



Diksha Rane

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

BAIL APPLICATION NO.1082/2023

PANKAJ S/O. BHAGCHAND CHALLANI	..APPLICANT
VS.	
THE STATE OF MAHARASHTRA	..RESPONDENT

**WITH
INTERIM APPLICATION NO.4157/2023
IN
BAIL APPLICATION NO.1082/2023**

M/S ASHOKA ENGINEERING COMPLANY THROUGH ASHISH ASHOK KATARIYA AND ORS	..APPLICANT
VS.	
THE STATE OF MAHARASHTRA	..RESPONDENT

Adv. Pavan S. Patil a/w. Adv. Abhay Ostwal, Adv. Nitin Jagtap,
Adv. Yash Gawade for the applicant.

Ms. Veera Shinde, APP for the State.

Senior Advocate Aabad Ponda a/w. Adv. Shailesh Kharat,
Adv. Rutvik Gadge for the intervener.

Adv. Nitin Gaware Patil for the respondent no.2.
PI Nilam Bhagat, EOW, Pune City.

CORAM : M. S. KARNIK, J.

DATE : NOVEMBER 9, 2023.

P.C. :

1. Heard learned counsel for the applicant, learned APP for the State, learned senior advocate for the intervener and learned counsel for the respondent no.2.

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) read with Sections 3 and 4 of the Maharashtra Protection of Interest of Depositors (in Financial Establishments) Act, 1999 (hereafter 'MPID Act' for short) registered on 5/1/2021 vide C.R. No.3/2021 with Swargate Police Station, Pune.

3. In brief it is the case of the prosecution that the applicant who claims to be a Chartered Accountant, gained trust of several investors/depositors who were known to him personally. The investors/depositors invested an amount of Rs.70,78,60,933/- with the applicant as he had promised lucrative returns. The investors/depositors later realized that the applicant defaulted in paying them assured returns. It was later learnt that the investments/deposits made by the investors/depositors was utilized by the applicant for purchasing various properties.

4. The applicant was arrested on 5/1/2021 and now is in custody for more than two years and nine months. The maximum period of imprisonment prescribed for the offence for which the applicant is being tried before the MPID Court is seven years imprisonment.

5. As and by way of security, the applicant had offered some properties. The title and the ownership of such properties is seriously disputed by Mr. Ponda, learned senior advocate. I refrain from venturing into matters of title or otherwise of the said property offered as security in these proceedings. The parties are free to take recourse in appropriate proceedings before the appropriate forum.

6. Learned senior advocate for the interveners submitted that the conduct of the applicant disentitles him from enlargement on bail for failing to comply with the order dated 11/8/2023 of this Court. The relevant portion of the said order reads thus:-

- "1. According to the prosecution, the amount involved in the present offence is Rs.70,78,60,933/-.
2. Learned Advocate for the applicants states that he will take instructions from the applicant about deposit amount of entire amount.
3. Stand over to 1 September 2023. To enable him to take instructions on that aspect."

7. Learned senior advocate submitted that once the advocate for the applicant was to take instructions from the applicant about deposit quantum of entire amount, now the applicant cannot resile from his statement and he must abide by the same, more so when such statement is recorded in the order dated 11/8/2023 of this Court. He insists that the applicant must deposit the amount.

8. In my opinion, the order dated 11/8/2023 only records that the advocate for the applicant was to take instructions from the applicant about deposit quantum of entire amount. There is no definite statement made about such deposit. I, therefore, do not find any substance in the contention of learned senior advocate Mr. Ponda appearing for some of the investors that failure to deposit the amount should result in the consequence of rejecting this application.

9. Mr. Gaware Patil, learned counsel for some of the investors has filed an affidavit of Mr. Sunil Bansilal Raison. It is submitted by Mr. Gaware Patil that earlier a stand had been taken by the applicant that he does not own or possess any property. While placing reliance on Exhibit "R-5"

of the affidavit, learned counsel contends that the list of the properties mentioned in Exhibit "R-5" are sold by the applicant to other parties who are proxy purchasers.

10. Learned counsel for the applicant, on instructions, submits that if there are any properties of the ownership and/or in possession of the applicant, the applicant will have no objection if the MPID Court is to proceed for attachment of those properties under sub-section (4) of Section 7 of the MPID Act. This statement is recorded as an undertaking to this Court. The applicant to abide by such statement. Further as regards the properties which are mentioned in Exhibit "R-5" at page 1275 of the affidavit filed by Mr. Sunil Raisonni is concerned, it is open for the investors/depositors to make an appropriate application before the MPID Court for appropriate reliefs including the attachment of such properties. Learned counsel submits that the applicant on his part shall not have objection for attachment of such properties in accordance with law if they are of his ownership. This statement is recorded as an undertaking to this Court.

11. Considering that the applicant is in custody for more

than two years and nine months as an undertrial with nothing being placed on record to indicate that he is a flight risk or he will evade attending the trial, in respect of the offence punishable for a maximum period of seven years imprisonment, the applicant can be enlarged on bail. Continuation of the applicant's custody will only be by way of pre-trial punishment. Though learned senior advocate as well as learned counsel for the investors requested that the applicant should deposit the amount, in my opinion, in the facts and circumstances of the case, imposing such a condition when the applicant has already undergone this long period of custody as an undertrial, will be unfair. It is open for the investors/depositors to make appropriate application/s before the MPID Court to secure their deposits and for realization of their money out of the properties attached in accordance with law.

12. I must bear in mind the observations of the Hon'ble Supreme Court in the case of **Manish Sisodia vs. Central Bureau of Investigation**¹. Their Lordships in paragraph 27 held thus:-

¹ 2023 SCC OnLine SC 1393.

“**27.** However, we are also concerned about the prolonged period of incarceration suffered by the appellant Manish Sisodia. In *P. Chidambaram v. Directorate of Enforcement*, the appellant therein was granted bail after being kept in custody for around 49 days, relying on the Constitution Bench in *Shri Gurbaksh Singh Sibbia v. State of Punjab*, and *Sanjay Chandra v. Central Bureau of Investigation*, that even if the allegation is one of grave economic offence, it is not a rule that bail should be denied in every case. Ultimately, the consideration has to be made on a case to case basis, on the facts. The primary object is to secure the presence of the accused to stand trial. The argument that the appellant therein was a flight risk or that there was a possibility of tampering with the evidence or influencing the witnesses, was rejected by the Court. Again, in *Satender Kumar Antil v. Central Bureau of Investigation*, this Court referred to *Surinder Singh Alias Shingara Singh v. State of Punjab* and *Kashmira Singh v. State of Punjab*, to emphasise that the right to speedy trial is a fundamental right within the broad scope of Article 21 of the Constitution. In *Vijay Madanlal Choudhary* (supra), this Court while highlighting the evil of economic offences like money laundering, and its adverse impact on the society and citizens, observed that arrest infringes the fundamental right to life. This Court referred to Section 19 of the PML Act, for the in-built safeguards to be adhered to by the authorised officers to ensure fairness, objectivity and accountability,²² *Vijay Madanlal Choudhary* (supra), also held that Section 436A of the Codes can apply to offences under the PML Act, as it effectuates the right to speedy trial, a facet of the right to life, except for a valid ground such as where the trial is delayed at the instance of the accused himself. In our opinion, Section 436A should not be construed as a mandate that an accused should not be granted bail under the PML Act till he has suffered incarceration for the specified period. This Court, in

Arnab Manoranjan Goswami v. State of Maharashtra, held that while ensuring proper enforcement of criminal law on one hand, the court must be conscious that liberty across human eras is as tenacious as tenacious can be.”

13. The applicant is in custody for more than two years and nine months with no possibility of the trial concluding any time soon. The investigation is complete. The charge-sheet has been filed. There are no criminal antecedents reported against the applicant. The applicant is not a flight risk. Hence, the following order :-

ORDER

- (a) The application is allowed.
- (b) The applicant- Pankaj s/o. Bhagchand Challani in connection with C.R. No.3/2021 registered with Swargate Police Station, Pune, shall be released on bail on his furnishing P.R. Bond of Rs.1,00,000/- with one or more sureties in the like amount.
- (c) The applicant is permitted to furnish cash bail surety in the sum of Rs. 1,00,000/- for a period of 6 weeks in lieu of surety.
- (d) The applicant shall attend the Investigating Officer of Swargate police station, Pune, once in a month every first Monday of the month between 11.00 a.m. and 1.00 p.m. till

the trial concludes.

(e) 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.

(f) 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.

(g) The applicant shall surrender his passport, if any, to the investigating officer and if he does not have the passport, an affidavit to that effect shall be filed before the MPID Court.

(h) The applicant shall not leave the country without prior permission of the Investigating Officer.

(i) The applicant shall attend the trial regularly. The applicant shall co-operate with the trial Court and shall not seek unnecessary adjournments.

(j) The applicant to file an affidavit/undertaking in this Court within a period of two weeks from the date of his release affirming that he abides by all the statements that have been incorporated hereinabove on his behalf.

14. The application is disposed of.

15. The interim application is also disposed of.

16. Learned senior advocate Mr. Ponda requests that this order be stayed for a period of four weeks. The request is rejected.

(M. S. KARNIK, J.)