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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO.4497 OF 2024

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Sunil Damu Mule … Applicant
V/s.
The State of Maharashtra … Respondent

WITH
INTERIM APPLICATION NO.857 OF 2025
IN
BAIL APPLICATION NO.4497 OF 2024

Sayyad Sahabuddin Nabisab & Ors. … Applicants
In the matter between
Sunil Damu Mule … Applicant
V/s.
The State of Maharashtra … Respondent

Mr. Kaushal Popat for the applicant in BA.

Ms. Megha S. Bajoria, APP for the respondent-State.

Mr. Rahul S. Kadam for the applicants-intervenors in IA.

Mr. Nilesh Amin for intervenor-Bank.

Mr. Sharad P. Suryawanshi, PI, Unit-8, MPID, EOW, Mumbai, is present.

CORAM : AMIT BORKAR, J.

DATED : JUNE 12, 2025

<u>P.C.</u>:

Interim Application No.877 of 2025:

The Interim Application having been filed by the investors, the same is allowed.

Bail Application No.4497 of 2024:

1. This is an application preferred by the applicant under Section 439 of the Code of Criminal Procedure, 1973, seeking regular bail in connection with C.R. No. 42 of 2023, registered with Shrinagar Police Station, Thane, for offences punishable under Sections 406, 409, and 420 read with Section 34 of the Indian Penal Code, 1860, Section 3 of the Maharashtra Protection of Interest of Depositors (in Financial Establishments) Act, 1999 (hereinafter referred to as "MPID Act"), and Section 66(D) of the Information Technology Act, 2000.

2. As per the prosecution's case, the present offence pertains to a large-scale financial fraud allegedly committed between 19 April 2022 and 10 August 2022. During the said period, the applicant along with other co-accused who are stated to be directors of Shri Mahakali Group of Companies, is alleged to have allured several members of the public to invest money in so-called "Ponzi Schemes" on the false assurance of earning three times return on their investments within a short span of time. It is the case of the prosecution that the investors, believing the representations to be genuine, deposited their hard-earned money with the accused persons. However, after obtaining funds from the investors, the accused allegedly failed to return the invested amount or provide the promised returns, and instead misappropriated the money by deceitfully forming a criminal conspiracy to cheat the investors.

3. During the course of investigation, it was revealed that approximately 430 investors were duped in this fraudulent scheme and the preliminary estimate of the financial loss caused to the public is to the tune of ₹44,19,35,316/-. It is further stated that the figure may increase as the investigation progresses and more complaints are received.

4. The applicant was taken into custody on 19 October 2023, and the investigation culminated into filing of charge-sheet on 15 January 2024. It is not in dispute that the charge-sheet includes the applicant as one of the accused persons. The applicant had earlier moved an application for bail before the Designated Judge under the MPID Act at Greater Bombay, which came to be rejected after hearing. Being aggrieved by the rejection of bail, the present application is filed before this Court seeking regular bail on suitable terms and conditions.

5. Learned Advocate for the applicant submitted that the arrest of the applicant is illegal and in contravention of the constitutional safeguards under Article 22(1) of the Constitution of India and Section 57 of the Criminal Procedure Code, 1973. He submitted that although the applicant was shown to be arrested on 19 October 2023, he was not produced before the learned Magistrate within 24 hours, as mandated by law. It is further submitted that at the time of arrest, the grounds of arrest were neither recorded nor communicated to the applicant, which amounts to a violation of the fundamental rights of the applicant under Article 22(1) of the Constitution and renders the arrest unlawful.

6. The learned Advocate further submitted that the applicant is not a Director of the Company, nor is he a recipient of any amount from the depositors. It is his submission that no specific overt act or role is attributed to the applicant in the charge-sheet, nor has the prosecution produced any material to show active participation of the applicant in the alleged conspiracy. Therefore, it is urged that the applicant is being falsely implicated and should be released on bail.

7. In support of his submissions regarding requirement to communicate the grounds of arrest, the learned Advocate placed reliance on the judgment of the Division Bench of this Court in *Hemang Jadavji Shah v. State of Maharashtra & Ors.* (Writ Petition No. 2989 of 2025, decided on 30 May 2025), wherein it was held that failure to communicate the grounds of arrest at the time of actual arrest vitiates the arrest and amounts to violation of the constitutional mandate under Article 22(1). He also relied upon the recent judgment of the Supreme Court in *Vihan Kumar v. State of Haryana* (Criminal Appeal arising out of SLP (Cri.) No. 13320 of 2024, decided on 7 February 2025), where it was held that mere formality of recording arrest in case diary or arrest panchnama would not suffice unless actual communication of grounds of arrest is duly recorded or acknowledged.

8. As regards the requirement to produce the arrested person before the Magistrate within 24 hours, the learned Advocate relied on the judgment of the Supreme Court in *Directorate of Enforcement v. Subhash Sharma* (Criminal Appeal arising out of SLP (Cri.) No. 1136 of 2023, decided on 21 January 2025), wherein it was reiterated that production of the accused before a Magistrate beyond 24 hours without sufficient explanation would vitiate the remand and continued detention.

9. On the basis of the above submissions and case law, the learned Advocate prayed that in view of the alleged illegal arrest and absence of any direct involvement of the applicant, the applicant be released on bail, subject to appropriate conditions.

10. Per contra, the learned APP appearing for the State strongly opposed the bail application. She submitted that the applicant was in fact produced before the learned Magistrate well within the prescribed period of 24 hours, and the arrest is perfectly legal and proper. She pointed out that as per the case diary entry dated 19 October 2023, the applicant was arrested at around 1:45 p.m., and the grounds of arrest were duly communicated to him at the time of arrest, as mentioned in the arrest form. It is further submitted that the applicant was produced before the Magistrate on the same day at 4:20 p.m., well within the statutory period of 24 hours, and hence, the contention of illegal arrest has no substance.

11. The learned APP also submitted that during investigation, it was found that an amount of ₹1,41,92,651/- was received by the applicant and his family members from the Mahakali Cooperative Society, which had collected deposits from the public. Further, a certificate issued by the Assistant Registrar, Cooperative Societies, clearly shows that the applicant was a member of the Managing Committee of the said Cooperative Society, thereby indicating his active role in managing and controlling the affairs of the Society.

12. It is also submitted that the applicant has sold mortgaged properties to third parties at a value much below the market rate, which suggests intention to defeat the interest of investors and creditors. The affidavit-in-reply filed by the Investigating Officer further discloses that as on the date of filing of the reply, as many as 623 depositors have been identified, and the total investment collected by the Society is estimated at ₹65.27 Crore.

13. The learned APP contended that the role of the applicant was not merely passive, but he was instrumental in inducing investors to invest in the scheme by making false assurances of lucrative returns. Moreover, some of the other Directors are absconding, and in such a scenario, if the applicant is released on bail, it would seriously hamper the ongoing investigation and may also lead to tampering with witnesses. Therefore, she prayed for rejection of the present bail application.

14. The learned Advocate appearing for the intervenors/investors, as well as the learned Advocate appearing for the concerned Bank, also supported the stand of the prosecution. They submitted that the applicant, being a member of the Managing Committee of the Society and having received substantial amounts, cannot disown his responsibility at this stage. They contended that the investors have been cheated of their lifetime savings, and the gravity and magnitude of the financial fraud should weigh heavily with the Court while considering the bail application. It is their submission that in view of the conduct of the applicant and the interest of justice, the applicant does not deserve the benefit of bail at this stage.

15. I have carefully perused the material placed on record including the case diary, arrest memo, and the affidavit-in-reply filed by the Investigating Officer. It is seen from the record that the applicant was handed over by the Senior Inspector of Police, Shravanabelagola Police Station, Karnataka, to the investigating agency on 18 October 2023 at 16:30 hours. Thereafter, the applicant was formally arrested by the investigating officer at 13:45 hours on 19 October 2023. The arrest memo and case diary clearly reflect this fact. It is further seen that the applicant was produced before the learned Special Court under the MPID Act at 16:20 hours on the same day, i.e. 19 October 2023.

16. Thus, the production of the applicant before the competent court was well within 24 hours from the time of his formal arrest, as required under Section 57 of the CrPC and Article 22(2) of the Constitution of India. Therefore, the contention raised by the learned Advocate for the applicant that the arrest is illegal merely because of alleged delay in production is without merit and not supported by the record.

17. As regards the second contention that grounds of arrest were not communicated to the applicant at the time of arrest, the case diary produced before the Court along with the affidavit-in-reply shows that the grounds of arrest were explicitly communicated to the applicant at 13:45 hours on 19 October 2023, which is the same time when he was formally arrested. This fact is duly recorded in the arrest memo, and there is no material to indicate any deviation from this procedural requirement. It is well-settled that so long as the accused is informed of the reasons for his arrest at the time of arrest, the mandate of Article 22(1) of the Constitution is fulfilled. Hence, this Court finds no illegality in the arrest on the said ground either.

18. Coming to the merits of the application, on perusal of the charge-sheet, bank transaction records, certificate from the Assistant Registrar of Cooperative Societies, and other documents, it appears that the applicant is not a passive participant but an active Managing Committee Member of the Mahakali Cooperative Society. The materials on record suggest that the applicant was involved in luring innocent investors by promising them unrealistic returns, such as tripling their investments within 10 to 19 months, which on the face of it, were false and commercially unachievable assurances. This indicates dishonest intention and fraudulent inducement right from the inception.

19. Further, the investigation has revealed that similar economic offences are registered against the applicant at two other police stations, and the modus operandi adopted in all three cases appears to be identical, showing a pattern of premeditated fraudulent conduct. The amount involved in the present scam has now escalated to ₹65.27 Crores, and the number of defrauded investors continues to increase with the progress of the investigation.

20. It is further borne out from the investigation that the applicant and his family members have received ₹1,41,92,651/-, which has not been repaid. Moreover, the applicant has also sold mortgaged properties at rates far below market value, suggesting an intent to defeat the claims of creditors and frustrate recovery efforts.

21. Taken cumulatively, these facts indicate that the applicant was part of a well-planned conspiracy to cheat public investors, and he appears to have played a vital role in siphoning off large sums of money. The seriousness of the offence, the scale of cheating, the likelihood of tampering with evidence, and the fact that other co-accused are absconding, all point to a situation where grant of bail at this stage would not be in the interest of justice or public confidence in the financial system.

22. In view of the above discussion and considering the gravity and magnitude of the offence, the economic impact on a large number of investors, and the material on record suggesting active involvement of the applicant, this Court is of the opinion that the applicant does not deserve to be enlarged on bail at this stage.

23. Hence, the bail application stands rejected. No order as to costs.

(AMIT BORKAR, J.)