

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO. 1046 OF 2023

SANTOSH
SUBHASH
KULKARNI

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Ravi Shantaram Gurav ...Applicant
Versus
The State of Maharashtra ...Respondent

Mr. Shon Gadgil, a/w Amit Bhate, for the Applicant.
Mr. S. R. Aagarkar, APP for the State/Respondent.
API P. B. Bakale, Tilaknagar Police Station, present.

CORAM: N. J. JAMADAR, J.
DATED: 8th APRIL, 2024

PC:-

1. Heard the learned Counsel for the parties.
2. This is an application for bail in CR No.52 of 2022 registered with Tilaknagar Police Station, Thane, for the offences punishable under Sections 406 and 420 read with Section 34 of the Indian Penal Code, 1860 ("the Penal Code") and Section 3 of the Maharashtra Protection of Interest of Depositors (In Financial Establishments) Act, 1999 ("MPID Act, 1999").
3. The applicant and his wife Iffy, the co-accused, have allegedly induced the first informant Prasad Raut and other investors to invest an amount by making a representation that the applicant would, in turn, invest the amount in the share

market and the investors would get lucrative returns. Neither the principal amount invested was refunded, nor the return promised thereon was paid. In all, the applicant and co-accused allegedly deceived unsuspecting investors to the tune of Rs.94,25,000/-.

4. The learned Counsel for the applicant submitted that the applicant has been in custody since 5th May, 2022. The applicant has no property. However, the brother of the applicant, who owns Flat No.5, Building No.4, Sarla Nagar Cooperative Housing Society Ltd., the value of which is in the range of Rs.45,00,000/-, has filed an affidavit to secure the interest of the investors under the provisions of MPID Act, 1999. Therefore, considering the period of incarceration, the applicant be released on bail.

5. The learned APP resisted the prayer for bail. It was further submitted that in the event the Court is inclined to consider the prayer for bail, the brother of the applicant, who has filed the affidavit, be put to terms.

6. In paragraph 5 of the Affidavit filed by the brother of the applicant, the following statement is made:

“5. That the present market value of the said immovable property is not less than Rs.75 lacs. It is submitted that the deponent undertakes to hand over the said property for attachment and liquidation under the provisions of MPID Act

as and when directed by the learned Trial Court. It is submitted that there is no encumbrance or legal hindrance of any nature over the said immovable property as described in paragraph 3 for the purpose of securing the interest of the investors under the provisions of MPID Act. The present affidavit may kindly be considered for the purpose of granting bail to the applicant in the present matter.

7. Today the learned Counsel for the applicant has tendered a valuation report, which values the said flat at Rs.47,18,000/-. The learned Counsel further submitted that the said flat is mortgaged to IDBI Bank and approximately Rs.13,00,000/- is outstanding.

8. The applicant has been in custody for almost two years. It is very unlikely that the trial can be concluded within a reasonable period. Having regard to the punishment, which the offences under Section 420 of the Penal Code and Section 3 of the MPID Act entail, further detention of the applicant does not seem warranted. I am, therefore, impelled to exercise discretion in favour of the applicant.

9. Since the brother of the applicant has voluntarily filed an affidavit undertaking to secure the interest of the investors, till the conclusion of the trial, no further third party interest be created over Flat No.5. The statement made in the affidavit is accepted as an undertaking to the Court.

10. Hence the following order:

: O R D E R :

- (i) Application stands allowed.
- (ii) The applicant be released on bail in CR No.52 of 2022 registered with Tilaknagar Police Station, Thane, on furnishing a P.R. Bond in the sum of Rs.50,000/- with one or more sureties in the like amount to the satisfaction of the learned Magistrate.
- (iii) The applicant shall mark his presence at the concerned police station on the first Monday of every month between 10.00 am. to 12.00 noon till conclusion of the trial.
- (iv) The applicant shall not tamper with the prosecution evidence. 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.
- (v) 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.

- (vi) The applicant shall regularly attend the proceedings before the jurisdictional Court.
- (vii) By way of abundant caution, it is clarified that the observations made hereinabove are confined for the purpose of determination of the entitlement for bail and they may not be construed as an expression of opinion on the guilt or otherwise of the applicant and the trial Court shall not be influenced by any of the observations made hereinabove.

Application stands disposed.

[N. J. JAMADAR, J.]