2024:BHC-AUG:15889

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

BAIL APPLICATION NO. 645 OF 2024
WITH
CRIMINAL APPLICATION NO. 1986 OF 2024
IN BA/645/2024

Mahesh Prakash Mungase
VERSUS
The State Of Maharashtra
...
Advocate for Applicant : Mr. S.J. Salunke h/f Mr. G.J. Pahilwan
APP for Respondent/State : Mr. S.M. Ganachari
Advocate for Applicants in APPLN/1986/2024 : Mr. D.R. Kale h/f Mr. Y.H. Lagad
...

CORAM : S.G. MEHARE, J.

DATED : JULY 26, 2024

PER COURT:-

1. Heard learned counsel for the applicant, learned APP for the State and learned counsel for the complainants/investors.

2. The applicant seeks bail in Crime No.129 of 2021 registered with Beed City Police Station, District Beed, for the offence punishable under Sections 420, 406, 120-B r/w 34 of the Indian Penal Code and Sections 3 and 4 of the Maharashtra Protection of Interest of Depositors (in Financial Establishments) Act, 1999 ('MPID Act' for short).

3. The applicant has been arrested on 28.11.2023. After his arrest, a detailed investigation was carried out. The investigation officer collected data about the property standing in his name.

4. Learned counsel for the applicant would submit that the applicant has been granted bail in other crimes. He would submit that there are a large number of witnesses, and the prosecution could not ensure a speedy trial, which is a fundamental right of the applicant under Article 21 of the Constitution of India. He would submit that he has roots at Shelgaon, Pune. Mere absconding of other co-accused is no ground to refuse the bail. The trial may take its time. He has furnished the details of the property at Tuljapur, which is about Rs.01,17,73,500/- as against the fraud of Rs.01,62,31,886/-. Besides the above property, he has other properties. The police have collected detailed information about the properties of the applicant. Section 4 of the MPID Act ensures the protection to the depositors by attaching the properties on default of return of deposits. Registering many similar crimes against the applicant is no grounds to refuse the bail. It is a failure of the business. Therefore, it could not be said that he intended to cheat the depositors. He undertakes that he will not transfer the property of the financial institution and will furnish the details to the investigation officer about another property which he has purchased in the name of his relatives or benami in the name of anybody. He submits that no purpose would be served by keeping the applicant behind bars.

5. Learned APP for the State and counsel for the investors have strongly opposed the application. They would submit that this is

an economic offence affecting the national economy. The applicant is a clever man who is involved in similar crimes that have been registered against him in different places. The process for the attachment of properties under Section 4 is in progress. They would submit that there is a great possibility of repeating the crime. To bolster his arguments, Learned APP relied on the judgment of the Hon'ble Supreme Court in the case of Tarun Kumar Vs. Assistant Director Directorate of Enforcement. Further, it has been argued that the poor and innocent investors should not be cheated in the future. They prayed to dismiss the application.

6. The pretrial detention of the applicant is to avoid the interference investigation. He should not tamper with the prosecution evidence. He should not flee away from trial. True, there are many cases registered against the applicant, but that may not be grounds for refusing bail. The prosecution must satisfy the Court; if the applicant has been granted bail, he will flee. The object of MPID Act is to protect the interest of the depositors in the financial establishment and matters relating thereto. Therefore, Section 4 has been incorporated, authorizing the authority to attach the property. The process under Section 4 has been initiated. Section 8 of the said Act also takes care of the attachment of property of mala fide transferees. It has been provided therein that where the assets available for attachment of a Financial Establishment or other person referred to in

section 4 are found to be less than the amount or value which such Financial Establishment is required to re-pay to the depositors and where the Designated Court is satisfied, by affidavit or otherwise, that there is reasonable cause for believing that the said Financial Establishment has transferred (whether before or after the commencement of this Act) any of the property otherwise than in good faith and for consideration, the Designated Court may, by notice, require any transferee of such property (whether or not he received the property directly from the said Financial Establishment) to appear on a date to be specified in the notice and show cause why so much of the transferee's property as is equivalent to the proper value of the property transferred should not be attached.

7. The case of Tarun Kumar (supra) was in connection with the offence under the Prevention of Corruption Act with Sections 420, 465, 467, 468 and 471 of the Indian Penal Code. The provisions of the Prevention of Money Laundering Act were applied in that case. The Hon'ble Supreme Court has dealt with the provisions of the Prevention of Money Laundering Act. The facts of that case were different. It seems that the bail was sought before filing the charge sheet. Here, the charge sheet has been filed. There are a large number of witnesses and documentary evidence. The trial would be based on the accounts and transfers. These transfers were to be examined whether those are with intent to play fraud with the investors. Speedy

trial is the fundamental right of the accused guaranteed under Article 21 of the Constitution of India. Every accused remains to be innocent unless he has been convicted. The prosecution should have some materials to satisfy the Court that the release of the accused is harmful and he may flee away. Nothing as such is with the prosecution. Evaluating the provisions of law and the fundamental right guaranteed under Article 21 of the Constitution of India, the Court is of the view that the trial may not be concluded in a reasonable period. Therefore, his incarceration would amount to a violation of fundamental rights guaranteed under Article 21 of the Constitution of India. However, the apprehension of the prosecution and the investors may be guarded by imposing certain conditions. No purpose would be served by keeping the applicant behind bars. Hence, the following order :

O R D E R

(i) Bail Application is allowed.

(ii) **Applicant,** Mahesh Prakash Mungase, be released on bail on furnishing P.B. and S.B. of Rs.1,00,000/- (Rupees one Lakh Only) with one or two solvent sureties of the like amount in the above crime, on the conditions that;

(a) The applicant shall not tamper with the prosecution witnesses and shall attend the trial on each and every date.

(b) The applicant shall furnish an undertaking that he should not transfer any of the property of the financial institution and disclose the purchase or transfer of the property of the financial institution in the name of his close relatives or friends.

(c) The applicant shall not leave the place of his residence without the leave of the Court.

(d) The applicant shall furnish his residential address and cell phone number with an undertaking that he will not change it till the trial is concluded.

(e) The applicant shall furnish his passport, if any, with the police station.

(f) The applicant shall not establish any more Financial Institutions and accept the deposits from any other or further deposits.

(iii) Criminal Application No.1986 of 2024 stands disposed of.

(S.G. MEHARE, J.)

Mujaheed//