

2. The Applicant is arrested on 12/02/2021 in connected
with C.R. No. 34 of 2021 registered at Lonand Police Station on
26/01/2021. It was for the offence punishable under Sections 420,
409, 465, 467 of the Indian Penal Code and under Sections 3 and 4
of the MPID Act.

3. The sum and substance of the allegation is that the
Applicant with the help of absconded accused Anil Ankush Kolpe and
Sandeep Sopan Yele have formed a company by name Royal ways

Marketing Business Private Limited. All of them have given fanciful promise to various investors and induced them to invest amount in their Company. The investors were assured that their money will be doubled within a short period. The F.I.R. is lodged by one of such investor - Smt. Seema Sunil Dhanwade. She has invested Rs. 2,17,000/- and she was returned only a meager amount of Rs. 26,000/- and she was cheated of Rs. 2,44,000/-.

4. After F.I.R., the Applicant came to be arrested and one of the co-accused Sandeep Sopan Yele even attempted for anticipatory bail but he was not successful even before this Court. Now the charge sheet is filed against the Applicant and two absconding accused persons.

5. During investigation, it was disclosed that there are 19706 investors and out of them 2514 have acted as commission agent. The total amount of investment is Rs. 30,61,90,831/- and out of that amount of Rs. 14,94,85,406/- was returned to the investors. Some of the investors are commission agents.

6. During investigation, the Police have recorded the statements of the various persons. The statements of the bank account they have also collected. Two vehicles belonging to this

Applicant were also seized during investigation. Even Police have tried to collect information about any immovable property in which money is invested. But somehow they got information about survey no. 70/1/1 of 40 guntas, however it was sold by the Applicant.

7. The learned Advocate Shri Nikam relied upon the following judgments:-

- (a) Pandharinath Genubhau Raut Vs. the State of Maharashtra, in Criminal Bail Application No. 2397 of 2019, decided on 25.06.2021 by this Court (Coram : Smt. Bharati Dangre, J.)
- (b) Satender Kumar Antil Vs. Central Bureau of Investigation and Anr.¹
- (c) Sheila Sebastian Vs. R. Jawaharaj and Anr.².

8. According to him the sections pertaining to forgery will not be applicable and even Section 409 of the Indian Penal Code will not be applicable because the Applicant does not fall within the categories mentioned therein. He also submitted that the punishment for the offence under MPID is six years.

9. As against this, the learned APP opposed the bail on the ground that yet two accused are absconding and one is a brother of the accused. It is also opposed on the ground of material collected

1 (2022) 10 Supreme Court Cases 51

2 2018 (7) SCC 581

during investigation and yet amount of Rs. 15,67,05,424/- is yet to be recovered.

10. On the last date this Court has asked the prosecution to give information to the Court about steps taken in order to arrest two absconding accused and steps taken to attach the property belonging to this Applicant. It is submitted that necessary proclamation application is filed before learned Special Judge but applicant has sold the land.

11. It is true that the duration of the offence is Jan 2020 upto September 2020. It is also true that the Applicant is behind bar since 12/02/2021. It is also true that he has been interrogated. In case of Satender Kumar Antil (Supra), the Hon'ble Supreme Court observed that the financial offence is not separate class of offence and observation in case of P. Chidambaram Vs. Directorate of Enforcement³ were reproduced.

12. The request for bail has to be considered in the light of the triple test or the triphod test. It is observed that "*irrespective of the nature and gravity of charge, the precedent of another case alone will not be the basis for either grant or refusal of bail though it may*

3 (2020) 13 SCC 791 : (2020) 4 SCC (Cri.) 646

have a bearing on principle. But ultimately the consideration will have to be on case-to-case basis on the facts involved therein and securing the presence of the accused to stand trial.”

13. I think by detaining the Applicant behind bar till conclusion of the trial will not serve any purpose. He has also remained behind bar for two years and sufficient opportunity has been granted for investigation.

14. There are remedies for recovering an amount by taking recourse to the provisions of MPID Act. Though those remedies are exhausted, up till now no property was attached.

15. This Court feels that the Applicant deserves to be released on bail but interest of the prosecution can be secured by imposing the strict conditions. The principle ‘bail is rule jail is exception’ is applicable in this case. Hence following order is passed:-

ORDER

(a) The application is allowed.

(b) The Applicant – Vitthal Ankush Kolpe be released on bail on furnishing PR bond and surety bond in the sum of Rs.1,00,000/- in

connection with C.R. No. 34/2021 registered at
Lonand Police Station.

- (b) The Applicant shall not threaten the prosecution witness and allure them in any manner.
- (c) The Applicant shall give attendance to the Lonand Police Station on every Monday and Thursday from 10 am to 12 noon until completion of the trial.
- (d) The Applicant shall not leave territorial limits of the Satara District without obtaining the permission from the learned Special Judge.
- (e) If any of the condition is breached, the prosecution is at liberty to approach for cancellation of bail.

16. It is made clear that the observations made herein are prima facie, and the trial Court shall decide the case on its own merits, in accordance with the law, uninfluenced by the observations made in this order.

17. Application is disposed of in the aforesaid terms.

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

[S. M. MODAK, J.]