IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.187 OF 2024

Sunil Dada Gaji]
Age: 57 Years, Occ: Business]
R/at: 249/1 Murkute Colony, DP Road,]
Aundh Pune: 411 007] … Appellant.

V/s.

1. The State of Maharashtra]
Commissioner of Pune Office]
Through Its Economic Offence Wing]
Unit 1, Camp, Pune: 411 001]
Both Respondent no.1 and 2]
Represented by Learned Assistant]
Public Prosecutor]
Off: PWD Building, Bombay High]
Court premises, Fort, Mumbai – 400 001]

2. The P.I. of Chatursrungi]
Police Station, Tal. Haveli, Dist: Pune] … Respondents.

Mr. Ashok Mundargi, Senior Advocate a/w. Adv. Rushikesh R. Chavan for the Appellant.

Smt. Prajakta P. Shinde, APP, for the Respondent-State.

Mr. Mohan Khandare, PI, EOW, Pune City, present.

CORAM : A. S. GADKARI AND
KAMAL KHATA, JJ.
RESERVED ON : 23rd April, 2026.
PRONOUNCED ON : 8th May, 2026.

Judgment (Per : Kamal Khata, J) :-

1) By the present criminal Appeal under Section 11 of the Maharashtra Protection of Interest of Depositors (in Financial

SUMEDH NAMDEO SONAWANE Digitally signed by SUMEDH NAMDEO SONAWANE Date: 2026.05.08 15:27:42 +0530

Establishments) Act, 1999 ('MPID Act'), the Appellant is challenging the legality and validity of the Order dated 25^{th} January, 2024 passed by learned Additional Sessions Judge, Pune and Special Judge, MPID in Special MPID case bearing No.14/2017 ('impugned Order'), rejecting his application for bail.

2) It is the prosecution case that, Temple Rose Real Estate Pvt. Ltd (TRRE) was a Company incorporated on 27^{th} March 2007. TRRE was engaged real estate business. It floated schemes such as 'Plots on EMI', 'Buy Back', 'Income Growth Plan', 'Revenue Sharing', 'Direct Double' and 'Unit Certificates' assuring 20% to 24% per annum returns on maturity of 4 to 5 years. The Appellant was appointed as an employee of TRRE on 1^{st} April 2013. On 1^{st} April 2013 he was appointed as President cum Manager (Employee) on probation and was made permanent on 1^{st} July 2013. On 16^{th} October 2016 he was authorised to operate one bank account with three other employees out of 23 Bank Accounts held by TRRE. The operations of TRRE came to a standstill on 17^{th} January 2017 upon an FIR bearing No. CR 8/2017 being filed against it at Bhoiwada Police Station, Mumbai. A second FIR bearing No. 275/2017 was filed on 3^{rd} May 2017 at Chaturshrungi Police Station.

In the year 2017 a chargesheet was filed against the Directors of TRRE (Accused 1 to 5). On 24^{th} July 2017 the Appellant was arrested in connection with CR 275/2017. On 22^{nd} December 2017 the Appellant was released on Bail. A discharge Application was preferred which was rejected on 18th March 2023. The Appellant filed a Criminal Appeal for restoration of discharge Application which was allowed directing the Trial Court to consider it on its own merits. The said Application upon being heard afresh was rejected on 25th January 2024. The present Appeal challenges the Order dated 25th January 2024.

3) Mr. Mundargi learned senior counsel for the Appellant contended that, being an employee the Appellant had no say in the policy decisions of TRRE's directors. The Appellant himself had invested an amount of Rs. 1.22 crores for which he had received no return and was consequently himself a victim. He has been falsely implicated. Neither the Forensic Audit nor the charge-sheet disclosed that, the Appellant had either collected the amount or authored the alleged schemes. The charge-sheet does even allege that the Appellant was the custodian of the said public deposits. Hence, the question of common intention or criminal conspiracy does not arise.

3.1) He submitted that the Investigation Agency (IA) has not attributed any role of the Appellant while invoking section 34 of the IPC on the directors of TRRE. The Company floated the schemes in 2008 whereas the Appellant joined only in 2013. According to him, the complaint is an afterthought, full of exaggeration and has no direct, cogent, reliable evidence against the Appellant. It is therefore submitted that, it is a fit case where the Appellant is entitled to be discharged under Section 227 of the Code of Criminal Procedure, 1973 ('Cr.P.C.'). He argued that the impugned Order neither dealt with the Appellant's contentions nor contained reasoning to reject the Appellant Application. The charge-sheet contained the name of the Appellant on the basis of cryptic statements made by the investors which are baseless and do not constitute a crime. The Forensic Audit Report does not establish any charge under Section 3 of MPID Act read with the provisions of the IPC against the Appellant and therefore he is entitled to be discharged. He submitted that, the statement of witnesses did not establish a criminal conspiracy or common intention or criminal misappropriation or misrepresentation or illegal gain on the part of the Appellant.

3.2) According to him, the allegations of misappropriation are premature as investments made in 2013 matured only in 2016. The theory of inducement was inapplicable as the Appellant was an employee and all amounts were collected by and on behalf of TRRE. It was TRRE's responsibility to return capital and interest thereon. The Appellant was not a beneficiary but merely and agent. The properties acquired by the Appellant in his name or of his close family members does not by itself establish acquisition thereof from crime proceeds. Admittedly, the properties were purchased much prior to his association with the TRRE. The trail of money and income tax paid support Appellant's contentions and its contrary is not established. He submitted that the Forensic Audit report disclosed that, out of the total lands purchased by the directors (accused) the Appellant held only 1.20% of the land in his and his family members name which by itself does not constitute a crime under the provisions of Sections 119, 120, 406, 409 and 420 of the IPC r/w Section 3 of the MPID Act. It is certainly not an illegal transfer of investment or misappropriation of properties. Since the Forensic Audit Report does not reveal any default of promises against the Appellant, no vicarious liability can be implicated against the Appellant.

3.3) He submitted that, despite several other persons were alleged to have purchased properties in the Forensic Audit Report, yet those persons were not made and accused in the present case. The commission received was remuneration for facilitating the investment and is an incentive offered by TRRE and cannot be termed as deposits. The Appellant was not involved in day-to-day affairs of TRRE and not a part of major decisions. The economic affairs and the control were solely in the hands of the accused Nos.1 to 5. The Appellant is neither an equity shareholder nor a preference shareholder in the Company.

3.4) In view of the above circumstances, he submitted that, the impugned Order deserves to be set aside and the Appellant is entitled to be discharged.

4) Smt. Shinde learned APP for the State supported the impugned

Order and submitted that, the Appeal deserves to be dismissed.

5) We have heard the senior counsel as well as the learned APP and have carefully perused the record.

6) In the present case, on a bare perusal of the material on record, it can be seen that the Appellant has not only acted in his capacity as an agent or an employee of a disclosed principle but has also received commission in addition to the salary received from the Company. The commission received is admittedly not under any written contract. Though it is contended that the Appellant has not undertaken any personal contractual liability and consequently, does not incur such liability it is not in dispute that he has received benefits for inducing people in making deposits with the company in accordance with the scheme. It is further not in dispute that the Appellant has received commission of almost ₹ 2 crores. Besides, immovable property also was purchased in his and his family's name.

7) The contention that the Appellant joined the Company as an employee much later in 2013 whereas the scheme was floated much earlier in 2008 cannot be countenanced in as much as the Appellant has lured and induced people for promoting and selling the scheme for which he earned the position of Marketing President, Financial Advisor and Commission over and above his salary which is not documented. The statements of witnesses recorded by the investigating Officer as well as the Forensic Audit Report

clearly indicate the role of the Appellant being a commission agent other than an employee. The purchase of 1.2% of land in the name of the Appellant or his family members would by itself attract Sections 119, 120, 406, 409 and 420 of the IPC r/w. Section 3 of the MPID Act.

8) At this stage a useful reference can be made to the decision of the Hon'ble Supreme Court in the case of *Union of India Vs. Prafulla Kumar Samal,* reported in *AIR 1979 SC 366***,** particularly in paragraph 10 thereof which reads as under:-

> "10. Thus, on a Consideration of the authorities mentioned above, the following principles emerge:
>
> > *(1) That the Judge while considering the question of framing the charges under Section 227 of the Code has the undoubted power of shift and weigh the evidence for the limited purpose of finding out whether or not a prima facie case against the accused has been made out:*
> >
> > *(2) Where the materials placed before the Court disclose grave suspicion against the accused which has not been properly explained the Court will be, fully justified in framing a charge and proceeding with the trial.*
> >
> > *(3) The test to determine a prima facie case would naturally depend upon the facts of each case and it is difficult to lay down a rule of universal application. By and large however if two views are equally possible and the Judge is satisfied that the evidence produced before him while giving rise to some suspicion but not grave*

> *suspicion against the accused, he will be fully within his right to discharge the accused.*
>
> *(4) That in exercising his jurisdiction under section 227 of the Code the Judge which under the present Code is a senior and experienced Judge cannot act merely as a Post office or a mouth-piece of the prosecution, but has to consider the broad probabilities of the case, the total effect of the evidence and the documents produced before the Court, any basic infirmities appearing in the case and so on. This however does not mean that the judge should make a roaming enquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trial".*

9) In *R.S. Nayak vs. A.R. Antulay and Anr.* reported in *AIR 1986 SC 2045*, while analyzing provisions of Section 227, 239 and 245 of Cr.P.C., the Apex Court in unequivocable terms it held in Para 44 as under:-

> *"The Code contemplates discharge of the accused by the Court of Sessions under Section 227 in a case triable by it; cases instituted upon a police report are covered by Section 239 and cases instituted otherwise than on police report are dealt with in Section 245. The three sections contain somewhat different provisions in regard to discharge of the accused. Under Section 227, the trial Judge is required to discharge the accused if he 'considers that there is not sufficient ground for proceeding against the accused.' Obligation to discharge the accused under Section 239 arises when "the*

Magistrate considers the charge against the accused to be groundless." The power to discharge is exercisable under Section 245(1) when "the Magistrate considers, for reasons to be recorded, that no case against the accused has been made out which, if unrebutted, would warrant his conviction…." It is a fact that Section 227 and 239 provide for discharge being ordered before the recording of evidence and the consideration as to whether charge has to be framed or not is required to be made on the basis of the record of the case, including documents and oral hearing of the accused and the prosecution or the police report, the documents sent along with it and examination of the accused and after affording an opportunity to the two parties to be heard. The stage for discharge under Section 245, on the other hand, is reached only after the evidence referred to in Section 244 has been taken. Notwithstanding this difference in the position there is no scope for doubt that the stage at which the Magistrate is required to consider the question of framing of charge under Section 245(1) is a preliminary one and the test of "Prima facie" case has to be applied. In spite of the difference in the language of the three sections, the legal position is that if the trial Court is satisfied that a prima facie case is made out, charge has to be framed."

10) A further reliance can also usefully be placed on the decision of the Supreme Court in the case of *State of Maharashtra Vs. Soma Nath*

Thapa reported in (1996) 4 SCC 659 wherein, it held that, if there is ground for presuming that the accused has committed the offence, it can be said that, a prima facie case has been made out against the accused. It has been further held that even if the Court finds that the accused might have committed an offence, it can frame charge. It further clarified that at the stage of framing of charge probative value of the statements cannot be gone into.

11) In *Palvinder Singh Vs. Balwinder Singh and others* reported in *(2008) 14 SCC 504,* the Supreme Court while dealing with the provisions of Section 227 of Cr.P.C., in para 13 has held that, the charges can also be framed on the basis of strong suspicion. That marshaling and appreciation of evidence is not in the domain of the Court at that point of time.

12) Thus, it is clear from the various decisions of the Supreme Court that, while considering an application for discharge, the Court must take into consideration the prima facie case as made out by the Complainant/prosecution.

13) In our view, the Appellant played a significant role in luring and inducing investors to deposit their hard-earned money with the company. For this role, he received not only a salary but also commissions. Furthermore, properties were purchased in his name as well as in the names of his family members. In our opinion, such acquisitions cannot be regarded merely as entrustment, as contended. Taken together, these

circumstances and the material on record lead us to conclude that a *prima facie* case is made out and that there is sufficient evidence to frame charges against the Appellant.

14) In that view of the matter, we find no reason to interfere with the impugned Order. Consequently, the Appeal is dismissed.

(KAMAL KHATA, J.) **(A.S. GADKARI, J.)**