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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

**BAIL APPLICATION NO.1399 OF 2024**

Pritish Dayaram Mungmode ...Applicant
vs.
The State of Maharashtra ...Respondent

Mr. Mahesh Vishwakarma a/w. Ms. Gauri Bandre, Mr. Nachiket Chandurkar i/b. Ms. Naina Sharma, for the Applicant.
Mr. Swapnil Sangle i/b. Mr. Prajit Sahane, for the Complainant.
Mr. A.A. Naik, APP, for the Respondent/State.

**CORAM : N. J. JAMADAR, J.**
**DATE : NOVEMBER 25, 2024**

**P.C.:**

1. The applicant, who is arraigned in C.R. No. 21 of 2023 registered with EOW, Unit V, Mumbai (initially registered at Worli police station vide C.R. No. 332 of 2023) for the offences punishable under sections 406, 409 and 420 read with 34 of the Indian Penal Code, 1860 (the Penal Code), has preferred this application to enlarge him on bail.

2. The gravamen of indictment against the applicant and the co-accused is that during the period January, 2022 to December, 2022 the applicant and the co-accused Shreyash Solao (A2) induced Abhijeet Pawar, the first informant, Smt. Saroj Bhosale-Naik, Rajesh Kothari and Dr. Sonal Pawar, the wife of the first informant, to invest amounts by making false representations that the said funds would be utilized to purchase the scrap from the factory premises of

Khaitan Chemicals and Fertilizers and Damodar Valley Corporation, and the sale of the said scrap would fetch lucrative returns. The first informant and the above named victims were thus induced to invest an amount of Rs. 18.20 Crores. The applicant and the co-accused neither returned the amount nor paid the return thereon, as promised. The first informant and the victims realized that they were duped by making false representations.

3. At the outset, Mr. Vishwakarma, the learned counsel for the applicant, submitted that this Court was persuaded to grant pre-arrest bail to Shreyas Solao (A2) by an order dated 7$^{th}$ October, 2024, albeit in view the settlement of the dispute between the first informant and Shreyas Solao (A2). However, while deciding the said application, this Court has observed that there was material to show that the amounts invested by the investors were transferred to the accounts of the companies from whose premises the scrap was to be lifted and, prima facie, it appeared that the initial transaction was not fraudulent. These observations, according to Mr. Vishwakarma, squarely govern the case of the applicant as well.

4. Mr. Vishwakarma laid emphasis on the fact that the transfer of the amount invested by the investors to the accounts of the companies, from whose premises the scrap was to be lifted, was through the banking channels. In fact, upon the termination of the

contract by Damodar Valley Corporation, M/s. Maa Maihar Alloys Ltd., the consortium partner of the company, of which the applicant was a Director, had filed Writ Petition (St.) No. 3887 of 2024 before the High Court of Jharkhad at Ranchi, which came to be disposed of with liberty to the petitioner to raise the grievance under the alternate dispute resolution mechanism.

5. Moreover, the applicant has been in custody since 27th June, 2023. Investigation is complete for all intent and purpose. Charge sheet was lodged on 20th September, 2023. Therefore, further detention of the applicant as an under trial prisoner would assume the character of pre trial punishment.

6. In opposition to this, Mr. Naik, the learned APP, strongly resisted the prayer for bail. It was submitted that there are statements of the witnesses, especially Ramesh Sharma, the then Dy. General Manager, Khaitan Chemicals company, to the effect that the applicant was supplied the scrap material. Yet, the applicant did not share the profits with the first informant and the victims, as promised. Reliance was also sought to be placed on the statement of Manisha Meshram who was looking after the accounts of M/s. Advita Iron & Steel Pvt. Ltd., of which the applicant was a Director. The said witness stated that the applicant had obtained the investment from the first informant, Smt. Saroj Bhosale-Naik and

Rajesh Kothari to the tune of Rs. 11 Crores. Therefore, having regard to the quantum of the amount involved in the fraud, the applicant does not deserve to be enlarged on bail.

7. Mr. Sangle, learned counsel for the first informant, supplemented the submissions of the learned APP. It was urged that the first informant has entered into the settlement with Shreyas Solao (A2) upon the latter satisfying the claim of the first informant. That does not entitle the applicant to seek regular bail as there are grave allegations against the applicant.

8. I have given careful consideration to the submissions canvassed across the bar. I have also perused the statements of the first informant and the investors/victims.

9. The gravamen of the indictment against the applicant and co-accused is that they induced the first informant and the victim to invest the amount by making promises of lucrative returns. The amounts of the investors were invested through banking channels. Prima facie, there is, material to indicate that the applicant and the co-accused had, in turn, transferred the amounts received from the investors to the accounts of the companies, from whose premises the scrap was to be lifted. The statement of Ramesh Sharma, the Dy. General Manager of Khaitan Chemicals and Fertilizers indicates that Advita Iron & Steel Pvt. Ltd., had deposited the amount of Rs. 6

Crore, between January, 2022 to May, 2022. Subsequently, a tri party agreement was executed between Advita Iron & Steel Pvt. Ltd, Khaitan Chemicals and Fertilizers and Popular Espat Industries Pvt. Ltd., of which also the applicant was a Director, and, thereafter, Popular Espat Industries Pvt. Ltd., transferred a sum of Rs. 3,18,50,000/- to the account of Khaitan Company. He further states that, as against the said investment, goods worth Rs. 5,44,11,610/- were delivered and the balance amount was returned, by way of demand draft, at the instance of police.

10. The fact that the transaction with Damodar Valley Corporation fell through, on account of failure of the consortium, comprising the applicant's company, to deposit the balance amount, becomes evident from the order passed by the High Court of Jharkhad at Ranchi, in Writ Petition No. 3887 of 2022. It appears that, upon such failure, the sale was cancelled on 1st August, 2022 and deposit amount of Rs.27,38,25,726/- was forfeited.

11. Thus, at this stage, there is, prima facie, material to show that the applicant and the co-accused had transferred the amounts to the accounts of the companies, from whose premises the scrap was to be lifted. The prosecution now alleges that, the complicity of the applicant consists in not refunding portion of the profits to the first informant and the victims. This failure, prima facie, does not render

the initial transaction fraudulent. It is trite, there is an essential distinction between cheating, which involves an element of dishonest intent since the inception of transaction, and failure to perform the promise. Whether the intent of the applicant was dishonest since the inception of the transaction would be a matter for adjudication at the trial.

12. In any event, the offences revolve around documents. The transactions were mostly through banking channels. The investigation is complete and charge sheet came to be lodged in the month of September, 2023. The applicant has been incarcerated for almost one and half years. Having regard to the nature of the accusation and the evidence, which the prosecution may be required to be adduce, it is extremely unlikely that the trial can be concluded in near future. Further detention of the applicant as an under trial prisoner, therefore, appears unwarranted. It also appears that the applicant has sufficient roots to tie him down to his place of abode and avocation. The possibility of tampering with evidence and fleeing away from justice, thus, appears to be remote. I am, therefore, inclined to exercise the discretion in favour of the applicant.

Hence, the following order.

**ORDER**

1] The application is allowed.

2] The applicant Pritish Dayaram Mungmode be released on bail in C.R. No. 21 of 2023 registered with E.O.W., Unit V, Mumbai, on furnishing a P.R. Bond of Rs. 50,000/- with one or more sureties in the like amount.

3] The applicant shall attend the office of E.O.W., Unit V, Mumbai on first Monday of every month between 10 am to 12 noon for a period of three years or till the conclusion of the trial, whichever is earlier.

4] The applicant shall not tamper with the prosecution evidence and give threat or inducement to first informant, any of the prosecution witnesses or any person acquainted with the facts of the case, so as to dissuade him from disclosing the said facts to the Court or police officer.

5] 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.

6] The applicant shall regularly attend the proceedings before the jurisdictional Court.

Application disposed.

**(N. J. JAMADAR, J.)**