Ajay

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL BAIL APPLICATION NO.2174 OF 2024

Jignesh Pravinbhai Shroff .. Applicant

Versus

State of Maharashtra .. Respondent

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- Mr. Aabad Ponda, Senior Advocate a/w. Mr. Arjun Dev, Advocate for Applicant.
- Ms. Mahalaxmi Ganapathy, APP for State.

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CORAM : MILIND N. JADHAV, J.

DATE : JANUARY 10, 2025.

P.C.:

1. Heard Mr. Ponda, learned Senior Advocate for Applicant and Ms. Ganapathy, learned APP for State. Perused the record.

2. By the present Application, Applicant seeks enlargement on bail in connection with C.R. No.I-304 of 2023 registered with Kolsewadi Police Station, Kalyan for offences under Section 406, 420 readwith 34 of the Indian Penal Code, 1860 (for short "**IPC**") alongwith Section 3 of the Maharashtra Protection of Interest of Depositors Act, 1999 (for short "**MPID Act**"). Applicant is incarcerated in prison since 18.10.2023. There are total 8 accused in the crime and Applicant is arraigned as Accused No.4. Accused No.1 Ritesh Panchal is the main accused.

3. Briefly stated, prosecution case is that one Salim Kachi informed Complainant that his friend Shahid Sayed has invested in Shri Mahakali Group of Companies (for short "**SMGC**") and if she invests Rs.1,00,000/- in the said group then she would get Rs.3,00,000/- after 10 months. On 08.03.2022, Complainant alongwith Salim Kachi attended a function organised by SMGC at G.C.C. Club, Mira Road where she met Shahid Sayed. It is alleged that two days thereafter, she alongwith Shahid Sayed went to the office of SMGC at Powai where she was introduced to Accused Nos.2 to 7, who informed her that if she invested Rs.1,00,000/- with the company, she would get Rs.2,00,000/- after four months and Rs.3,00,000/ after ten months. Complainant invested three amounts viz., Rs.1,60,000/-, Rs.3,50,000/- and Rs.2,00,000/- at the behest of Shahid Sayed, wife of Accused No.1 (Ritesh Panchal) and Jitendra Chaturvedi with SMGC. It is prosecution case that on 03.08.2022, Complainant was supposed to receive partial returns for her investment, however as she did not receive any returns. Hence she visited the office of SMGC and met Accused Nos.1, 3, 4 and 8 who assured her that she would receive the returns in her bank account. As per her complaint since she did not receive any returns, on 10.08.2022, she once again again visited the office of SMGC when she learnt about the arrest of Accused No.1 owing to which the office of SMGC was shut.

3.1. It is the prosecution case that after Accused No.1 was released on bail he sent an audio clip on Whatsapp group promising all investors in SMGC to return their money. It is prosecution case that thereafter in January 2023, Accused No.2 called the Complainant and informed her that Accused No.1 had started a new Company called RGN and asked her to invest some money in that company to receive back her investment amount in SMGC. Complainant paid Rs.50,000/- cash to Accused No.2 for investing in RGN. It is Complainant's case that when she did not receive any returns, she called upon some of the Accused Nos.1, 2, 4 and 5 who informed her that as the Company was new they would require some time to repay the money. On 03.04.2023 Accused No.2 sent an image of a cheque to the Complainant on her Whatsapp and asked her to invest Rs.1,00,000/- and also promised her that she would get an amount of Rs.8,000/- per week in return. Complainant then invested an amount of Rs.95,000/-. It is prosecution case that Complainant invested a total amount of Rs.8,55,000/- (Rs.6,10,000/- in SMGC and Rs.2,45,000/- in RGN) of which she did not receive any returns as promised by Accused and hence she lodged C.R. No.I-304 of 2023 with Kolshewadi Police Station in 13.05.2023.

4. Investigation in the matter is completed and charge-sheet has been filed before the Trial Court on 20.12.2023.

5. In compliance with order dated 27.06.2024 passed by this Court (Coram: Manish Pitale, J.), Investigating Officer has filed Affidavit dated 04.07.2024 for opposing the Bail Application which is at page No.1981 of the Application. Ms. Ganapathy, learned APP has at the outset drawn my attention to the said Affidavit and would submit that accused persons have lured 32 such investors for investing in various lucrative schemes floated by SMGC and prosecution has recorded statements of 34 witnesses in that regard. She would submit that prosecution has procured bank statements of the Applicant's bank accounts and from scrutiny of the same it is seen that an amount of Rs.3,38,37,707/- was transferred to the said personal bank account of Applicant in Yes Bank, Santacruz Branch by SMGC from time to time and additionally an amount of Rs.9,64,53,500/- has been transmitted in the proprietory bank account / current account of Applicant in HDFC Bank, Ahmedabad. This transfer is denied by the Applicant.

5.1. She would submit that investigation has revealed that thereafter an amount of Rs.30,00,000/ was transferred by the Applicant to one Morya Car Pvt. Ltd., Powai, which has been recovered by prosecution and deposited in an escrow bank account opened by prosecution after seeking order dated 30.11.2023 from the Trial Court. Next, she would submit that during investigation, it is found that there are three antecedents against the present Applicant pending in Courts at Delhi, Uttarakhand and Karnataka wherein similar *modus operandi* has been adopted by Applicant to commit similar crime. She would submit that offence has been committed by Applicant alongwith other co-accused not only in Maharashtra but also in New Delhi, Uttarakhand, Madhya Pradesh and Karnataka by adopting the same modus operandi.

5.2. She would submit the the prime Accused in the matter namely Ritesh Panchal was granted bail by the Trial Court by order dated 19.11.2023 in connection to another offence, however his bail was cancelled as he committed breach of the condition of the bail order and he is now absconding at present, hence custody of present Applicant is necessary.

5.3. She would submit that from the investigation it is revealed that present Applicant was one of main promoter of the SMGC and he was also involved in taking decisions and therefore he is jointly and severally liable for all acts of the Company. She would submit that Applicant is a resident of Gujarat and hence is a flight risk. In view of her above submissions, she would pray for rejection of the Bail Application.

6. Mr. Ponda for the Applicant would however counter by stating that there is no specific role attributed to the Applicant by the prosecution. He would submit that Applicant is incarcerated since 18.10.2023 and investigation of the matter is fully completed and in that view of the matter there is nothing left to be seized or recovered from the present Applicant.

6.1. He has drawn my attention to the Affidavit dated 19.07.2024 filed by Applicant to counter the Affidavit filed by the Investigating Officer which is appended at page No.2097 of the Application and would submit that Applicant is neither a director nor an employee of SMGC and was in no way connected or managing the affairs of the said Company. He would submit that even in the prosecution's Affidavit, nothing has been brought on record to substantiate the claim that Applicant was a trustee or director of SMGC. He would submit that on the contrary Applicant was himself an investor in the Company and has transferred the amount received from the said Company back to the Company.

6.2. He would draw my attention to the Complaint dated 07.06.2023 filed by one of the witness namely Satyendra Singh Bhadoria on behalf of himself and 25 other investors wherein the said complainant has not named the present Applicant as an accomplice. However if the however in the statement recorded by the police of Mr. Bhadoria on 14.10.2023 is perused, name of Applicant is stated therein with an oblique motive to indict him in the present crime. He would submit that delay in filing the FIR is another important aspect required to be considered by the Court. He would submit that no offence whatsoever under Section 406 or 420 of IPC is made out against the present Applicant.

6.3. Next, he would submit that Applicant has never met or induced any of the 32 investors including the Complainant. He would submit that on instructions of the prime Accused, Applicant transferred an amount of Rs.1,05,000/- to two investors and an amount of Rs.4,87,07,740/- to directors of SMGC which is higher than the amount of Rs.3,68,15,208/- as alleged by the prosecution to have come into the bank account of the Applicant. With regard to the amount of Rs.9,64,53,500/- as alleged by prosecution in the proprietory / current account of Applicant, he would submit that from perusal of the bank statements of Applicant it is evident that no such transaction for any such amount has been effected by Applicant but a transaction for an amount of Rs.5,10,75,500/- has been done by Applicant for his personal use which has no nexus with the present crime.

6.4. With respect to antecedents of the Applicant, Mr. Ponda would submit that in respect of the crime registered in Delhi, Applicant's statement has been recorded by the concerned Investigating Officer; that he has not sought arrest of the Applicant despite passage of two months and he has been falsely roped into the said crime merely because an amount of Rs.25,00,000/- was transmitted in his bank account which was subsequently transferred to the prime accused Ritesh Panchal (Accused No.1). With respect to the crime registered in Uttarakhand, he would submit that Applicant has been granted Anticipatory Bail by the Uttarakhand High Court vide order dated 09.07.2024 as no money has been transmitted to his bank account. With respect to the offence registered in Karnataka, he would submit that Applicant has neither received any money nor induced any customers but he has been falsely roped into the said offence. He would submit that it is falsely alleged that Applicant is involved in a similar offence in Madhya Pradesh, but prosecution has not produced any of the FIRs to substantiate their allegations against the role of Applicant in any of those alleged crimes.

6.5. In support of his submissions, Mr. Ponda has referred to and relied upon the following two decisions of the Supreme Court:-

(i) ***Sanjay Chandra Vs. CBI*** [1] and

(ii) ***P. Chidambaram Vs. Directorate of Enforcement*** [2].

6.6. My attention is specifically drawn by the learned Senior Advocate to paragraph No.39 in the case of ***Sanjay Chandra*** (1st *supra*) which has been quoted with approval by the Supreme Court in the later judgment of ***P. Chidambaram*** (2nd *supra*) in paragraph No.22 therein. The said judgments have been cited to argue that the

1 (2012) 1 SCC 40
2 (2020) 13 SCC 791

punishment for offence in such cases would be imprisonment for a term which may extend to 7 years and in considering grant of bail, both, seriousness of the charge *qua* the Applicant in question and the severity of punishment should be taken into consideration. For reference, paragraph No.22 of the decision in the case of ***P. Chidambaram*** (2nd *supra*) which encompasses the finding of the Supreme Court in the case of ***Sanjay Chandra*** (1st *supra*) is reproduced below for reference:-

> *"22. The learned Senior Counsel for the appellant has also placed reliance on the decision in Sanjay Chandra v. CBI [Sanjay Chandra v. CBI, (2012) 1 SCC 40 : (2012) 1 SCC (Cri) 26 : (2012) 2 SCC (L&S) 397] with specific reference to para 39, which reads as hereunder : (SCC pp. 62-63)*
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>> *"39. Coming back to the facts of the present case, both the courts have refused the request for grant of bail on two grounds : the primary ground is that the offence alleged against the accused persons is very serious involving deep-rooted planning in which, huge financial loss is caused to the State exchequer; the secondary ground is that of the possibility of the accused persons tampering with the witnesses. In the present case, the charge is that of cheating and dishonestly inducing delivery of property and forgery for the purpose of cheating using as genuine a forged document. The punishment for the offence is imprisonment for a term which may extend to seven years. It is, no doubt, true that the nature of the charge may be relevant, but at the same time, the punishment to which the party may be liable, if convicted, also bears upon the issue. Therefore, in determining whether to grant bail, both the seriousness of the charge and the severity of the punishment should be taken into consideration."*
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> *The said case was a case of financial irregularities and in the said circumstance this Court in addition to taking note of the deep-rooted planning in causing huge financial loss, the scope of consideration relating to bail has been taken into consideration in the background of the term of sentence being seven years if convicted and in that regard it has been held that in determining the grant or otherwise of bail, the seriousness of*

> *the charge and severity of the punishment should be taken into consideration."*

6.7. Hence he would urge the Court to enlarge the Applicant on bail on any conditions as deemed fit by the Court and the Applicant would be ready and willing to abide by the same.

7. I have considered the rival submissions of both the Advocates which are delineated herein above and perused the record of the case.

8. Applicant is in prison since 18.10.2023 i.e. 1 year 2 months 24 days. There is no direct attribution of any specific role to the Applicant. Though this is a crime committed against a group of individuals according to the prosecution, none of the 32 investors have indicted the Applicant in inducing them or luring them into making the alleged investments. Even in the case of Complainant in the present case, she has approached SMGC for investment through her friend Salim Kachi who introduced her to Shahid Sayed and thereafter she along with Shahid Sayed went to office of SMGC. All that is stated in the complaint by the Complainant is that on that date when she visited the office of SMGC, she was introduced to Accused Nos.2 to 7. Applicant is Accused No.4. Shahid Sayed is ironically not an accused in the conspiracy. Save and except this attribute of introduction, there is no other role attributed to the Applicant. No other details are stated in the complaint. Applicant is neither the Director or authorised signatory of SMGC or RGN, the two companies where Complainant invested her amounts from time to time.

9. Though transfer of amount of Rs.3.38 Crores approximately is seen to be transferred from SMGC to the Applicant's bank account, it is also seen *prima facie* that an amount of Rs.4.87 Crores approximately is transferred back to the accounts of the Directors of SMGC in their bank accounts. In so far as the allegation of receiving Rs.9.64 Crores approximately in Applicant's proprietory / current account is concerned, the same is not evident as there is no such transaction *prima facie* seen to be done. If that is the allegation, then the case of prosecution will have to be proven at the time of trial since *prima facie* it is not evident. It is also seen that none of the 32 investors apart from the Complainant have indicted the Applicant. There is one Complaint dated 07.06.2023 filed by one of the investor i.e. Satyendra Singh Bhadoria for himself and 25 other investors wherein name of Applicant is not stated by the said investor.

10. The above observations and *prima facie* findings therefore persuade me to allow the present Application considering that investigation has been completed. Hence, the following order:-

(i) Applicant – Jignesh Pravinbhai Shroff is ordered to be released on bail in connection with Crime No.I-304 of 2023 on furnishing P.R. Bond in the sum of

Rs.2,00,000/- (Rs. Two Lakh only) with one or two sureties in the like amount;

(ii) Applicant shall report to the concerned Police Station on the first Tuesday of every month from 10:00 am to 5:00 pm or as and when called for 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 for reasons to be recorded in writing by the Trial Court;

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

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

(vi) Applicant shall surrender his passport, if any, with the Trial Court within a period of two weeks from today;

(vii) 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, as applicable; and

(viii) Any infraction of the above conditions shall entail revocation of this order.

11. The aforesaid observations are *prima facie* on the basis of record of the case which have been argued before me and shall not be considered as an expression of opinion by this Court and are only for the purpose of enlargement of Applicant on bail and shall not influence the trial in the present case.

12. In the above terms, Bail Application stands allowed and disposed.

[MILIND N. JADHAV, J.]

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AJAY TRAMBAK UGALMUGALE

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