

AGK

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

BAIL APPLICATION NO.4989 OF 2024

Jayant Sanjeeva Shetty ... Applicant
V/s.
The State of Maharashtra ... Respondent

**WITH
INTERIM APPLICATION NO.238 OF 2025**

Prada Sadhu Shetty ... Applicant
V/s.
The State of Maharashtra & Anr. ... Respondents

**WITH
INTERIM APPLICATION NO.1663 OF 2025**

Golden Peace Hospitality Pvt. Ltd. ... Applicant
V/s.
The State of Maharashtra & Anr. ... Respondents

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Mr. Aabad Ponda, Sr. Advocate a/w Jugal Kanani for the Applicant.

Mrs. Megha Bajoria, APP for the State – respondent.

Mr. Mutahar Khan with Sachin Mhatre, Ishita Kamath, and Rithika Mehra i/b Mhatre Law Associates for the Intervener in IA/238 of 2025.

Mr. Rahul S. Arote a/w Jay N Suryavanshi for Intervener in IA/1663/2025.

Mr. Sangle, PI, EOW, is present.

CORAM : AMIT BORKAR, J.

DATED : AUGUST 12, 2025

P.C.:

1. The present application has been moved by the Applicant/Accused No.2, namely Jayant Sanjeeva Shetty, under Section 439 of the Code of Criminal Procedure, 1973, seeking the grant of regular bail. The matter arises out of C.R. No. 2 of 2020 registered with the Economic Offences Wing, Mumbai, which was initially registered as C.R. No. 5 of 2020 with Malad Police Station. The offences alleged against the present Applicant are punishable under Sections 406, 409, and 420 read with Section 120-B of the Indian Penal Code, 1860 (hereinafter “IPC”) as also under Sections 3 and 4 of the Maharashtra Protection of Interest of Depositors (in Financial Establishments) Act, 1999 (hereinafter “MPID Act”).

2. The prosecution case, in brief, is that agents of M/s. Shree Ramanjaneya Leasing and Finance Pvt. Ltd. (hereinafter “the said Company”) were operating in the area where the complainant resides. Through these agents, popularly referred to as “pigmy agents,” the complainant came to know, in the year 2012, about the activities of the said Company.

3. According to the prosecution, the pigmy agents represented to the complainant, one Sunil Nagpal, that the said Company was engaged in the business of financing and mortgaging property. It was further informed that apart from giving loans, the Company also accepted public deposits under various investment schemes, offering attractive and assured rates of interest. The prosecution alleges that the said Company primarily generated income by mortgaging properties and lending against them. For raising the

funds required for such lending, the Company accepted deposits of ₹1,00,000/- and above from members of the public under investment/deposit schemes. The collected deposits were then used by the Company for advancing loans.

4. It is alleged that one Ganesh Shetty personally approached the complainant and informed him about the investment schemes. He allegedly stated that people from Malad and other areas of Mumbai had invested in these schemes and were receiving guaranteed monthly interest from the Company. Acting on such representations, the complainant invested ₹1,00,000/- per month in cash for four consecutive months, totalling ₹4,00,000/-, with an assurance of monthly interest at the rate of 1.25%. The complainant further alleged that between 2013 and 2017, he was regularly paid the assured monthly interest and, upon maturity, the principal amount. In this period, he claims to have invested a total of ₹40,00,000/-. However, from December 2017, the Company allegedly stopped paying interest. When the complainant approached accused Ganesh Shetty, Harish Shetty, and the present Applicant, they are said to have informed him that the Company was facing financial difficulties and requested him to wait.

5. By the year 2018, the complainant's investments had matured, and he demanded the principal along with the outstanding interest. According to him, the accused assured that they would repay once certain immovable properties and hotels of the Company were sold.

6. The complainant later discovered, on visiting the Company's

office, that numerous other depositors were also facing the same problem, having been neither paid their interest nor their principal amounts. It is further alleged that after persistent follow-ups, the present Applicant convened a meeting of depositors on 26.10.2019 at the office of Fidalgo Group of Hotels at Chincholi Bunder Road, Malad (West), Mumbai. In this meeting, the Applicant allegedly did not give any concrete assurance regarding repayment and stated that another meeting would be held on 09.11.2019.

7. The prosecution case is that from 2012 to 2017, the Company and its Directors, namely Ganesh Shetty, Harish Shetty, and the present Applicant, cheated several investors, including the complainant, by accepting deposits under various schemes, luring them with the promise of high interest, and ultimately failing to return the amounts invested along with the promised returns. In all, the complainant alleges to have deposited a sum of ₹45,76,000/- with the Company, for which he was issued deposit certificates.

8. Mr. Ponda, learned Senior Advocate appearing for the Applicant, submitted that the present case essentially arises from a money-lending transaction. Even if, for the sake of argument, it is assumed that the transaction amounts to a “deposit,” there is no allegation or stipulation that the funds were held in a fiduciary capacity “in specie” or that they were required to be utilized for any specific or earmarked purpose. In such circumstances, the essential ingredients of Section 406 or Section 409 of the IPC, which require proof of entrustment of property and its dishonest misappropriation, are not attracted.

9. Learned Senior Counsel pointed out that since the year 1994, repayments have consistently been made to the investors without default. The scheme in question was neither of the nature of a “high-return double-your-money” scheme nor one promising an exorbitant interest rate such as 5% per month. There is no material to suggest that there was any element of fraud from the inception of the scheme, and therefore, invocation of IPC offences is misconceived.

10. It was argued that once the prosecution case is examined in this light, the matter would stand confined only to the provisions of the MPID Act. Even under the MPID Act, the maximum punishment prescribed is six years, and the Applicant has already undergone one year and six months of incarceration. A bare perusal of the charge-sheet, it was submitted, indicates that the transaction was in the nature of a loan advanced to a party in financial need. Such a loan transaction, by its very nature, does not fall within the legal definition of an “investment” or “deposit” under the MPID Act. The law clearly distinguishes between a loan and entrustment of property.

11. Learned Senior Counsel emphasised that in civil law, the Limitation Act itself prescribes different limitation periods for actions based on loans and those based on deposits. In criminal jurisprudence also, these two concepts are treated as distinct and cannot be interchanged.

12. It was submitted that, for an offence of criminal breach of trust under Section 405 IPC to be made out, two essential

conditions must be fulfilled: (i) that the accused was entrusted with property or had dominion over the property, and (ii) that the accused dishonestly misappropriated or converted that property to his own use, or disposed of it in violation of any legal direction or contract relating to such trust. In this context, “entrustment” means that the ownership or beneficial interest in the money, in respect of which the breach of trust is alleged, must be vested in a person other than the accused, and the accused must hold that money for the benefit of another person or on account of such person.

13. Applying these principles to the present case, learned Senior Counsel argued that the investors had advanced monies to the Company and had been issued fixed deposit certificates in return. The arrangement was that, upon maturity, the principal amount along with the agreed rate of interest would be returned to the investors. There was no understanding between the parties that the invested money would be applied for any specific or restricted purpose. In law, once the investors parted with the money under such an arrangement, the beneficial ownership of that money vested in the Company. Thus, there was no entrustment in the legal sense required to constitute an offence under Section 405 IPC.

14. It was further argued that it is not the prosecution’s case that the Company or the Applicant had a dishonest intention since inception. On the contrary, from the year 1994 until 2017, the Company regularly paid both principal and interest to its investors, a track record spanning over 26 years. In fact, the first informant

received interest on his principal between 2012 and 2013, and defaults only began after 2017 due to alleged financial difficulties. Such a history, it was urged, is inconsistent with any pre-existing intent to cheat.

15. On this basis, learned Senior Counsel contended that Section 409 IPC is inapplicable to the facts of the present case. Once IPC provisions are excluded, the remaining offences under the MPID Act carry a maximum sentence of six years. Since the Applicant has already spent one year and seven months in custody, his continued detention is not justified. Reliance was placed on the principles laid down by the Supreme Court in *Sanjay Chandra v. Central Bureau of Investigation*, (2012) 1 SCC 40, particularly on the aspect that pre-trial detention should not be prolonged when the trial is likely to take considerable time.

16. In support of his submissions, learned Senior Counsel placed reliance upon the following judgments:

- (a) *Chellor Mankkal Narayan Ittiravi v. State of Travancore-Cochin*, AIR 1953 SC 478;
- (b) *M/s. Indian Oil Corporation v. M/s. NEPC India Ltd.*, AIR 2006 SC 2780;
- (c) *Delhi Race Club v. State of Uttar Pradesh*, (2024) 10 SCC 690;
- (d) *Deochand Durlabhji Jogi v. Madanlal Gopikisan Sharma*, 1967 SCC OnLine Bom 88;
- (e) *The Sarvada Merchant Coop. Credit Society Ltd. & Ors. v. State of Maharashtra & Anr.*, Criminal Application No. 798 of 2013;
- (f) *N. Raghavender v. State of Andhra Pradesh*, (2021) 18 SCC 70;
- (g) *Wainganga Krishna Gramin Bank v. State of Maharashtra &*

Ors., (2012) SCC OnLine Bom 1077;

(h) *Nadir Ali Barqa Zaidi & Ors. v. State of U.P.*, (1959) SCC OnLine All 106; and

(i) *Satishchandra Ratanlal Shah v. State of Gujarat*, (2019) 9 SCC 148.

17. Per contra, Mrs. Megha Bajoria, learned APP, strongly opposed the bail application. She submitted that the applicant is one of the Managing Directors of the said Company. From the very inception of the company, investors were lured with various investment schemes, such as: (i) Fixed Deposit Scheme – having a duration of 12 months, offering interest in the range of 1% to 1.5% per month, with the principal amount repayable on maturity and an option for renewal. ii) Double Money Scheme – where the amount invested would be doubled within five years. (iii) Daily Collection Scheme – having a term of 3 to 6 months, where the company's agents collected daily deposits of at least ₹100/- from retail traders, and the depositors were promised interest on the maturity of such deposits.

18. She submitted that while the company's stated business was that of mortgaging property and providing loans against security, in reality, without possessing any valid license to accept public deposits, the company illegally ran these investment schemes and accepted huge sums from investors. Upon maturity, the company failed to return the principal along with interest. The period of offence, according to the prosecution, spans from September 2012 to 6 January 2020.

19. Learned APP pointed out that a certificate issued by the Reserve Bank of India specifically records that the applicant's company was not authorised to accept or hold public deposits, yet the company continued to do so in violation of the law.

20. It is further the prosecution's case that the applicant diverted investors' money to his personal bank accounts instead of depositing the same in the company's accounts. The applicant maintained two accounts with Axis Bank, into which significant sums were received directly from investors. For example, an investor, Pradip Shetty, transferred ₹5 lakh on 20 March 2013 and another ₹5 lakh on 26 March 2014, and a further ₹5 lakh on 23 May 2014 into the applicant's personal accounts.

21. The registration certificate issued by the Municipal Corporation of Greater Mumbai to the company on 22 December 2015 records its activity as "leasing and finance." Despite this, the applicant and other directors illegally accepted public deposits in violation of applicable law.

22. Learned APP submitted that 32 bank accounts belonging to the company and the four accused persons, including the present applicant, have been frozen. A forensic audit is in progress, and the provisional audit report shows that an amount of ₹268.05 lakhs was deposited in the applicant's personal accounts, with the sources of these funds remaining unidentified.

23. It is alleged that the accused siphoned off investors' funds into their personal accounts and later transferred substantial amounts to accounts of M/s. Maberest Hotel Private Limited and

Hotel Fidalgo, Panaji. Statements of several investors, witnesses, and pigmy agents of the company reveal that the accused directors initially enticed investors with promises of high returns, either 1% to 1.5% monthly or doubling of principal, and thereafter pressured them to invest even larger amounts.

24. Further, information received regarding the bank accounts of the accused financial institution shows that the applicant was an authorised signatory. The statements of 1,933 investors have been recorded so far, disclosing that the total fraud detected amounts to ₹214 crore. The process of recording investors' statements is still ongoing, and the prosecution anticipates that the quantum of the fraud may further increase.

25. Learned APP also brought to the notice of this Court that the applicant had filed two anticipatory bail applications before this Court, both of which were rejected, on 23 October 2020 and 17 December 2020. Thereafter, the applicant remained absconding and could be arrested only on 17 January 2024. This conduct, according to the prosecution, reflects the applicant's disregard for the law.

26. It was also pointed out that one Nitesh Lalabhai Shah, a hotelier, has lodged a non-cognizable complaint at Amboli Police Station, Mumbai against the applicant, alleging that he was threatened. The prosecution alleges that these threats were issued by the applicant while he was in judicial custody, and that he was making calls from jail. Learned APP submitted that such conduct is of serious concern, as it raises a real apprehension that, if released

on bail, the applicant may threaten investors or witnesses. In view of these facts, it was submitted that the present bail application deserves to be rejected.

27. Mr. Mutahar Khan, learned Advocate for the intervener, submitted that the total number of investors defrauded by the applicant and other co-accused has now increased to 3,023. He pointed out that ten immovable properties of the accused have been attached under the provisions of the MPID Act. Out of these, four properties have already been sold. One immovable property was demolished, and another property was detached from attachment as it had already been auctioned under SARFAESI proceedings. According to him, apart from one property at Serial No. 10 of the affidavit filed by the Economic Offences Wing, valued at only ₹2 crore, there is no other property left which could be liquidated to compensate the investors.

28. Learned counsel submitted that the amounts deposited by investors with the applicant would amount to entrustment within the meaning of Section 405 IPC if it is shown that the applicant had dominion over such amounts. From the material in the charge-sheet, it is clear that the first informant was told by the accused company that it was in the business of mortgaging property and providing loans against such security. However, the evidence indicates that the applicant misappropriated and utilised the investors' funds for his own benefit by transferring the amounts to his personal account as well as to an HUF account controlled by him. This fact, he submitted, stands confirmed by the applicant's sister, wife of another absconding accused, in her reply/objections

dated 6 September 2024. Such misappropriation and conversion of amounts received from investors for personal use, according to him, is contrary to the understanding between the accused and the investors, and clearly amounts to breach of trust.

29. It was further submitted that under Section 73 of the Companies Act, the accused company was prohibited from accepting deposits from members of the public. Similar restrictions, he pointed out, exist under Section 45-S of the Reserve Bank of India Act. Moreover, the Securities and Exchange Board of India had never granted permission to the accused company, controlled by the applicant, to accept such deposits.

30. Learned counsel argued that floating investment schemes and accepting deposits without legal authority was illegal from the very inception. The mere fact that the accused had paid interest or returned principal amounts to some investors for a certain period would not make the transaction lawful; the scheme was fraudulent right from the beginning. In fact, payment of interest in the initial years was only a device to attract more investors and thereby perpetuate the fraud. In support, he relied upon the judgment of this Court in *Prashant Wasankar v. State of Maharashtra*, (2016) 4 Bom. C.R. (Criminal) 257.

31. The learned counsel submitted that the analogy drawn by the applicant, comparing deposits with the company to deposits made with a bank, is wholly misconceived. A bank is authorised under the RBI Act and operates under strict regulatory control to accept deposits and utilise them only in prescribed ways.

Acceptance of money from unsuspecting investors under fraudulent schemes, such as the present one, cannot be equated with legitimate banking transactions.

32. He further argued that the applicant falls within the description of an “agent” under Section 409 IPC. In various judicial pronouncements, it has been held that to constitute an agent, it must be shown that the person was entrusted with property or had dominion over property in the ordinary course of his occupation or trade, for a particular purpose. In this regard, reliance was placed upon the decision of the Supreme Court in *R.K. Dalmia v. Railway Administration*, 1962 SCC OnLine SC 83.

33. Learned counsel then contended that the applicant had evaded arrest for over four years by concealing his identity. During this period, the applicant also created back-dated documents in relation to Hotel Fidalgo with the objective of siphoning off property and keeping it beyond the scope of attachment under the MPID Act. The applicant, in his own bail application before the Sessions Court, has admitted that after registration of the FIR, he prepared fraudulent documents regarding Hotel Fidalgo and parted with possession of the said property in favour of a third party.

34. Considering the applicant’s past conduct of absconding for four years, learned counsel submitted that there is a very strong likelihood that, if released on bail, the applicant will not make himself available for trial.

35. As regards the applicant's argument that the trial in respect of other co-accused has been stayed, learned counsel submitted that this is of no assistance to the applicant since there is no impediment to proceeding with the trial against him and other accused whose trial has not been stayed. He, therefore, urged that the bail application be rejected.

36. I have heard learned Senior Advocate for the applicant, learned APP for the State, and learned counsel for the intervener. I have also perused the charge-sheet, provisional forensic audit extracts placed on record, the RBI communication relied upon by the prosecution, the statements of investors received thus far, and the orders rejecting the applicant's earlier anticipatory bail.

37. At the stage of bail under Section 439 CrPC, the Court is not required to conduct a mini-trial or return conclusive findings on guilt. The exercise is to ascertain whether, on the material presently available, there exists a prima facie case; the nature and gravity of the accusations; the role attributed to the applicant; the likelihood of absconding, tampering with evidence or influencing witnesses; the stage of investigation/trial; and the balance between the right to personal liberty and the societal interest. Economic offences involving public money ordinarily warrant a strict view, given their impact on the community and investor confidence.

38. The applicant's primary contention is that the case springs from a money – lending/deposit transaction, devoid of "entrustment", and, therefore, Sections 406/409 IPC are not

attracted. It is urged that returns were consistently paid since 1994; the schemes were not usurious; there was no inception-stage fraud; at the highest, the matter is within the MPID Act where the maximum sentence is six years; and the applicant has already undergone around one year seven months of incarceration. Reliance is placed on decisions emphasising that a breach of contract does not automatically translate into criminal breach of trust or cheating, and on the general principle that pre-trial detention should not be prolonged.

39. The prosecution and the intervener, however, assert that the applicant, a Managing Director, is shown to have (i) accepted public deposits without authority; (ii) diverted investor funds into personal and HUF accounts; (iii) facilitated transfers to allied entities including Maberest Hotel Pvt. Ltd. and Hotel Fidalgo, Panaji; (iv) presided over schemes promising 1%–1.5% per month or even doubling within five years; and (v) remained absconding after rejection of two anticipatory bail applications (23-10-2020 and 17-12-2020), until arrest on 17-01-2024. The State points to an RBI communication stating that the company was not authorised to accept/hold public deposits. A provisional forensic audit indicates deposits aggregating about ₹2.68 crore in the applicant's personal accounts with unidentified sources. The statements of 1,933 investors have been recorded, and the alleged fraud presently assessed is about ₹214 crore, which may escalate as the process continues. There are also allegations of threats to a hotelier from custody.

40. On the contention raised by the applicant that the transactions in question were merely in the nature of loans or deposits, and therefore lacked the element of “entrustment,” this Court is mindful that at the stage of deciding a bail application, it is not required to conclusively determine the issue. The limited scope of scrutiny is to see whether, on the material presently placed on record, there exists a prima facie case showing (i) entrustment of property or dominion over it, and (ii) dishonest misappropriation, conversion, or use of such property contrary to the understanding between the parties.

41. In my Prima facie opinion, entrustment is not confined to formal trust arrangements, it covers any situation where one party hands over property or funds to another with a specific purpose, and the recipient obtains dominion over that property with a corresponding obligation to use it in the manner agreed. What is crucial is: (i) Delivery of property or funds by one person to another; (ii) Obligation, express or implied, to use or return them for that purpose; and (iii) Dishonest misappropriation or conversion inconsistent with that purpose.

42. The material placed by the prosecution does not merely say that there was a simple failure to repay money. It goes further and claims that large amounts were collected from the public through different investment schemes which were not authorised under law. These schemes were started without the required licence or legal permission to take public deposits. The money collected in this way was not kept or used in the normal course of a lawful lending business. Instead, as per the provisional forensic audit and

statements of investors, it was moved into the applicant's personal bank accounts and HUF accounts under his control, and then sent to other related entities.

43. These facts, taking public money without legal authority, putting it into personal accounts, and then transferring it elsewhere, clearly go beyond a normal lender-borrower relationship. In a genuine loan deal, the lender willingly gives the money to the borrower for an agreed return, and the borrower can use it as his own so long as he repays it. But here, the allegation is that the money was taken from investors with the promise that it would be used for the company's mortgage and loan business, yet it was instead used for purposes that did not match that promise.

44. Another important point from the prosecution's material is that the fixed deposit receipts given by the applicant's company to many investors were missing key details. In several cases, the maturity value, the maturity amount in words, the way in which interest would be paid, and even the rate of interest were either left blank or marked with a dash. In any normal and lawful financial transaction, a fixed deposit receipt should clearly mention the principal amount, the agreed rate of interest, the time period of the deposit, the maturity date, and the exact amount payable on maturity. If these basic details are missing, the receipt loses much of its value as proof of a genuine financial agreement and, at first glance, does not match standard financial practice.

45. This becomes even more serious here because it is not disputed that the applicant's company had no legal authority

under Section 73 of the Companies Act or Section 45-S of the RBI Act to take public deposits. In such a situation, issuing incomplete or vague deposit receipts can reasonably be seen, at least at this stage, as a way to keep control of investors' money without committing to clear repayment terms. This, in turn, could make it easier to divert or misuse the funds. This fits with the prosecution's version that the money was collected under so-called "deposit schemes" but without the transparency, rules, or safeguards that lawful banks or licensed finance companies are required to follow.

46. For deciding bail at this stage, these incomplete or dash-marked receipts give initial support to the claim that investors' money was entrusted to the applicant and his co-accused for a specific purpose, investment in the company's finance business, and was later used in a way that went against that purpose. When these incomplete receipts are looked at together with the other allegations, like taking deposits without authorisation and diverting money into personal accounts, they strengthen the initial view that there may have been dishonest intention from the start.

47. Whether the applicant, by virtue of his position as a Managing Director and authorised signatory, would fall within the category of an "agent" or otherwise be covered under Section 409 IPC is ultimately a matter of evidence to be determined during trial. At this stage, however, the present material does indicate that the applicant had dominion over the investors' funds and that there was a use of such funds inconsistent with the avowed and represented purpose. This is sufficient, at the prima facie stage, to satisfy the basic ingredients of Sections 405, 406, and 409 IPC for

the purpose of considering the bail application.

48. In *Deochand Durlabhji Jogi (supra)*, this Court clarified that for an offence under Sections 405/406 IPC, the first and foremost requirement is entrustment of property or dominion over property. Mere deposit of money, without any agreement that it will be kept separate or used for a specific purpose, creates only a debtor–creditor relationship, not entrustment. In such cases, beneficial ownership of the money passes to the recipient, who can use it for their own purposes, subject only to a contractual obligation to return an equivalent sum. Dishonest refusal to repay may give rise to civil liability but not necessarily criminal breach of trust.

49. Applying that reasoning to the facts narrated in this case if the investors had simply advanced money to the company on terms that, after a fixed period, the principal plus agreed interest would be repaid, and there was no stipulation that the money would be earmarked for any particular use or kept in a separate account, the relationship at inception would resemble that of a lender and borrower. On this view, entrustment in the strict sense may be absent.

50. The prosecution’s case here is not confined to non-repayment. They allege that the company was unauthorised to accept deposits under the RBI Act/Companies Act. Funds were diverted to the applicant’s personal and HUF accounts and allied entities. This diversion was contrary to the understanding given to investors that their money would be used for the business of mortgage lending.

51. As explained in *Deochand*, if money is handed over for a specific purpose or under specific directions (even orally or implied from the scheme’s representation), and the recipient uses it for a different purpose, that can constitute entrustment plus misappropriation. The prosecution’s claim that the funds were to be used in the business of the company and instead were diverted to personal accounts may supply this “specific purpose” element.

52. While whether the transaction legally amounted to “entrustment” will ultimately be decided at trial, the present material, statements of investors, RBI’s prohibition on deposit-taking, the alleged diversion into personal accounts, provides a factual basis for the prosecution to argue that the money was held for a particular business purpose, not as an unrestricted loan. This is sufficient, at the bail stage, to cross the prima facie threshold for Sections 405/406/409 IPC, unlike in *Deochand*, where no such purpose was pleaded or proved.

53. If the facts are ultimately proved as the prosecution alleges, i.e., that public funds were collected under an assurance they would be deployed in a specified business and were instead diverted for personal use, the transaction could amount to entrustment under Section 405 IPC, distinguishing it from the pure debtor–creditor relationship in *Deochand*. However, if at trial it is found that there was no such specific obligation and the money was accepted without restriction on use, *Deochand* would support the defence contention that no entrustment existed.

54. The Supreme Court in *N. Raghavavender (supra)*, has made it clear that “entrustment” under Sections 405 and 409 IPC is not limited to formal trust arrangements. It covers any situation where property is given to someone with control over it, along with an obligation to use it for a particular purpose. In that case, even a bank officer’s misuse of funds that he controlled in his official capacity was enough to show criminal breach of trust. Here, the applicant, as Managing Director, had control over investors’ funds in a role similar to a fiduciary, even though the company had no legal right to take such deposits in the first place. The alleged diversion to his personal accounts is, on the face of it, inconsistent with the investment schemes promised to the depositors. Whether the applicant legally qualifies as an “agent” or comes within the stricter category of Section 409 IPC will be decided at trial. But for the purpose of bail, there is enough material to say that a prima facie case under Sections 405/406/409 IPC exists.

55. The applicant’s reliance on the judgment in *Savada Merchant Cooperative Credit Society(supra)* is misplaced. In that case, the cooperative society was a lawful body that was allowed by law to take deposits from its members, and the dispute was about handling those lawful deposits. In the present case, the applicant’s company was never authorised to take deposits from the public. In fact, the law expressly prohibited it, and the Reserve Bank of India had confirmed that the company was not allowed to accept or hold public deposits. This means that from the very start, the deposit-taking activity was allegedly illegal. This basic difference means the ratio of the *Savada* case cannot be applied here.

56. Looking at all this together, the present record shows enough material to indicate entrustment and dishonest misuse of investor funds. This takes the case beyond a mere civil dispute about a loan and into the zone of criminal breach of trust for the limited purpose of deciding bail.

57. The authorities relied upon by the applicant to emphasise the distinction between civil and criminal liability are, in the considered view of this Court, distinguishable on facts at this stage. It is no doubt well settled that the criminal law should not be invoked to settle purely civil disputes, and that a mere breach of contract or failure to repay a debt, without more, ordinarily gives rise to civil remedies rather than criminal prosecution. Those principles serve as a safeguard against the misuse of criminal process in matters where no criminal intent can be inferred even *prima facie*.

58. However, the present factual matrix goes beyond the boundaries of a simple civil breach. The record, as it stands today, discloses specific allegations of (i) acceptance of public deposits in clear contravention of statutory provisions and without the requisite regulatory authority; (ii) diversion of substantial amounts from such deposits into the applicant's personal accounts and HUF accounts under his control, as well as to allied entities; and (iii) systemic inducement of investors through schemes offering high and assured returns, thereby encouraging larger and continued investment inflows.

59. These features, if ultimately proved, are indicative not merely of non-repayment, but of a course of conduct involving deception, misuse of public funds, and breach of the specific representation allegedly made to depositors regarding the use of their money. For the limited purpose of assessing a bail application, such allegations are sufficient to *prima facie* remove the matter from the category of a pure debtor–creditor dispute and bring it within the realm of offences involving dishonest intention at some stage of the transaction.

60. Therefore, while the decisions cited by the applicant remain good law on their own facts, they cannot be pressed into service to neutralise the weight of the present allegations at the bail stage. The distinctive factual elements in the case at hand justify the invocation of criminal process alongside any civil remedies that may be available to the investors.

61. On the other hand, the decision cited by the intervener, which, among other things, makes it clear that making regular payments at the beginning does not make an unlawful scheme lawful, appears to match the present facts, at least at this initial stage. At this point, the Court is only considering the material to see if there is a *prima facie* case, and this principle seems relevant. However, it would not be proper to go into a detailed discussion or make any conclusive finding on this aspect now, so as to avoid causing any prejudice to either side during the trial.

62. The applicant has argued that since the company has been regularly paying interest and principal to investors since 1994, it

shows there was no dishonest intention. However, this fact alone cannot be taken as final proof that there was no criminal intent (*mens rea*). In cases where money is collected from the public without legal authority, it is quite common that, in the beginning, the promoters make all payments on time. These early and regular payouts are often used to build trust among existing investors and to attract more people to invest, helping the scheme expand. In financial fraud investigations, this stage is sometimes called the “confidence-building stage.” Such early payments do not change the legal nature of the scheme if it is later found to be in violation of legal prohibitions.

63. It is a well-settled rule that simply making the promised payments in the early years does not wipe away an illegality that was present right from the start. If the very act of collecting deposits from the public was done without the required legal permission, or in breach of the prohibitions under the Companies Act, the Reserve Bank of India Act, or the MPID Act, then later regular payments cannot make the arrangement lawful. Even in such a case, the dishonest intention (*mens rea*) to commit the offence can still be inferred if it is shown that the accused knew the company had no authority to accept public deposits, yet continued to ask for and receive people’s money.

64. The intervener is right in saying that early and timely payments cannot be taken as proof that the scheme was lawful from the beginning. In fact, according to the prosecution, these payments may have been part of a calculated plan to make the scheme appear safe and genuine, so that more people would invest

larger amounts over time. If, at the trial, it is proved that the scheme was illegal right from its inception, then these early repayments will have no bearing on whether an offence was committed, except to show the method used to gain the trust of investors and persuade them to hand over their money.

65. The applicant has argued that this case should be looked at only under the MPID Act and not under the Indian Penal Code. At this stage, this Court is not persuaded by that argument. It is correct that the MPID Act is a special law made to protect depositors by allowing the authorities to attach the properties of financial establishments and sell them to repay investors. But just because such a special law exists, it does not mean that the general criminal law in the IPC stops applying, if there is enough material to show that those offences are also made out on the facts.

66. The MPID Act mainly deals with what happens when a financial establishment fails to return deposits, it focuses on attaching and liquidating assets for repayment. On the other hand, IPC offences like cheating (Section 420) or criminal breach of trust (Sections 405, 406, 409) deal with the mental element, dishonest intention and misuse of someone else's property. It is well settled that if the same set of facts shows the ingredients of offences under both a special law and the IPC, the prosecution can go ahead under both, unless a specific legal bar says otherwise.

67. In the present case, the prosecution has brought on record material indicating that (a) the Reserve Bank of India had clearly communicated that the company was not authorised to accept

public deposits; (b) accepting such deposits was also barred under Section 73 of the Companies Act and Section 45-S of the RBI Act; and (c) substantial amounts collected from investors were allegedly diverted to the applicant's personal accounts and HUF accounts under his control, and further transferred to related entities.

68. If these allegations are ultimately proved, they would not only establish a violation under the MPID Act but also satisfy the prima facie elements of IPC offences involving entrustment, dishonest misappropriation, and inducement with fraudulent intent. The law does not prevent the two streams of liability from operating concurrently when the facts so justify. Therefore, at the present stage, this Court is unable to accept the submission that the matter should be examined only through the lens of the MPID Act, ignoring the provisions of the IPC.

69. In simple terms, the comparison made by the applicant between the money kept in a licensed bank and the money given in the present case does not hold good. A bank is a financial institution which works only after getting a proper licence from the Reserve Bank of India, and it must follow strict legal rules. These rules include keeping a certain amount of money in reserve, following safe lending practices, and working under continuous checks by the authorities. The law clearly allows banks to use the money deposited by customers, but only in certain approved ways, and this use is always under watch to make sure the depositors' money is safe. Even when a bank uses the depositors' money for its own business, it has to do so within a protected system, where

proper safeguards are in place to ensure that the money can be returned and, if there is a problem, the law provides for strict regulatory action.

70. The present allegations stand on an entirely different footing. It is not the prosecution's case that the applicant was carrying on deposit-taking activities under lawful authority. On the contrary, the material on record suggests that the company of which the applicant was a Managing Director was expressly unauthorised to accept public deposits. Despite this, it is alleged that public funds were solicited and collected through various investment schemes. More importantly, there is specific material showing that significant amounts from such collections were transferred into the applicant's personal accounts and HUF accounts under his control, and further moved to allied entities such as related companies and hotels.

71. These circumstances fundamentally distinguish the present case from the operations of a regulated bank. In the case of a bank, the depositor knowingly parts with ownership of money with the understanding that it will be used in accordance with statutory norms. Here, if the prosecution's version is accepted at face value, the investors were led to believe that their money would be utilised for the business activities of the company, namely mortgage lending, but instead, the funds were diverted for purposes outside the agreed scope.

72. At this stage, therefore, the analogy with a banking transaction does not hold good. The legal and regulatory

environment of banks provides a presumption of legitimacy to their deposit-taking, whereas the present activity, as alleged, was illegal from its inception and conducted in defiance of statutory prohibitions. Such unauthorised and unregulated acceptance of public funds, coupled with the alleged diversion for personal benefit, places the case in a category far removed from legitimate banking operations.

73. As regards the quantum and spread of the alleged transactions, the material placed on record by the prosecution shows that, as on date, statements of 1,933 investors have already been recorded. These statements, according to the prosecution, are only part of the total picture, as they assert that the number of affected depositors runs into several thousands. The provisional forensic audit presently indicates an alleged financial exposure of approximately ₹214 crore, with the clear possibility of this figure increasing as the remaining statements are recorded and the audit process is completed.

74. While the precise quantum and the total number of investors are ultimately matters to be established at trial through admissible evidence, the sheer breadth of the alleged victim class and the magnitude of the sums involved cannot be ignored at this stage. These factors are relevant not for determining guilt but for assessing the gravity of the accusations and the potential impact on public confidence in financial dealings.

75. In offences involving large-scale public investment, the number of victims and the total financial exposure are not mere

statistics, they indicate the scale of the alleged breach of trust and the corresponding risk to the economic security of a wide section of the public. Even if the final figure differs from the provisional estimate, the material presently available shows that the alleged fraudulent activity was neither isolated nor minor in scope, but extended over a large geographical and social spectrum.

76. Such magnitude, coupled with the allegation that the activity was unauthorised and in violation of statutory provisions, heightens the seriousness of the offence. It also strengthens the apprehension that, if released on bail at this stage, the applicant may influence a substantial number of potential witnesses, thereby affecting the fairness of the trial.

77. On the issue of flight risk and conduct, the record shows that the applicant had filed two separate anticipatory bail applications before this Court in the year 2020, both of which came to be rejected, first on 23 October 2020 and again on 17 December 2020. Despite the rejection of these applications, the applicant did not make himself available for investigation. Instead, he remained untraceable for a prolonged period of more than three years, until he was finally apprehended on 17 January 2024.

78. Such prolonged absence from the reach of the investigating agency, particularly after denial of anticipatory bail, creates a strong prima facie impression that the applicant is capable of, and willing to, evade the legal process when it suits his convenience. At this stage, the explanation offered by the defence for this long absence does not appear sufficient to dispel this inference.

79. The apprehension of the prosecution is further reinforced by allegations that, even while in judicial custody, the applicant has issued threats to at least one individual, namely, a hotelier, who has lodged a complaint in this regard. It is also alleged that these threats were made through phone calls originating from within the jail premises. If these allegations are ultimately proved, they would not only amount to misconduct during custody but would also support the conclusion that the applicant poses a real and tangible risk of influencing or intimidating witnesses if enlarged on bail.

80. In matters involving a large number of victims and significant public interest, the Court is duty-bound to ensure that the trial process remains free from interference or coercion. When past conduct shows both evasion of arrest and alleged acts of intimidation, the risk of the applicant misusing his liberty cannot be lightly brushed aside. These factors, when weighed together, operate strongly against the exercise of discretionary power in favour of granting bail at this stage.

81. With regard to the stage of the proceedings, it is true that the investigation has advanced to the point where a charge-sheet has been filed against the applicant and other accused. However, the record also makes it clear that the investigative process is not yet complete in all respects. The forensic audit, which is crucial for tracing the flow of funds, identifying the ultimate beneficiaries, and determining the full extent of the alleged misappropriation, is still stated to be in progress.

82. In addition, the prosecution has placed on record that as many as 32 bank accounts belonging to the accused persons and the concerned company have been frozen. Statements from a large number of investors are yet to be recorded, and the process is continuing. The number of potential witnesses in this case is substantial, given the wide spread of investors across different locations.

83. In such a situation, releasing the applicant, who is alleged to be a principal functionary and one of the key decision-makers of the company, at this delicate juncture carries a real and credible possibility of obstructing the due course of justice. This obstruction may take the form of contacting or influencing investors and other witnesses, persuading them to alter or dilute their statements, or creating confusion about the nature of their investments.

84. There is also a real risk that assets which have not yet been found could be hidden or disposed of. The properties already attached under the MPID Act, ten immovable assets in total, may not be enough to repay all the depositors, especially since some of these have already been sold, demolished, or released from attachment due to earlier proceedings like SARFAESI actions, particularly when according to intervenors only one property worth 2 crores is available for liquidation. If any remaining untraced or unencumbered assets are sold off or transferred during this period, it could seriously damage the purpose of the prosecution and make it impossible for investors to recover their money through the process provided under the MPID Act.

85. Considering these facts, the ongoing investigation into important aspects of the case, together with the applicant's alleged role and access to resources, creates a strong reason to deny bail at this stage. Granting bail now could not only affect the fairness of the criminal case but also harm the separate process under the MPID Act meant to secure repayment to the investors.

86. The plea advanced on behalf of the applicant, that he has already undergone a certain period of incarceration and that the maximum sentence under the MPID Act is comparatively lower, does not, in the opinion of this Court, tilt the balance in his favour at this stage.

87. Firstly, the applicant has disputed the applicability of Section 409 IPC; however, for the reasons already discussed earlier, there exists prima facie material to proceed against him under that provision. Section 409 IPC, which deals with criminal breach of trust by a public servant, banker, merchant, or agent, prescribes a substantially higher maximum punishment than the offences under the MPID Act. If the allegations are ultimately established, the applicant could face a far more severe sentence than that contemplated under the special statute alone. Therefore, the argument that his custody period should be weighed only against the MPID Act's sentencing framework is not persuasive.

88. Secondly, while it is true that the Supreme Court in *Sanjay Chandra (supra)* reiterated the principle that bail is the rule and jail is the exception, the same judgment makes it equally clear that the Court, while deciding a bail application, must give due regard

to the gravity of the offence, its impact on society, and the likelihood of the accused interfering with the process of justice. These factors are not merely formal considerations; they go to the heart of the Court's discretion under Section 439 CrPC.

89. From the material placed before this Court at this stage, the allegations are not about an isolated or small transaction but about a large-scale operation involving the collection of public money in direct breach of legal prohibitions. The prosecution says that these funds, instead of being used for the purpose for which they were collected, were moved into the applicant's personal accounts, HUF accounts, and accounts of related entities. The case records also suggest that the number of affected investors runs into thousands, and the provisional figure of loss has been estimated in hundreds of crores, though the final figure may be even higher once the forensic audit is complete.

90. Such large-scale mobilisation of funds, allegedly in contravention of statutory provisions meant to safeguard the public, significantly increases the seriousness of the case. The Court also cannot overlook the applicant's past conduct, after his anticipatory bail applications were rejected, he is said to have remained out of reach for several years before being arrested. This past behaviour, coupled with the allegation that he issued threats to a third party while in judicial custody, raises a genuine and reasonable fear that if released, the applicant might attempt to influence or intimidate witnesses, or take steps to hide or dispose of assets.

91. Given these factors, there is a real possibility that releasing the applicant on bail at this stage may not only hamper the investigation and trial but may also make it more difficult to recover the amounts allegedly misappropriated, thereby frustrating the process intended to secure restitution for the investors.

92. When these aspects are considered cumulatively, the principle in *Sanjay Chandra* does not operate in isolation to secure the applicant's release. On the contrary, applying the very tests laid down in that judgment, gravity, public impact, and likelihood of interference, the present case clearly falls within the category where continued detention is justified in the interest of justice.

93. Taking a holistic view, the scale of the alleged fraud; the role attributed to the applicant as Managing Director and authorised signatory; the money trail to personal/HUF accounts and allied entities; the unlicensed nature of the deposit-taking activity; the period of abscondence and the apprehension of intimidation, I am not persuaded that this is a fit case for exercise of discretion in favour of the applicant at this juncture.

94. After considering all the points discussed above, this Court finds that, at this stage, the prosecution has shown enough material to indicate: (i) a prima facie entrustment of investors' money to the applicant, (ii) that these funds were collected in violation of legal prohibitions, (iii) that the money was diverted and used in a way that went against the stated purpose, (iv) that incomplete deposit receipts were issued, pointing to a lack of clear repayment terms, (v) the large number of alleged victims and the

huge scale of the case, (vi) a real risk that the remaining assets could be hidden or disposed of, and (vii) the applicant's past conduct showing a risk of absconding and possibly influencing witnesses. Looking at all these factors together, and keeping in mind the well-settled principles for granting bail in economic offence cases, this Court is of the view that releasing the applicant now would likely harm both the criminal case and the process of recovering money for the investors under the MPID Act. The bail application is, therefore, rejected.

95. Before parting, two directions are necessary in aid of a fair and expeditious process: (i) the Investigating Officer and the prosecuting agency shall endeavour to complete the forensic audit and file any supplementary charge-sheet(s) within a reasonable time; (ii) the Trial Court may, if otherwise permissible, consider segregation/scheduling so that the trial against the present applicant proceeds without being held up by any stay operating in respect of other co-accused.

96. Subject to the above observations, the application for bail is rejected.

97. In view of disposal of the Bail Application, nothing remains for adjudication in the interim applications. Hence, all interim applications are also disposed of.

(AMIT BORKAR, J.)