Sayali Upasani

SAYALI DEEPAK UPASANI
Digitally signed by SAYALI DEEPAK UPASANI
Date: 2024.04.25 18:32:20 +0530

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO.- 3176 OF 2023
WITH
INTERIM APPLICATION NO. 386 OF 2024

Shreekumar Shankara Pillai … Applicant

Vs.

The State of Maharashtra ...Respondent

Mr. Suparnaraj Dhotre i/b E.A. Sasi, for Applicant in BA.
Ms. Supriya Kak, APP for State/Respondent.
Mr. Bhushan Bendre, for Intervener/Applicant in IA.

CORAM:- N. J. JAMADAR, J.
DATED:- 24th APRIL, 2024.

ORDER:-

1) The applicant, who is arraigned in MPID Special Case No. 350 of 2022, arising out of CR No. 137 of 2022, initially registered with Mahatma Phule Chowk police station Kalyan, and subsequently investigated by Economic Offices Wing, Thane, for the offences punishable under Sections 420 and 409 of the Indian Penal Code, 1860 and Section 3 of the Maharashtra Protection of Interest of Depositors (In Financial Establishments) Act, 1999 ('the Act, 1999'), has preferred this application to enlarge him on bail.

2) The gravamen of indictment against the applicant is that the applicant was running jewellery outlets under the name and style of "M/s. S. Kumar Gold and Diamond" in Maharashtra and other States. One of the jewellery stores was at Bail Bazaar, near D-Mart, Kalyan (W). In the said store in addition to sale and purchase of gold, the applicant had floated various schemes like Monthly Chit Fund Scheme, Fixed Deposit Scheme, and Special Gold Savings Scheme offering lucrative returns. When the customers approached M/s. S. Kumar Gold and Diamond, the salesmen, at the instance of the applicant, would persuade the customers to invest in any of the aforesaid Schemes offering lucrative returns of 15 to 18%, on the amount so invested.

3) Smt. Roshan Krushnakant Gavit, the first informant, was one of such customers. She was induced to invest the amounts in Special Gold Savings Scheme, under which the first informant was to deposit 24 monthly instalments and at the end of the maturity period, she would get back the money along with two additional instalments to be paid by M/s. S. Kumar Gold and Diamond or gold equivalent to the value of 26 instalments. The first informant and her mother invested a sum of Rs.2,50,000/-.

4) In the month of October, 2021, the first informant realised that the said outlet at Kalyan was shut. Inquiries revealed that the stores of M/s. S. Kumar jewellers across Maharashtra and other States were also shut.

Further inquiry revealed that apart from the first informant, there were numerous other investors who were deceived by inducing them to part with the amount in one or the other Schemes floated by the applicant. The first informant thus lodged a report that the first informant and other investors were defrauded to the tune of Rs.1,54,24,539/.

5) In the meanwhile, crimes were registered against the applicant at Mulund, Nayanagar, Goregaon and LT Marg Police Stations. The applicant came to be arrested. The investigation in the instant crime revealed that the applicant had deceived in all 1507 investors and they were defrauded to the tune of Rs.70,55,70,554/-. While the applicant was in custody in another case, the applicant came to be arrested in this case on 13th September, 2022. Post completion of investigation, charge-sheet has been lodged for the offences punishable under Sections 420, 406 and 409 of the Indian Penal Code, 1860 and Section 3 of the MPID Act, 1999.

6) The learned Special Judge declined to exercise discretion in favour of the applicant opining, *inter alia,* that though the applicant was released on bail in other four cases, the applicant was not entitled to bail in this case. In the cases wherein the applicant was released on bail, he had offered security to protect the interest of the investors therein. The security offered in the instant case i.e. the property situated at Nerul, Navi Mumbai was already encumbered and otherwise appeared to be

inadequate to protect the interest of the investors having regard to the magnitude of the fraud. The applicant has, thus, preferred this bail application.

7) In the instant application also, the applicant has filed an affidavit-cum-undertaking offering security of the property bearing Survey No. 47/2, Ward C, Block No. 20, Rajapalayam Town, Virudhunagar District, Tenkashi Road, Municipal Ward No. 16, within the municipal limit of Rajapalayam, Tamil Nadu, admeasuring 373.2335 sq. meters with a commercial structure standing thereon (Rajapalayam Property). The approximate value of Rajapalayam property is stated to be Rs.23,47,65,500/-. A valuation report of Er. M. Azhagu Ponniah, a registered Valuer, is annexed to the undertaking.

8) An affidavit-in-reply is filed on behalf of the State opposing the prayer for bail. Referring to the four crimes already registered against the applicant and the number of investors, who have been duped as well as the amount they have been defrauded of, the respondent contends that the applicant does not deserve to be enlarged on bail. It is alleged that the applicant has acquired a number of properties out of the proceeds of crime and has sold about 11 properties to defeat legitimate claims of the investors.

9) An Additional Affidavit cum undertaking came to be filed by the applicant dated 7th December, 2023 to which an additional affidavit-in-reply has also been filed.

10) I have heard Mr. Suparnaraj Dhotre, the learned Counsel for the applicant, Ms. Supriya Kak, the learned APP, and Mr. Bhushan Bendre, the learned Counsel for the Intervener/Applicant in IA No. 386 of 2024.

11) Mr. Dhotre submitted that the prosecution has inflated both the number of investors as well as the amount for which they have allegedly been defrauded of by clubbing the amount of investors in all the five crimes registered against the applicant. It was submitted that in the rest of the crimes, the jurisdictional Court was persuaded to grant bail as the applicant had offered adequate security. Thus, the amount covered by those cases cannot be clubbed with the amount involved in this crime.

12) Mr. Dhotre laid emphasis on the fact that in the FIR, the first informant alleges that the first informant and other investors were deceived to the tune of Rs.1,54,24,539/- only. Mr. Dhotre further submitted that an audit, carried out by an independent auditor, of the voluminous record, including the receipts which the applicant had allegedly issued after receiving the amount from the investors, would reveal that the total amount covered by the instant case would be in the range of Rs.11,20,00,000/- only. The applicant is offering security of the property the value of which is more than Rs.23 Crores. The applicant is 69 years of age. Thus, the applicant be enlarged on bail.

13) Ms. Kak stoutly resisted the prayer for bail. It was submitted that the applicant had deceived hundreds of unsuspecting investors. Apart from the instant case, there are four other crimes in which the applicant has been arraigned. The property which the applicant had offered by way of security, has already been mortgaged. Even in respect of the Rajapalayam property, there is a serious allegation of having usurped the said property by illegal means. Therefore, having regard to the magnitude of the fraud, the applicant does not deserve to be released on bail.

14) Ms. Kak placed reliance on the statements of the witnesses, which indicate that the applicant had deceived them and offered property in lieu of return on the investments.

15) Mr. Bendre also strongly opposed the prayer for bail. It was submitted that the applicant has criminal antecedents. Mr. Bendre supplemented the submissions of the learned APP. In the event the applicant is released on bail, there is an imminent threat of the applicant fleeing away from justice. Therefore, the applicant does not deserve to be enlarged on bail.

16) Prima facie, there is material on record to indicate that by floating various Schemes, the applicant had induced hundreds of investors to invest the amounts in one or the other Scheme. It seems that by offering lucrative returns, unsuspecting persons were induced to part with money. The applicant neither returned the invested amount, nor paid the return thereon as agreed.

17) Mr.Dhotre's attempt to canvass a submission that on account of the exigency of the situation which arose due to COVID-19 pandemic, the applicant could not honour the commitment. However, there was no intent to deceive the investors. In the backdrop of the magnitude of the fraud and the number of investors, the submission does not merit countenance.

18) Mr. Dhotre's, endeavour to urge that the offence may not fall within the tentacles of Section 3 of the MPID Act, 1999, also does not deserve elaborate consideration, at this stage. That would essentially be a matter for trial.

19) The question that warrants consideration is, whether the applicant deserves to be enlarged on bail, even if the Court proceeds on the premise that a strong prima facie case is made out against the applicant.

20) Few factors bear upon the exercise of discretion. One, in the rest of the four crimes, the jurisdictional Courts have released the applicant on bail, albeit in some cases on the strength of security offered by the applicant. Two, the applicant has been in custody for almost 21 months. Investigation is practically complete for all intent and purpose.

Three, the applicant claims to be 69 years of age. Four, the applicant proposes to offer security of a property at Rajapalayam, which the applicant claims to be unencumbered and valued in excess of Rs.23 crores.

21) As regards the last factor, there is a controversy over the amount for which the investors have been defrauded of, in the instant crime. The prosecution alleges that the number of investors deceived in the instant crime is 1507 and the total defrauded amount is Rs.70,55,70,554/-. In the gist of the accusation against the applicant (pg 37), the said allegation follows the reference to the four other crimes registered against the applicant.

22) At this stage, the Court may not delve into the claim of the applicant based on the audit report that the maximum claim of the investors in the instant case would be in the range of Rs.11,20,00,000/- only. However, prima facie, the number of investors in the instant crime and the quantum of the amount they have been defrauded of, appears to be in the arena of controversy.

23) In the additional affidavit-in-reply filed on behalf of the State, it is contended that the valuation of Rajapalayam property is in the range of Rs.14,59,34,808/- only and not Rs.26 Crores as claimed by the applicant. As noted above, the fact that there are allegations of usurpation of the said property by the applicant by illegal means, is also adverted to in the affidavit.

24) Mr. Dhotre submits that the allegation is false and has already been repelled by an order passed by the Madras High Court in W.P. (MD) No. 13718 of 2022 and W. M. P. (MD) No. 9740 of 2022, instituted at the instance of the said person.

25) The situation which thus emerges is that the Rajapalayam property prima facie appears to be unencumbered and valued, in the assessment of the respondent, at 14,59,00,000/-. Prima facie, there does not appear to be any impediment for the applicant to offer the said property by way of security.

26) As the applicant has been released on bail in rest of the crimes and the personal attributes, like age and health conditions, are such that further detention of the applicant may not be warranted, I am persuaded to exercise discretion in favour of the applicant.

27) Hence, the following order:-

: O R D E R :

(i) Application stands allowed.

(ii) The applicant be released on bail in MPID Sepcial Case No. 350 of 2022, arising out of CR No. 137 of 2022, registered with Mahatma Phule Chowk police station, for the offences punishable under Sections 420 and 409 of the Indian Penal

Code, 1860 and Section 3 of the Maharashtra Protection of Interest of Depositors (In Financial Establishments) Act, 1999, on furnishing a P.R. Bond in the sum of Rs.2.00,000/- with one or two sureties in the like amount to the satisfaction of the learned trial Court.

(iii) The applicant shall mark his presence at EOW, Thane on the first Monday of every alternate month between 11.00 am. to 1.00 pm. for a period of two years or till conclusion of trial, whichever is earlier.

(iv) The applicant shall not tamper with the prosecution evidence and/or give threat or inducement to the first informant and any of the persons acquainted with the facts of the case.

(v) The undertakings given by the applicant to offer security of Rajapalayam property and Nerul property (subject to prior encumbrance) in the affidavit cum undertakings dated 21st September, 2023, affidavit cum undertaking dated 7th December, 2023 and additional affidavit of the applicant dated 12th February, 2024 are accepted as undertakings to the Court.

(vi) The applicant shall not create further third party rights in Rajaplayam as well as Nerul properties till the disposal of the MPID Special Case No. 350 of 2022.

(v) The undertakings of the applicant that he has no objection to attach and sale those properties in accordance with the provisions contained in MPID Act, 1999 also stand accepted as the undertakings to the Court.

(vi) The applicant shall not leave the jurisdiction of MPID Court without prior permission of MPID 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.

(viii) The Bail Application stands disposed.

(ix) In view of disposal of Bail Application, Interim Application also stands disposed.

[N. J. JAMADAR, J.]