2024:BHC-AS:19264

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
BAIL APPLICATION NO.3756 OF 2023

Avinash s/o Vinod Suryavanshi ... Applicant
versus
The State of Maharashtra ... Respondent

Mr. K.N.Shermale, for Applicant.
Mr. S.R.Aagarkar, APP for State.

CORAM: N.J.JAMADAR, J.

DATE : 22 APRIL 2024

P.C.

1. Heard the learned Counsel for the parties.

2. The applicant, who is arraigned in C.R.No.108 of 2023 registered with Mumbai Naka Police Station, Nashik, for the offences punishable under Sections 120B, 406, 409, 420 of the Indian Penal Code and Sections 3 and 4 of the Maharashtra Protection of Interest of Depositors (in Financial Establishments) Act, 1999, has preferred this application to enlarge on bail.

3. The gravamen of indictment against the applicant is that the applicant is the director of Adishakti Fortune Solutions LLP Co., Trade Junction and Mahashaktimaya Urban Nidhi Ltd. The applicant represented that he was trading in shares. The applicant proclaimed that he had gained reputation as a successful trader in the share market and started various deposit schemes, in the name of the aforesaid companies. Based on the aforesaid representations made by the applicant that the

amount invested with the applicant's companies would double in 11 months, the first informant – Pradeep Mandal, was induced to invest the amounts over a period of time. Eventually, the first informant and his relatives invested a sum of Rs.20 Lakhs. After initial returns, since the month of September 2022, the applicant stopped paying returns/interest on the invested amount. Later on, the applicant started to give evasive replies. Inquiries revealed that the applicant had deceived many investors. Hence, the first informant lodged report.

4. During the course of investigation, it transpired that that the applicant and the co-accused had deceived hundreds of unsuspecting investors. As many as 183 investors were defrauded to the tune of Rs.7,66,30224/-.

5. Mr. Shermale, learned Counsel for the Applicant, submitted that the offence under Section 409 of the Penal Code cannot be said to have been prima facie made out. Secondly, in the facts of the case, it was submitted that the provisions of the Maharashtra Protection of Interest of Depositors (in Financial Establishments) Act, 1999 are not attracted as it is intended to secure the interest of small depositors. Reliance was placed on a decision of the Supreme Court in the case of **State of Maharashtra v/s. Avinash**[1].

6. It was submitted that, at this stage, when the investigation is complete for all intent and purpose, further detention of the applicant as an under-trial prisoner

1 (2017) 16 SCC 735

is not at all warranted. It was also submitted that having regard to the nature of the accusation, it is unlikely that the trial can be concluded within a reasonable period. Therefore, further detention of the applicant would amount to pre-trial punishment. Reliance was placed on a decision of the Supreme Court in the case of **Sanjay Chandra V/s. CBI**[2]. It was further submitted that co-accused Bhausaheb Patil and Dnyaneshwar Wagh, in whose accounts the amounts were transferred from the accounts of the abovenamed companies, have been granted bail by the learned Special Judge. Therefore, on parity of reasoning, the applicant is also entitled to same dispensation.

7. As against this, Mr. Aagarkar, learned APP submitted that the applicant is the principal character in the fraud. The companies were floated by the applicant. Unsuspecting investors were made to deposit the amounts in the accounts of the applicant and those companies. As the investigation has revealed that 238 depositors were defrauded to the tune of Rs.12,84,34,113/- by the applicant, he does not deserve exercise of discretion.

8. I find substance in the submissions of the learned APP. The claim for parity with Bhausaheb Patil and Dnyaneshwar Wagh does not merit countenance as the learned Special Judge has recorded that they were not the directors of the companies and the material indicated that the investors had paid the amounts pre-

2 (2012) 1 SCC (Cri) 26

dominantly to the applicant.

9. Prima facie, the applicant seems to have floated companies and induced hundreds of persons to invest the amount by making false representations of lucrative returns. As the fraudulent representations were made and the investors were deceived to part with their lifes savings in a systematic manner by issuing deposit receipts, the offence clearly falls within the dragnet of Section 3 of the MPID Act, 1999. The role of the applicant of being a principal confederate in the conspiracy to defraud innocent investors, is borne out by the material on record.

10. In the aforesaid view of the matter, the applicant does not deserve exercise of discretion.

11. Hence, the following order :

ORDER

(i) The application stands rejected.

(ii) 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 co-accused and the trial Court shall not be influenced by any of the observations made hereinabove.

(N.J.JAMADAR, J.)