Amberkar

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL BAIL APPLN. NO. 4326 OF 2024

Vimal Baban Takle .. Applicant
Versus
The State of Maharashtra .. Respondent

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- Mr. Amit Sale a/w Mr. Shivprasad Vernehar, Advocates for Applicant.
- Ms. Shilpa M. Yadav, APP for Respondent – State.
- Mr. Digvijay Patil, API, Sunil Sonawane, PSI Charkop Police Station, Mumbai – Present.

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CORAM : MILIND N. JADHAV, J.

DATE : JANUARY 30, 2025

P. C.:

1. This Application is filed under section 439 of Code of Criminal Procedure, 1973 by Applicant seeking regular bail in relation to C.R. No. 668 0f 2023 registered with Charkop Police Station, Kandivali (West) against him for offences punishable under Sections 406, 420 read with Section 34 Indian Penal Code, 1860 (for short **"IPC"**) along with Section 3 of The Maharashtra Protection of Interest of Depositors (In Financial Establishments) Act, 1999 (for short **"MPID Act"**). First Information Report is lodged by the First Informant on 20.12.2023. Applicant is arrested on 08.01.2024 and has been incarcerated for the past 12 months. According to the First Informant, sometime in January 2022, First Informant pledged her *Mangalsutra* with a local jeweler at the insistence of the Applicant and received Rs.50,000/- which was given to the Applicant on her request. According to prosecution, when First Informant asked the Applicant for her money to be returned back to her, the Applicant persuaded her to participate and become a member of *Boli Bishi* which was conducted by Applicant. The First Informant thereafter participated in the *Boli Bishi* conducted by the Applicant and invested substantial amounts. It is her case that she suffered loss of Rs.7,46,000/- which was invested by herself and her mother. In the First Information Report, names of three similarly placed victims are also stated in the notice under Section 41A of Cr.P.C. which was issued to Applicant on 22.12.2023. Applicant was thereafter arrested on 08.01.2024.

2. Learned Advocate Mr. Sale appearing on behalf of Applicant would submit that invocation of Section 3 of MPID is unwarranted in the present case. He would submit that at the highest, if prosecution allegation under section 420 IPC is considered to be true, the maximum punishment for the said offense would be up to 3 years. He would draw my attention to Section 3 of the MPID Act and would argue that the said provision applies only to Financial Institutions. He would submit that by their own volition, the First Informant and others participated in the *Boli Bishi* conducted by the Applicant by virtue of which the First Informant and all participants received the dividend on a regular basis. He would submit that it was only when the *Boli Bishi* failed subsequently and they did not recieve their returns they filed the FIR. He would submit that if the First Information Report is seen, it is filed on 20.12.2023 whereas the tenure of the offense is from 01.01.2022 to 30.08.2023. He would submit that there is no doubt that the investors in the *Boli Bishi* conducted by the Applicant before the Court did not get their returns but such returns are dependent on the monthly contribution given by all members of the *Boli Bishi* which in the instant case failed. He would fairly inform the Court that even according to the prosecution case, Applicant has been conducting the *Boli Bishi* for the past several years and would further submit that there is no inducement or cheating at the inception on the part of Applicant to have induced the First Informant into making the monthly investment. He would persuade me to consider the First Information Report which does not indicate dishonest inducement or cheating or deceit to deliver any property. Similarly, he would submit that Application of Section 406 is also unwarranted since there is no dishonest misappropriation of any amount entrusted to the Applicant by the First Informant or other investors.

3. Learned APP, Ms. Yadav on behalf of prosecution would vehemently oppose grant of bail to Applicant. She would submit that there is enough evidence on record to show that First Informant transferred substantial amounts into the Applicant's bank account through bank transfers and online payment but did not receive any returns from the Applicant. She would submit that 14 such investors have been identified who invested in the *Bishi* scheme conducted by the Applicant and they did not receive any returns, First Informant being one of them. She would rely upon statements of similarly placed investors who are victims having suffered financial losses. She would submit that investigation is complete and chargesheet has been filed. She would heavily rely upon the bank statements appended on the chargesheet to show receipt of payment by Applicant from various investors and would submit that Applicant's business was akin to a financial establishment as contemplated under Section 2 (d) of the MPID Act read with Section 3 of the said Act. Hence she would submit that the Application be rejected.

4. I have heard the rival submissions and perused the record. There is no doubt that Applicant before me was running the *Bishi* scheme with several investors of which First Informant and her mother were members. *Prima facie* the incident tenure, as stated by the First Informant, is from 01.01.2022 but she did not lodge any Complaint regarding the pledging of her *Mangalsutra* and lending Rs.50,000/- to the Applicant. Thereafter there is a stoic silence for almost 2 years in lodging the First Information Report which would invariably mean that Applicant and other investors participated in the *Bishi* scheme. *Prima facie,* I am not convinced on the applicability of Section 3 of the MPID Act since there is no financial establishment to describe the Applicant before me. Section 3 of MPID Act clearly relates to management or conduct of business affairs of a financial establishment. One of the charge of the prosecution is diversion of the money trail by the Applicant but there is nothing placed on record as to where and which account of the relatives the monies were transferred. Some of the statements of the investors show that the investors were voluntarily paying the monthly *Bishi* contribution amount since July 2021 to the Applicant. Most of the investors have stated that along with Applicant her husband Baban Takle, her son Sanjay Takle, her daughter Sunita Takle, her daughter in spirit Sapna residing together in Charkop, Kandivali Mumbai are all involved. *Prima facie* it is seen that the investors voluntarily invested substantial amounts on a monthly basis for more than 20 to 23 months at a stretch. That apart the concept of *Boli Bishi* will also require consideration for understanding the role of Applicant. In the *Boli Bishi* scheme, generally every month the *Bishi* (contribution pot) is opened and given to the person who bids the lowest. When such a bid is received, the excess amount over and above the bid amount collected is distributed as dividend in that month to the other members / investors. In such a scheme every month one of the member gets an opportunity to bid and take over the total amount collected which is collected in the collection pot. The element of inducement or cheating of the Applicant will be determined in trial. Reading of the statement of various investors *prima facie* shows that they had volunteered to enter into the *Bishi* scheme conducted by the Applicant. Prosecution has unearthed the details of investments made by the members from the bank accounts which are appended. Any further trail, of the money is not seen from the *prima facie* perusal of the chargesheet. In view of my above *prima facie* observations, any further custodial interrogation or custody of the Applicant is no longer required. The Applicant is therefore enlarged on bail on the following terms and conditions:-

(i) Applicant is directed to be released on bail on furnishing P.R. Bond in the sum of Rs. 1,00,000/- (One Lakh Only) with one or two sureties in the like amount;

(ii) Applicant shall report to the Investigating Officer of concerned Police Station twice every month on the first and third Saturday between 10:00 a.m. to 05:00 p.m. for one year and thereafter as and when called;

(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; She shall deposit her passport, if any, with the Trial Court within one week from the date of her release on bail;

(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 the prosecution to seek cancellation of this order.

5. 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 the merits of the case.

6. Bail Application stands allowed and disposed.

Amberkar

[MILIND N. JADHAV, J.]

HARSHADA HANUMANT SAWANT

Digitally signed by HARSHADA HANUMANT SAWANT Date: 2025.01.30 20:27:57 +0530