Ajay

# IN THE HIGH COURT OF JUDICATURE AT BOMBAY
## CRIMINAL APPELLATE JURISDICTION

## CRIMINAL BAIL APPLICATION NO. 3834 OF 2024

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|---|---|---|
| Sagar Vishnu Borate | .. | Applicant / Accused |
| **Versus** | | |
| The State of Maharashtra | .. | Respondent |

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- Mr. Karan Singh Rajput, Advocate i/by Mr. Satish Raut, Mr. Atharv Gidaye, Mr. Tanmay M. Shembavanekar and Mr. Shravan H. Sul, Advocates for Applicant.
- Mr. Balraj B. Kulkarni, APP for Respondent – State.
- Mr. Deepak Kadam, API – EOW-I, Navi Mumbai presett.

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**CORAM : MILIND N. JADHAV, J.**

**DATE : FEBRUARY 18, 2025.**

**P.C.:**

**1.** Heard Mr. Rajput, learned Advocate for Applicant and Mr. Kulkarni, learned APP for Respondent – State.

**2.** This is an Application under Section 439 of the Code of Criminal Procedure, 1973 seeking Regular Bail in connection with C.R.No.52 of 2024 registered with A.P.M.C. Police Station, Navi Mumbai for the offences punishable under Sections 420, 406, 409 and 120-B read with 34 of the Indian Penal Code, 1860 and Sections 3 and 4 of the Maharashtra Protection of Interest of Depositors (in Financial Establishments) Act, 1999.

**3.** After hearing the learned Advocate for the parties yesterday, the following order was passed:-

> *"**1.** Heard Mr. Rajput, learned Advocate for Applicant and Mr. Kulkarni, learned APP for Respondent – State.*
>
> ***2.** Applicant is arraigned as Accused No.5 in the present crime. Charge against the Applicant is that the Complainant who is the friend of the Applicant has filed the complaint stating that he on the request and behest of the Applicant invested in the various schemes promoted by the principal accused belonging to the SVPS group.*
>
> ***3.** Mr. Rajput would submit that Applicant before the Court is himself a victim of circumstances as also the crime purported by the principal accused. He would submit that Applicant himself invested a sizable amount and when he failed to get any returns, he was induced by the principal accused to bring him more investors and get 2% commission.*
>
> ***4.** Indictment of the Applicant is on the basis that he is one of the sub agent of the said group who lured investors / customers into making investments in the schemes floated by the said group.*
>
> ***5.** Mr. Rajput would submit that Applicant is indicted on account of luring 33 investors / customers into making investments, however 21 out of these 33 persons / investors are his own relatives who showed faith in the Applicant and invested in the scheme floated by the said group.*
>
> ***6.** He would submit that Applicant is incarcerated since 20.02.2024 for almost a year. Affidavit has been filed by the prosecution. The only question that I have for the prosecution is as to why the custody of the Applicant is required unless the prosecution is in a position to show that the Applicant was recipient of any amount received by the SVPS group or by the principal accused in the present crime.*
>
> ***7.** Considering the submissions made by Mr. Rajput, I am inclined to take up this Application for hearing.*
>
> ***8.** Mr. Kulkarni, learned APP is directed to take appropriate instructions from the concerned Investigating Officer and apprise the Court on the next adjourned date.*
>
> ***9.** Stand over to **18th February 2025**. To be placed under the caption '**First on Board**'."*

**4.** Accused No.1 and Accused No.2 are the Directors of SVPS group i.e. the Company which called for investments rather lured investments from depositors with the promise of giving them substantial returns in a short period of time on their investments. Accused No.3 is the agent who was employed by Accused Nos.1 and 2 in an apparent investment pyramid structure created by the Company. Accused No.4 is wife of Accused No. 3.

**5.** In the present crime, prosecution has filed two chargesheets. Second chargesheet is a supplementary chargesheet. Both are placed on record. According to the prosecution case emanating from the two chargesheets , Accused Nos.3 and 4 employed various sub-agents by giving them a salary on behalf of the Company and also a commission which was earned by them, if they brought in investors to invest in the Company's various investment schemes. Applicant – Accused No.5 is one such sub-agent employed by Accused No.3, rather from the chargesheet itself it is seen that he is not the only such person but there were 21 such other persons who were also appointed. Their names are appended at page No.36 of the Bail Application. Applicant i.e. accused No. 5 is a rickshaw driver.

**6.** When asked about the reasons as to why only Applicant – Accused No.5 whose name is at Sr. No.21 of the said list at page No. 36 and not the others in the list are implicated as Accused, learned prosecutor has no answer, save and except to state that investigation is under progress till date. From the chargesheet itself it is seen that some of the names which appear as sub-agents alongwith the Applicant who were appointed by accused No. 3 are police personnel who are employed with the Police Department itself. This information is not hearsay but stated in the chargesheet itself. Be that as it may, it will be the subject matter of the ongoing investigation and / or trial according to the prosecution.

**7.** I am impelled to consider the Application of the Applicant before me due to one more submission made by Mr. Rajput that the chargesheet and supplementary chargesheet bring out the tracing and trail of the funds / amounts which were received as investment by the SVPS group of companies. Ironically Accused No.1, the principal accused and Director of the Company is absconding and not arrested till date. Accused Nos.2, 3 and 5 are arrested almost 1 year ago. Role of the Accused is precise and distinct and on being asked the reason as to why Accused No.4 is not arrested, learned APP would inform the Court that Accused No.4 has a small child and she has been cooperating with the investigation.

**8.** Mr. Rajput has taken me through the chargesheet and would submit that according to the investigation carried out till date, it is stated in the chargesheet that SVPS group of companies received Rs.7.14 crores from investors which has been *prima facie* traced as having been transferred to accounts of several bogus companies accounts opened by the Directors of the Company and from these accounts to off-shore accounts in Dubai.

**9.** Mr. Rajput would submit that the said SVPS group operated on a pan Maharashtra basis and there are multiple FIRs filed. On instructions, Mr. Rajput would submit that FIRs are admittedly filed in Nandurbar, Jalgaon and Baramati.

**10.** Coming to the case at hand before me the Applicant is a rickshaw driver. As delineated in the previous order since initially Applicant himself invested his amounts and did not fetch returns, the Applicant was induced into joining the so called investment pyramid by Accused No.3 on the promise of getting 2% commission which the Applicant accepted. Admittedly, Applicant received commission on getting 33 investors / customers out of which 21 are his own family members and relatives who have not filed any complaint or approached the prosecution agency till date to complain about their investments. It is seen that over a period of more than 14 months i.e. 01.07.2022 to 18.09.2023 Applicant received an amount of Rs.33 Lakhs in his Bank account intermittently towards commission against 64 entries which are appended in the chargesheet. Chargesheet itself on page Nos.36 to 38 of the Application states that the amount received by him was जमा झालेली कमिशनची रक्कम (रू) i.e. commission received by the Applicant for the investments brought in by the

Applicant for the Company.

**11.** Surprisingly, the prosecution has not taken the steps which have been taken against the Applicant qua other sub-agents whose names appear in the chargesheet. Though the reason given to understand is that investigation is under progress, Mr. Rajput would also submit that there only 9 investors apart from the above 21 investors who have approached the Investigating Agency and complained about the Applicant having induced them. He has placed on record a list of those persons / investors before me alongwith a table of the details of their investments made and amount received by them. From the said table, it is seen that the 9 names are stated in the chargesheet. It is seen that these 9 investors had invested an amount of Rs.91 Lakhs with the Company and they were refunded an amount of Rs.48.35 Lakhs by the Company itself and their balance amount is Rs.42.65 Lakhs.

**12.** Supplementary chargesheet has been filed. According to the prosecution they desire to examine 67 witnesses in the trial. Charge is not framed. Applicant's role is delineated herein above as emanating from the chargesheet. *Prima facie* no reasons are given by prosecution to undertake the investigation by adopting a pick and choose policy *qua* the Applicant only. Other sub-agents are not even touched for reasons best known to prosecution. In any event considering the aforesaid submissions made by Mr. Rajput which *prima facie* appeal to the Court from the chargesheet and the *prima facie* observations made herein above, Applicant has made out the case for grant of bail.

**13.** Bail Application stands allowed on the following terms and conditions:-

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

**(ii)** Applicant shall report to the Investigating Officer at APMC Police Station, Navi Mumbai 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 he 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 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, as applicable; and

**(viii)** Any infraction of the conditions shall entail prosecution to apply for cancellation of bail granted to the Applicant.

**14.** It is clarified that the above observations in this order are limited for the purpose of granting bail only and I have not made any observations on the merits of the case and the trial shall proceed uninfluenced by the present order.

**15.** Bail Application is allowed and disposed.

**[ MILIND N. JADHAV, J. ]**

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AJAY TRAMBAK UGALMUGALE

Digitally signed by AJAY TRAMBAK UGALMUGALE Date: 2025.02.18 18:19:36 +0530