Shabnoor

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO.5069 OF 2024

Umesh Shivram nAIK … Applicant
V/s.
State of Maharashtra … Respondent

Mr. Amit Patel, for the applicant.
Mrs. Supriya I. Kak, APP for the State – respondent.
Mr. Kiran Sanap, I.O., Kandivali Police Station is present.

CORAM : AMIT BORKAR, J.

DATED : AUGUST 14, 2025

P.C.:

1. The present bail application has been filed by the applicant under Section 439 of the Code of Criminal Procedure, 1973, seeking his release on regular bail in connection with Crime Register No. 404 of 2023 registered with Kandivali Police Station, Mumbai. The allegations against the applicant attract offences punishable under Sections 406 and 420 read with Section 34 of the Indian Penal Code, 1860. In addition to these provisions, the offences under Sections 3 and 4 of the Maharashtra Protection of Interest of Depositors (in Financial Establishments) Act, 1999 (hereinafter referred to as “MPID Act”) have also been invoked. The MPID Act is a special legislation enacted with the object of protecting the interest of depositors in financial establishments, and the invocation of these provisions indicates the seriousness of the alleged acts and their impact on public interest.

2. The case of the prosecution, in brief, is that the informant, the applicant, and the absconding accused, namely Shyamsunder Madhukar Malwankar, were earlier employed with Pan Card Club Company during the period from 2012 to 2016. In October 2018, the applicant and the absconding accused are alleged to have persuaded the informant to invest in a scheme run under the name and style of "Happiness 4 All". The representation allegedly made was that the scheme would yield attractive returns and that the principal investment would be refunded within one year. Acting upon these assurances, the informant invested a total of ₹31,50,000/- in the said firm.

3. It is the case of the prosecution that the said firm is a partnership entity comprising the applicant, Shyamsunder Malwankar, and one Deepak Mhaskar as partners. The informant is stated to have received ₹4,50,000/- as profit in two or three instalments, calculated at the rate of 8.5% per annum. However, the principal sum of ₹27,00,000/- has not been repaid to the informant. It is alleged that the default in repayment, coupled with the initial representation, constitutes dishonest inducement from the inception. Consequently, the informant lodged the present FIR against the applicant, the absconding accused, and their associates for the offences referred to above.

4. Learned Advocate appearing for the applicant submitted that the role attributed to the applicant is limited to that of an agent who merely introduced the informant and other depositors to invest the amount in the scheme. It is contended that the principal accused, who is presently absconding, is the main person responsible for managing the scheme and handling the investments. Learned counsel further submitted that, as per the prosecution's own case, the applicant is alleged to have received ₹9,08,000/- towards commission for his role, which amount has already been deposited before the Sessions Court. It is also urged that the applicant has been in custody since 8 February 2024, has no prior criminal antecedents, and there is no likelihood of him tampering with the prosecution evidence. Therefore, considering the period of incarceration and the deposit made, it is prayed that the applicant be enlarged on bail.

5. Per contra, the learned Additional Public Prosecutor opposed the application. It is submitted that the applicant's role is not as innocuous as claimed. According to the prosecution, the applicant was not merely an introducer but an active participant in the inducement process, having played a key role in convincing the informant to invest a large sum of money. It is further contended that his close association with the absconding accused and his position as a partner in the firm "Happiness 4 All" place him on an equal footing with the principal accused in terms of criminal liability. It is emphasised that offences under the MPID Act are serious in nature, involving public funds, and that granting bail at this stage may adversely affect the ongoing investigation, particularly in tracing the absconding accused and the funds. On these grounds, the learned APP prayed for rejection of the bail application.

6. I have considered the submissions advanced on behalf of the applicant and the learned Additional Public Prosecutor, and have perused the material placed on record. The allegations against the applicant are that he, along with the absconding accused and others, persuaded the informant to invest in the scheme "Happiness 4 All" and assured repayment of the principal with attractive returns. It is further alleged that the applicant received ₹9,00,000/- as commission from the said transactions. The partnership status of the applicant is disputed; however, for the purpose of the present bail application, the Court proceeds on the basis of the prosecution's allegations.

7. The material on record indicates that the role attributed to the applicant is primarily that of introducing the investor to the scheme and facilitating the investment. The allegation of receipt of commission has been met by the applicant by depositing the said sum of ₹9,08,000/- before the Sessions Court, which shows a gesture towards cooperation. It is also pertinent to note that the main accused, who is alleged to have managed the funds and formulated the scheme, is absconding, and the present applicant has been in custody since 8 February 2024. The investigation, insofar as the applicant is concerned, is substantially complete and the charge-sheet has been filed.

8. The offences alleged, though serious in nature, are largely based on documentary material such as partnership records, investment receipts, and bank statements, all of which are already in the possession of the investigating agency. There is no material to suggest that the applicant, if released on bail, would tamper with this documentary evidence. Further, the applicant has no past criminal antecedents. The apprehension expressed by the prosecution that the applicant is on an equal footing with the main accused is a matter to be decided during the trial upon appreciation of evidence and cannot, at this stage, be the sole ground to deny bail.

9. In view of the above factors, namely, the completion of investigation against the applicant, the deposit of the commission amount, absence of past criminal antecedents, and the period of custody, I am of the opinion that further detention of the applicant is not necessary. The ends of justice would be met by imposing suitable conditions to ensure his presence during trial and to prevent any interference with the prosecution evidence.

10. In view of the above discussion, the following order is passed:

(i) The Bail Application is allowed;

(ii) The applicant shall be released on cash bail of ₹50,000/- (Rupees Fifty Thousand only) in connection with Crime Register No. 404 of 2023 registered with Kandivali Police Station for offences punishable under Sections 406 and 420 read with Section 34 of IPC, Sections 3 and 4 of MPID Act;

(iii) Within a period of six weeks from the date of his release, the application shall furnish a Personal Bond of ₹50,000/- (Rupees Fifty Thousand only) along with one or more solvent sureties in the like amount, to the satisfaction of the learned Trial Court, subject to the following conditions:

(a) The applicant shall not tamper with evidence, or directly or indirectly contact, influence, threaten, or intimidate any witness.

(b) The applicant shall attend all proceedings before the Trial Court regularly, unless exempted by the Court on valid grounds supported by sufficient cause.

(c) The applicant shall report to the Kandivali Police Station on the first Monday of every month between 10.00 a.m. and 12.00 noon, until further orders.

(d) The applicant shall not leave the territorial jurisdiction of the State of Maharashtra without prior written permission of the Trial Court.

(e) The applicant shall not commit any offence or engage in any criminal activity during the pendency of the trial.

(f) The applicant shall, at the time of furnishing surety, provide his current residential address and mobile number to the Investigating Officer as well as the Trial Court, and shall inform the Court in writing of any change in residence or contact details during the pendency of the case.

11. The Bail Application stands disposed of in above terms.

(AMIT BORKAR, J.)