IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

ANTICIPATORY BAIL APPLICATION NO. 23 OF 2024

Ramchandra Raoji Bhoye ..Applicant
Versus
The State of Maharashtra ..Respondent

WITH
ANTICIPATORY BAIL APPLICATION NO. 24 OF 2024

Bhaskar Kondaji Binnar ..Applicant
Versus
The State of Maharashtra ..Respondent

WITH
ANTICIPATORY BAIL APPLICATION NO. 25 OF 2024

Vishnu Balu Dinkar ..Applicant
Versus
The State of Maharashtra ..Respondent

Mr. Akshay Bankapur for Applicants in all ABAs.
Ms. Pallavi N. Dabholkar, APP for State/Respondent.

CORAM :- SARANG V. KOTWAL, J.
DATE :- 1 MARCH 2024

P.C. :-

1. All these three applications are decided by this common order because they arise out of the same registered offence i.e. C.R.No.I 377 of 2023, registered at Bhadrakali police

station, Nashik, on 08.11.2023, under sections 420 and 406 r/w. 34 of the I.P.C. Section 3 of the Maharashtra Protection of Interest of Depositors (In Financial Establishments) Act, 1999 (hereinafter referred to as 'MPID Act') is also added.

2. Heard Mr. Akshay Bankapur, learned counsel for the applicants and Ms. Pallavi Dabholkar, learned APP for the State.

3. The F.I.R. is lodged by one Akash Sonavane. He has stated that, he was in the business of supplying medicines. In 2022 he met one Sudhakar Londhe. He told the informant that, he was an agent of M/s. Shramsampada Nidhi Ltd. (hereinafter referred to as 'the company') and that if the informant invested daily with the company, he would get 5% interest over six months. The informant started investing Rs.500/- per day. The entry was made in the book of the company. He had got 5% interest. After a few days, Sudhakar told him that, if the informant worked as under agent with him, he could get 7% commission on the investments. The informant agreed to that proposal. On 25.03.2023, Sudhakar got a form filled from him as an Agent of the company. The informant

was given inducement of getting a four wheeler, a foreign tour and promotion. The informant started getting investments through his acquaintances, relatives and other business associates. On his efforts, about 100 investors invested through him. While accepting the investment, he accepted Rs.100/- as a part of share holding from the investors. Some of the investors got back the interest and the principal amount. However, from October 2023 the investors stopped getting their returns on maturity of their invested amounts. The company started avoiding making payments. The informant took some of the investors to the company's office at Dwarka, Nashik. The applicant Bhaskar Binnar was the Chairman and the other two applicants Vishnu Dinkar and Ramchandra Bhoye were the Directors. There was another Director Arun Malusare and the two core committee members Sudhakar Londhe and Deepak Nikam. All of them met the informant and others and promissed to start making payment of the dues. On 29.10.2023 Arun Malusare closed the office at Dwarka, Nashik, and absconded. The informant tried to call the applicant Binnar, and Sudhakar for returning the investments made by the investors, but he was given false promises. In fact, he was told to continue collecting investments. After a few days, they stopped receiving his calls. The informant, therefore, was convinced that the money was misappropriated. Therefore, he lodged this F.I.R. It mentions list of 80 investors and their investments. The total investment mentioned in the F.I.R. was Rs.20,78,300/-. The investigation started, however, the applicants and Malusare are absconding. The present applications for anticipatory bail are preferred by these three applicants.

4. Learned APP has filed affidavit in reply.

5. The learned counsel for the applicants submitted that the company was incorporated as per the provisions of Nidhi Rules, 2014. The business of the company was legitimate. The company was permitted to accept the investments. Everything was running smoothly. The applicants appointed Malusare for looking after the business and since then he started defrauding the company. Mr. Bankapur submitted that the entire fraud is played by Malusare, and by some of the agents who had received the

investments but had not deposited the same with the company's account. He submitted that the applicants themselves had given a complaint to the Police Inspector of Mumbai Naka police station on 02.11.2023. They had made allegations against Arun Malusare and Vaishali Dalvi. He submitted that the said complaint bears signature of the present first informant Akash. After this complaint to the police was made on 02.11.2023, within six days, the F.I.R. is lodged deliberately at Bhadrakali police station on 08.11.2023 making allegations against the applicants. The F.I.R. is lodged only to divert the allegations of misappropriation of funds committed by some of the agents. He submitted that the informant was aware of the fraud committed by Malusare; as is evident from his signature on the complaint filed by the applicants. Within a short period he had changed his stand to save his own skin.

6. Learned counsel relied on the supplementary statement of the first informant Akash, recorded on 10.11.2023. It is annexed to the affidavit in reply filed by the investigating agency. In that statement Akash has mentioned that on 24.05.2023 the offence was registered against the applicants

Bhaskar and Vishnu in respect of misappropriation of funds in the Dombivli branch of the company. At that time, the applicants Bhaskar and other Directors had authorised Arun Malusare to look after the daily affairs of the company. During that time, the company's account maintained with the Cosmos Co-Op. Bank was freezed by the police. Therefore, Malusare was accepting the investments in cash and he was carrying on the business in cash. He had not maintained the accounts of the investments. The applicants and other Directors came to know about it and, therefore, they appointed Samir Kalkot. Shri. Bankapur, therefore, submitted that, even the first informant was aware that the fraud was committed by Malusare, and the applicants had no role to play with him.

7. Shri. Bankapur referred to the statement of Vaishali Dalvi. She has stated that the company's branches were at Diva, Jawhar, Vikramgad, Shahapur, Kalyan and Ahamadnagar. She has stated that in May 2023, the applicant Bhaskar had issued an order and had given the authority to Arun Malusare to conduct the business. According to that letter, Malusare and Ramchandra

Bhoye were looking after the affairs of the branches. They had formed a core committee consisting of Deepak Nikam, Deepak Jadhav, Sudhakar Londhe and Manish Jadhav. There were two groups in that core committee. She has named 17 agents who used to collect the investments, but did not use to deposit the amount in the account of the company. She had referred to an incident dated 30.09.2023 when Sudhakar Londhe and the applicant Vishnu Dinkar had asked for the keys of the office but she had refused. He submitted that this statement shows that there was a dispute between the Directors of the company and Malusare; which also indicated that Malusare had committed that fraud. He, therefore, submitted that, from this statement itself it is clear that the applicants have not committed any fraud, and they have not received investments from the investors; which were misappropriated. The applicants are also the victims of the fraud committed by Malusare.

8. Learned APP opposed these submissions. She relied on the averments made in the affidavit in reply filed on behalf of the investigating agency. She submitted that the investigation has

revealed that, as of today, 753 victims' names were disclosed and the total fraud amount is to the tune of Rs.1,54,16,254/-. The affidavit mentions that the investigating agency had examined the software data of the company in respect of 14 agents. There were figures in respect of Pigmy collection, F.D. collection, R.D. collection and other miscellaneous account, and the total transactions were to the tune of Rs.1,69,06,490/-. The investigation has revealed that the company had maintained the account with the Cosmos Co.Op. Bank, Nashik. When the account was freezed, only Rs.14,721/- were found in the account. The money was withdrawn under the head "To Your Self". These withdrawals are from April 2023 up to September 2023 for the amount of Rs.73,83,035/-. The applicant Bhaskar had transferred Rs.3,35,000/- to his own account in March, April, May, August and September 2023. The applicant Vishnu had transferred Rs.1,35,000/- in August and October 2023. The applicant Bhoye had transferred Rs.50000/- in June 2023. She submitted that some of these transfers were made even prior to Malusare coming in the picture. Therefore, it cannot be said that Malusare was responsible for all these withdrawals. The affidavit mentions that the activities of the company had spread in the vicinity of Dombivali, Kalyan, Nashik, Neral, Shahapur, Vikramgad, Diva, Jawhar and Ahamadnagar. The five branches were almost closed by the applicants, but the business operations of the remaining branches were continued. During the course of investigation, it was revealed that around 18000 investors had invested their money in the company and the returns were not made during the period from 2018 to 2023. After 2020, the accounts of the company were not audited. There is a reference to the agreement dated 26.10.2023 between the applicants and Samir Kalkot. She submitted that the company was incorporated by the applicants. The schemes were floated by the applicants. The investors' money is lost. They tried to disassociate from the fraud by appointing Malusare and then appointing Kalkot. But many investors have lost the huge amount. Therefore, custodial interrogation of the applicant is absolutely necessary.

9. I have considered these submissions. After the investors' money was misappropriated, the applicants entered into

an agreement dated 26.10.2023 with Samir Kalkot. In that agreement, they have stated that, till the execution of that agreement, the business of the company was going on smoothly. The applicants were the Directors of the company and because of their personal difficulties and since the company was not in good financial state, they wanted to retire and, therefore, wanted to handover the company to a new person to conduct the business. There is a reference to Arun Malusare and Vaishali Dalvi. It is mentioned that, those two had not accounted for the money received between 06.06.2023 to 28.10.2023 and the responsibility was taken by Kalkot to get that account.

10. The MPID Act defines 'Fraudulent default by Financial Establishment'. Section 3 of the said Act reads thus:-

> "Any Financial Establishment, which fraudulently defaults any repayment of deposit on maturity along with any benefit in the form of interest, bonus, profit or in any other form as promised or fraudulently fails to render service as assured against the deposit, every person including the promoter partner, director, manager or any other person or an employee responsible for the management of or conducting of the business or affairs of such Financial Establishment shall, on conviction, be punished with imprisonment for a term which may

> extend to six years and with fine which may extend to one lac of rupees and such Financial Establishment also shall be liable for a fine which may extend to one lac of rupees."

11. From the above discussion, it is clear that the applicants' role and description falls well within the four corners of the definition of 'fraudulent default'. The applicants, as the Directors and Chairman, were liable to be prosecuted and convicted for commission of that offence. The investors had given their money in the schemes floated by the applicants. According to the applicants, Arun Malusare had committed that fraud. But he was appointed only in May 2023. As mentioned earlier, there are heavy withdrawals even prior to his appointment. The applicants had given complaints to the police on 06.11.2023, but they had not issued any public notice or had not advertised or had not taken any steps to spread awareness that the deposits collected by the agents were not deposited in the company's account. This goes to show that the applicants are not only directly involved, but they are hand in glove with Malusare and others in defrauding the said amount. The statement of Vaishali does not help the applicants' cause, because even Arun's appointment is shrouded in suspicion.

The entire scope of the offence is very wide. Many investors were cheated and, their money was misappropriated. It is absolutely necessary that the investigating agency gets an opportunity to have custodial interrogation of the applicants. The offence is quite serious. It's scope is wide. The involvement of the applicants' is clearly seen from the investigation carried out so far. In this view of the matter, protection U/s.438 of the Cr.p.c. cannot be granted to the applicants.

12. The applications are rejected.

(SARANG V. KOTWAL, J.)