IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

ANTICIPATORY BAIL APPLICATION NO.759 OF 2024

Hanumant Tukaram More & Ors. .... Applicant

versus

State of Maharashtra .... Respondent

…....

- Mr. Hrishi D. Ghorpade a/w Omkar Tole i/b. Siddharth Mehta, Advocate for Applicant.
- Ms. Mahalakshmi Ganapathy, APP for the State/Respondent.

CORAM : SARANG V. KOTWAL, J.
DATE : 19th MARCH, 2024

P.C. :

1. The Applicant is seeking anticipatory bail in connection with C.R.No.92/2024, dated 27/01/2024, registered with Bharati Vidyapeeth Police Station, Pune City, under sections 406, 409, 420 r/w 34 of the Indian Penal Code and under sections 3 and 4 of the Maharashtra Protection Of Interest Of Depositors Act.

2. Heard Mr. Hrishi D. Ghorpade, learned counsel for the Applicant and Ms. Mahalakshmi Ganapathy, learned APP for the State.

3. The FIR is lodged by one Digambar Gaikwad. He has stated that on 25/08/2022, he met one Namdeo Gaikwad and his wife Rajashree. They told him that if he invested in Forex Trading, he would get 20% amount per month. They called him to show their setup at their native place. The informant went there on 26/08/2022. Namdeo and Rajashree gave information about Forex Trading Scheme. After about 8 days, they called the informant to Satara in their office. There, the informant was introduced to the Applicant Nos.1, 2 and 3. The informant was told that these three Applicants i.e. Hanumant More, Anil Chavan and Rupali Chavan were the owners of M/s. Creation Traders & Developers LLP (for short 'Creation Traders') and that they would give 20% to 25% returns per month on the investment. Getting impressed with the scheme, the informant decided to invest in that scheme. The FIR mentions that the Applicants Hanumant and Rupali met him in September 2022 and encouraged him to invest more in Forex Trading. The informant's friends who are named in the FIR also invested in that Creation Traders. The FIR mentions that about 20 other

people invested Rs.3,25,08,000/- with the said financial institution. After that, they did not receive any returns. The investors were told that the investment was under loss and for that further amount of Rs.2 Crores was necessary to convert it into profit. Therefore, the informant and others paid Rs.32 lakhs more and subsequently Rs.50 lakhs were transferred in the account of one Suresh Kumbhar at the instance of the accused. However, ultimately, nothing was returned and all of them lost their amount. On this basis, the FIR is lodged.

4. Learned counsel for the Applicants made the following submissions -:

The persons, who had invested the amount, are not the investors, but they were conducting their own business. The Applicants' firm was only helping them in converting Rupees into Dollars, so that the amounts could be invested in foreign exchange trading. He submitted that their company had received about Rs.2 Crores, out of which, Rs.1 Crore were refunded. The entire transaction is in the nature of share trading and it is not criminal offence. The complainant himself was an agent who was collecting money and there are complaint lodged against the first informant Digambar in various Courts and police stations. Learned counsel relied on the complaint dated 04/01/2024 by one Pradip Gaikwad against the first informant Digambar Gaikwad, wherein it is alleged that at the behest of the first informant Digambar, in this case had invested his money which he had lost. Learned counsel therefore submitted that to get over these allegations, a false FIR is lodged against the Applicant and others.

5. Learned APP opposed these submission. On instructions of the investigating agency she submitted that as of today, 21 victims have come forward and the total amount which they had invested and lost, amounted to Rs.33 Crores. The majority of the amount is deposited in the account of the said firm Creation Traders. Some substantial amount has gone in some private accounts at the behest of the Applicants. She submitted that the Applicant Rupali and the Applicant Shashikala are the partners of the said financial institution. The Applicant No.1 Hanumant's wife is also a partner. The Applicant

No.2 is the husband of the Applicant No.3 Rupali. All of them have controlled the said financial establishment. She produced the statements of some of the victims before me.

6. I have considered these submissions. The Financial Establishment is defined under section 2(d) of the MPID Act, which reads thus:

> *"2(d) "Financial Establishment" means any person accepting deposit under any scheme or arrangement or in any other manner but does not include a corporation or a co-operative society owned or controlled by any State Government or the Central Government or a banking company defined under clause (c) of section 5 of the Banking Regulation Act, 1949 (10 of 1949)."*

7. The offence under section 3 i.e. Fraudulent Default by Financial Establishment, reads thus:

> *"3. **Fraudulent Default by Financial Establishment -** 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."*

8. The victims' statements are similar. They have described as to how they were induced into investing in the scheme of Creation Traders. Some such victims are Sanjay Thorat, Babita Bhotre, Pravin Mule, Dhanashree Patil etc. These victims have stated their grievance in the similar manner as is stated in the FIR. Therefore, the first informant is not the only victim and hence even if there are complaints against him, the investigation pertains to the loss suffered by the other victims as

well. Therefore, the allegations against the Applicants and their firm Creation Traders, squarely falls within the meaning of financial establishment and fraudulent default by financial establishment. I do not find substance in the submissions that those investors were doing their own business and the Applicants' firm was merely converting Rupees into Dollars and had played no part whatsoever. From the material available with the investigating agency, it is quite clear that the offence as mentioned earlier under MPID Act as well as under the IPC, are made out. The amount involved is huge. Number of victims is also quite large. The money trail has to be traced. Custodial interrogation to find out the Applicants' exact role is also necessary. In this view of the matter, no case for grant of protection u/s 438 of Cr.P.C. is made out. The application is rejected.

(SARANG V. KOTWAL, J.)