

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CRIMINAL APPELLATE JURISDICTION****CRIMINAL APPEAL (ST.) NO.3450 OF 2024**

Mohammed Azam Abdul Aziz Khan

... Appellant

V/s.

The State of Maharashtra

... Respondent

Mr. Nooman A. Shaikh for Appellant.

Ms. Geeta N. Sharma, APP for Respondent-State.

**CORAM : A. S. GADKARI AND
SHYAM C. CHANDAK, JJ.****DATE : 21st February 2024****P.C. :**

1) Appellant-accused in M.P.I.D. Case No.2/2016 has preferred the present Appeal under Section 11 of the Maharashtra Protection of Interest of Depositors (In Financial Establishments) Act, 1999, seeking deletion of following sentence from para No.16 of the impugned Order dated 16th September 2023 passed below Exhibit 116.

The said sentence/portion from para-16 reads as under :-

“It is also seen from the say filed by accused Tarique Shaukat Chunawala and Spl.PP, accued Mohammed Azam Khan has accepted his liability of Rs.34 Crores before Hon’ble High Court in bail application by filing affidavits and by giving guarantee of these properties.”

2) Learned Advocate for the Appellant submitted that, the

Appellant never gave such 'guarantee' to the property involved in the crime for repayment of alleged defalcated amount of Rs.34 Crores. He submitted that, Appellant was the Director of Ionic Realty (Eco City) Pvt. Ltd., and in his capacity as a director had filed the said Affidavit and not in his personal capacity. Therefore the observation made by the trial Court as stated in para-16 of Order passed below Exhibit 116 is not in consonance with the Affidavit filed by the Appellant dated 12th October 2015 in Criminal Anticipatory Bail Application No.1389 of 2015. He therefore prayed that, the said portion and in particular the word 'guarantee' thereof may be deleted from the said Order.

3) After perusing the record, we are not in an agreement with the contentions raised by the learned Advocate for the Appellant that, the Affidavit dated 12th October 2015 filed in Criminal Anticipatory Bail Application No.1389 of 2015 was filed by Appellant as a director of said company, for securing pre-arrest bail. In paras-3 and 4, of the said Affidavit, the Appellant has stated as under :-

"3. I say that in all together there were 1400 investors/flat purchasers from whom I have received an amount of Rs.38 crores for the above mentioned project.

4. I say that the total liability in respect of the above mentioned project is Rs.38 crores at my instances and the same has been admitted by me."

3.1) In para-6, the Appellant had undertaken to pay a sum of Rs.7,48,31,050/- in installments to the investors.

3.2) It is thus an admitted fact on record that, Appellant has accepted the liability to pay Rs.34 crores in the said crime. It appears from the pleadings and the arguments advanced across the bars that, the Appellant now wants to change his stance, to suit his convenience and to shrug off his responsibility accepted by him on solemn affirmation in the said Affidavit dated 12th October 2015.

4) After perusing the record, we are of the considered view that, the trial Court has not committed any error in incorporating the said portion in the impugned Order.

5) Appeal is devoid of merits and is accordingly dismissed

(SHYAM C. CHANDAK, J.)

(A.S. GADKARI, J.)