Amberkar

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO. 1491 OF 2024
WITH
INTERIM APPLICATION NO. 3218 OF 2024

Surekha Shriram Garde .. Applicant

Versus

State of Maharashtra & Anr. .. Respondents

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- Mr. Ganesh Sovani for Applicant
- Mr. Sukanta A. Karmakar, APP for State
- Mr. Saurabh Butala a/w Ms. Ankita Pawar for Complainant
- Mr. D.M. Lengare, API - Kasarvadavali Police Station is present

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CORAM : MILIND N. JADHAV, J.

DATE : FEBRUARY 20, 2025

P. C.:

1. Heard Mr. Sovani, learned Advocate for Applicant; Mr. Karmakar, learned APP for State and Mr. Butala, learned Advocate for Complainant.

2. This is an Application under Section 439 of CrPC[1] seeking Regular Bail. Applicant before me is Accused No.2 in the crime. The principal accused, Accused No.1 is the husband of Applicant herein; he has passed away in custody in the interregnum. Applicant is in custody in connection with C.R. No. I – 180/2023 registered with Kasarvadavli

1 Code of Criminal Procedure, 1973

Police Station, Thane under Sections 420, 406, 417. 423, 504, 506 read with 34 of IPC[2] and Section 3 of then MPID[3] Act.

3. Perusal of FIR at page No. 53 shows that complainant deposited with the accused persons, an amount of approximately Rupees 70 Lakhs during 2020-2021, as investment, with the hope of receiving robust returns in interest. Name of the Complainant is Amit Premchand Goyal. The receipt of money by the Applicant and her husband is documented in six separately extended loan agreements dated:

- **i.** 23.11.2020 (Rs.10,00,000/-)
- **ii.** 23.11.2020 (Rs.10,00,000/-)
- **iii.** 18.12.2020 (Rs.10,00,000/-)
- **iv.** 25.01.2021 (Rs.20,00,000/-),
- **v.** 02.03.2021 (Rs.10,00,000/-)
- **vi.** 18.03.2021 (Rs.10,00,000/-)

4. Prosecution case is that the aforesaid loan amount was invested by First Informant and his wife in the investment ventures of Accused No. 1 to receive very high interest returns on a monthly basis against all loan amounts for different denominations of interest

2 Indian Penal Code, 1860

3 The Maharashtra Protection of Interest of Depositors (in Financial Establishments) Act, 1999

ranging between 8.5% to 15% every month from the accused persons namely Shriram Yashwant Garde (Husband of Applicant, who is now dead) and Applicant. All six loan agreements *prima facie* record that such rate of interest as recorded therein will be received by the Complainant and his wife until they choose to withdraw the principal amount given on loan by them.

5. Prosecution case proceeds on the basis that Accused No.1 Shriram Yashwant Garde has witnessed the execution of the 6 loan agreements and loan amounts are received in the bank account of Applicant i.e Surekha Shriram Garde. Facts which are material for determining this bail application are that Accused No.1 ran an investment business venture called 'Bear to Gain' and used these amounts for investments through the bank account of Applicant i.e. his wife. The complainants namely Amit Goyal and his wife Laxmi Goyal got acquainted with Applicant as their son studied in Hiranandani Foundation School in Thane where Applicant was employed as a teacher. There is an affidavit cum undertaking dated 18.02.2022 executed by Applicant and her husband which states that the Goyals namely Amit and his wife Laxmi Goyal deposited the aforesaid amounts with the hope of receiving high returns and paid over the said amounts to the Applicant in her bank account and in lieu thereof received signed cheques from the Applicant.

6. Prosecution allegation is that Applicant claimed to be vice-principal of the School and with a crooked intention induced the Goyals and other similar investors to invest funds in her husband's businesses venture and induced them by stating that her husband was an International Investment Trader in Securities and Investment Market who regularly took funds from people and returned them with high returns. According to prosecution case and complainant’s statement it is seen that when the initial amount was invested, they were paid high interest return on the said invested funds which they did receive for sometime but later on the Accused persons stopped paying interest by claiming losses in markets, when the compliant is filed.

7. Mr. Sovani, learned advocate for the Applicant would argue that the complainant has already received an amount of Rs. 22,15,000/- by way of interest as returns out of the total amount of Rs.70,00,000/- given on loan by them pursuant to which there was a MOU[4] executed between parties whereby accused persons agreed to pay back the entire amount to the Goyals as stated in the MOU and even thereafter on 02.04.2022 and 12.042022, the accused persons paid Rs. 12,00,000/- and Rs. 3,00,000/- i.e. a total of Rs. 15,00,000/- and in all Rs. 37,15,00,000/- out of the 70,00,000/- to them. Thus

4 Memorandum of Understanding

according to him, only an amount of Rs. 32,85,000 is remaining pending which the accused persons did not return under the MOU. He would vehemently argue that the aforesaid transactions if seen from the documents referred to and relied upon is clearly civil in nature and when cheques are given to the Complainant i.e. the Goyals, they encashed those cheques to be found dishonoured and have filed seven different Summary Criminal cases under Section 138 read with Secion 142 of the Negotiable Instruments Act, 1881 wherein process has been issued by the JMFC, Thane and the cases are prosecuted by the said Goyals i.e. by one of the Complainant in the present case. He would therefore persuade the Court to consider that once the Complainant and his wife are prosecuting private Complaints against the Applicant and her husband, then for the very same cause of action, the Complainant cannot invoke the present proceedings by filing a fresh criminal prosecution for the same relief as it would amount to double jeopardy.

8. Learned APP appearing for the state would submit that Applicant and her husband are guilty of deceiving similarly placed investors also and hence MPID prosecution is invoked against them. However, learned prosecutor would fairly submit that the complaint filed by the Complainant does not disclose the seven summary criminal cases filed by the Complainant and his wife which are prosecuted by them for the same cause of action.

9. Mr. Butala, learned advocate appears for the Complainant. He would also fairly admit that in the Complaint filed by the complainant disclosure of the seven private Summary Criminal cases for the same cause of action is not stated. However he would submit that from the record, it appears that there are other investors who have also not received their returns.

10. In the course of submissions, Mr. Sovani would submit that in order to show Applicant's *bona fides*, she has given two proposals to the Complainant for returning the balance amounts. Both these proposals are in form of an undertaking executed by Applicant which are duly endorsed and signed by the superintendent of Thane Central Prison also. Copies of these two undertakings dated 10.02.2025 and 12.02.2025 are given to the Learned APP and Complainant's advocate before me. First undertaking dated 10.02.205 is titled as proposal; 'A' whereas second undertaking is Proposal 'B', Copies are submitted to the Court also for record. She has in her undertaking stated that if she is released, she can arrange to pay the complainant the balance amount. Mr. Butala learned Advocate for the complainant would submit that proposal 'B' is agreeable to the complainant if he receives his balance amount. Here I would like to state that proceedings for grant of bail cannot be used by Complainants for recovery of their balance amounts. It will set a dangerous precedent. This Court will not say anything regarding the proposals.

11. On merits of the Application for seeking bail there are three *prima facie* observations:-

(i) The entire flavor of the transaction between the parties is civil in nature based on documentary evidence / contract i.e the loan agreement, the MOU, the cheques given, but it is given a criminal flavor by filing the present complaint;

(ii) Complainant has already received substantial part amount of the investments made periodically as stated in the complaint itself,

(iii) Complainant has already invoked Section 138 proceedings and is prosecuting it with his wife, hence there is double jeopardy, *prima facie.*

12. In the above peculiar facts and circumstances, I am inclined to accept the submissions of Mr. Sovani for grant of bail because Applicant though has received the amount from the Complainant and his wife in her bank account, it was her husband i.e.

Original Accused No.1, who dealt with the same for which / whom the Complainant had made the investment and they had clear knowledge about the same. The brochuers appended to the Application speak for themselves. The Applicant before me has lost her husband, she never had the full control of dealing with the amount which was invested through her bank account and dealt with by her husband. Applicant's Bank account was used by the Accused No. 1, her husband. Applicant is a highly educated woman having qualification of M.A. (History) degree from Mumbai University and B.Ed qualification. She was associated with as Head mistress with Heritage International School, Kalyan (East) at the time of her arrest and in-charge of Daffodils pre-school in Dombivali. She has one son called Kushal Garde who is working in an advertising Company in Mumbai. She is under arrest from 31.10.2023 despite her educated background due to her indirect participation which was to allow her husband to use her bank account for doing his business.

13. In view of my above *prima facie* observations and the facts of the case, judicial custody of Applicant is unwarranted. Applicant is released on bail on following terms and conditions:- Application is allowed in the following terms and conditions:-

(i) Applicant is directed to be released on bail on furnishing P.R. Bond in the sum of Rs. 25,000/- with one or two sureties in the like amount;

(ii) Applicant shall report to the Investigating Officer of concerned Police Station once every month on the third Saturday between 10:00 a.m. to 12:00 p.m. for the first six months after release on bail and thereafter as and when called by the Investigating Officer ;

(iii) Applicant shall co-operate with the conduct of trial and attend the Trial Court on all dates unless specifically exempted and will not take any unnecessary adjournments, if she does so, it will entitle the prosecution to apply for cancellation of this order;

(iv) Applicant shall not leave the State of Maharashtra without prior permission of the Trial Court;

(v) Applicant shall not influence with any of the witnesses or tamper with the evidence in any manner;

(vi) Applicant shall keep the Investigating Officer informed of his current address and mobile contact number and / or change of residence or mobile details, if any, from time to time;

(vii) Any infraction of the above conditions shall entail cancellation of this order.

14. It is clarified that the observations in this order are limited for the purpose of granting Bail only and I have not made any observations on merits of the case. The trial shall be adjudicated on the basis of evidence and strictly in accordance with law.

15. Bail Application is allowed and disposed.

16. Interim Application is also accordingly disposed.

Amberkar

[MILIND N. JADHAV, J.]

RAVINDRA MOHAN AMBERKAR

Digitally signed by RAVINDRA MOHAN AMBERKAR
Date: 2025.02.20 12:28:34 +0530