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Court : Mumbai Nagpur

Decided On : Sep-19-2016

Judge : S.B. Shukre

Appeal No. : Criminal Application [BA] No.622 of 2016 with Criminal Application [APPP] Nos. 1169 of 2016 & 1238 of 2016

Appellant : Prashant

Respondent : State of Maharashtra

Advocate for Pet/Ap. : Shri. D.V. Chauhan, Shri. Tarun Parmar

Judgement :

1. By this application, the applicant is seeking his release on bail under Section 439 of the Code of Criminal Procedure.
2. The allegations against this applicant and others against whom crime bearing No.156/2014 has been registered at Police Station Ambazari on the basis of complaint lodged by one Shri Vivek Ashok Pathak are that the applicant being the Director of Wasankar Wealth Management Private Limited (WWMPL for short) and also in charge of other companies of which he is either the director or proprietor, by making a false representation knowing it to be false, to the gullible investors made them invest their hard-earned money in the various investment schemes floated by his companies and did not return the money so invested in accordance with the promises given by him and thus committed offences of cheating, criminal

breach of trust and fraudulent defaults punishable under Sections 420, 406 read with Section 120B of the Indian Penal Code and also under Section 3 of the Maharashtra Protection of Investors' Deposits Act, 2002 (MPID Act for short). An offence punishable under Section 506 I.P.C. is also registered against the applicant and his associates as one of the allegations related to criminally intimidating the complainant and other investors.

3. The report was investigated into and it was found that prima facie this applicant and his associates were involved in commission of the aforesaid offences. Accordingly, a chargesheet was filed, which was the first one in the series of additional chargesheets filed subsequently. At that time, a few more offences were also added. Those offences were the ones punishable under or as per Section 409 of I.P.C., Section 45(1)(a), Section 45(s) of the Reserve Bank of India Act, 1949 and Section 24(1) and Section 27 of the Securities and Exchange Board of India Act, 1992. It appears that initially offences were registered against three persons including the applicant and later on the list of accused persons swelled. The first chargesheet was filed against three accused, which included the present applicant. Thereafter, two more supplementary chargesheets were filed and thus so far, the chargesheets have been filed against 11 accused persons. According to prosecution, there are in all 24 accused persons and the chargesheet against some of the accused persons is yet to be filed, as the investigation is still going on.

4. I have heard Shri D.V. Chauhan, learned Counsel for the applicant, Shri S.S. Doifode, learned A.P.P. for the State and Shri Anand Jaiswal, learned Senior Counsel, who assisted the prosecution.

5. Shri D.V. Chauhan, learned Counsel for the applicant submits that the applicant is one of the directors of the WWMPL and this company has been in the business of advising and counselling the investors so as to enable them to manage and operate their investment portfolios by opening Dmat Accounts for them and acting as a vital link between them and the main investment company viz. ISE Securities and Services Limited (ISE Limited for short), by being latter's sub-broker. He submits that WWMPL has never received any payments in its own name and whatever payments received were by way of cheques drawn in favour of ISE

Limited and thus, there was no question of the applicant dishonestly inducing any investor or depositor to deposit moneys with WWMPL. He submits that WWMPL was also not involved in making any direct payments either to the depositors or the ISE Limited and what it received was only its brokerage.

6. The learned Counsel for the applicant further submits that Wasankar Investments is only a proprietary concern of which the applicant is a proprietor and if anything has been received by this concern, at the most the applicant could be held personally liable for that and not in the capacity as a director of WWMPL. He further submits that it is not the case of the complainant that after depositing or investing various amounts in the concern of the applicant, the complainant did not receive payments as per the promises given. He further submits that there is not a statement of single witness showing that after making investments in the concern of the applicant, he did not receive any amount during the initial periods of the investments. He submits that it was only due to some difficulties arising in carrying on the business in its regular course, owing to some factors not within the control of the applicant, that the applicant could not make further payments, for which he sought some time from the depositors. He also submits that this would only show that the applicant never had any dishonest intention right from the beginning of the transactions and, therefore, it would have to be said that the mens rea, which is so essential for constituting the offences of cheating, criminal breach of trust and fraudulent defaults, is absent in this case. He also submits that there is not a whisper in the statements of witnesses that the applicant had intended to cheat them and that the applicant has committed a fraudulent default.

7. The learned Counsel for the applicant further submits that the figures of the alleged fraud as mentioned by the prosecution do not match with the investments and the deposits actually made. He submits that the law in cases such as the present case has been crystallized by the Hon'ble Apex Court in the case of **Sanjay Chandra vs. C.B.I. (2012)1 SCC 40**. He submits that it is a settled law that the purpose of bail is not to impose pretrial punishment as every accused is presumed to be innocent till he is found guilty.

8. Learned Counsel for the applicant further submits that alternately the applicant is seeking his release on temporary bail on the ground that it would enable the applicant to put into effect the plan which he has already prepared for refund of the deposits to the depositors in a phased manner. He submits that this has become all the more necessary, as the competent authority appointed under the provisions of the MPID Act is not taking prompt steps in selling the attached properties and distributing the proceeds thereof amongst the depositors and the investors.

9. He submits that this is evident from the fact that the prosecution has filed an application under Section 5(3) and 7 of the MPID Act seeking confirmation of the order of attachment and further directions of the Court as late as on 3rd February, 2016. This application, he further submits, has been filed by the prosecution after a delay of about 299 days requiring it to seek condonation of delay under Section 5 of the Limitation Act.

10. The learned Counsel further submits that in any case, the main offence as alleged against the applicant is of Section 3 of the MPID Act, for which maximum punishment is of six years of imprisonment, out of which, the applicant has already spent time of about 2 years in jail. So, according to the him, this is an additional ground on which the applicant is seeking his release on bail.

11. Shri S.S. Doifode, learned A.P.P. for the State strongly opposing the application submits that this application is not tenable as the bail application of the applicant's co-accused has been rejected earlier by this Court. He further submits that there are several depositors who have been lured by this applicant and his associates and the evidence so far collected by the prosecution prima facie shows that this applicant and others had induced the innocent depositors into depositing with the companies of the applicant their hard-earned money, which could be seen from fact that this applicant had promised return of the deposits with interest ranging from 30% to 60% per annum. He submits that the applicant was actively involved in conducting day-to-day affairs of the companies and himself used to approach the depositors and lure them into the trap laid by him by giving them false promises, which were known to him to be false. In support, the learned A.P.P. has invited my attention to the reply filed in great details by the prosecution,

wherein the evidence so far collected against the applicant and others has been summarized. The learned A.P.P. submits that the material available on record discloses that the offences of cheating, criminal breach of trust and fraudulent defaults are prima facie made out.

12. The learned A.P.P. further submits that the enormity of this crime is very high and that the question involved is not only of the liberty of the applicant, but also of the larger societal interest which deserves equal treatment at the hands of the Court in the discharge of its judicial functions. He submits that once it is found that the accused is prima facie involved in commission of offences having high economic magnitude, the community interest would disentitle the applicant from seeking his release on bail. He further submits that even otherwise there is also a possibility of the applicant influencing the prosecution witnesses, if released on bail, and not only that the possibility of his fleeing from justice also cannot be ruled out, considering the fact that the magnitude of the crime is too high and the offences which are registered against him are of very serious nature, particularly the offence punishable under Section 409 of I.P.C.

13. The learned A.P.P. further submits that in the absence of any concrete proposal being given by the applicant, there is no need for considering the alternate prayer for his temporary release on bail. He also submits that even otherwise the applicant could be called upon to execute his plan even while remaining under detention and at the most, the competent authority could be directed to render its assistance within the parameters of law in enabling the applicant to return the money to his various investors. He submits that this would be possible only when a suitable proposal is made before the trial Court and that the earlier proposal made by him before the trial Court in this regard, being vague, was rightly rejected by it.

14. Shri Anand Jaiswal, learned Senior Counsel appearing for the applicants, who have been granted leave to assist the prosecution, through the learned A.P.P. also submits that these applicants would have no objection, if temporary bail is granted to the applicant as ultimately the purpose of the MPID Act is to enable the depositors getting back their deposits and the applicant deserves to be given a

chance to prove his bona fides.

15. Before dealing with the rival contentions, I find it necessary to consider the objection taken by the learned A.P.P. that since the co-accused has been denied bail by this Court, this application is not maintainable. I find no force in this contention for the reason that the rule of equality applies in a positive way for giving benefit and not in a negative manner for denying a benefit. The learned Counsel for the applicant relying upon a Division Bench's judgment of Allahabad High Court in the case of **Nanha vs. State of U.P. 1993 Cri.L.J. 938** pointed out that a bail application cannot be rejected on the ground of parity also for the reason that at the time of prior rejection of the bail application of the co-accused, the other accused had no opportunity of being heard and placing material before that Court which rejected the bail to the co-accused. There can be no dispute about this principle of law and it squarely applies to the facts of this case. The contention of the learned A.P.P. is, therefore, rejected.

16. So far as the argument relating to absence of any prima facie case against the applicant is concerned, I do not find any substance in it. As rightly pointed out by learned A.P.P. that there has been voluminous material available on record prima facie indicating that the applicant canvassed various schemes of his companies, was actively involved in making the propaganda of the same either through newspaper or the seminars, functions and gatherings held for the investors and the depositors. In these seminars and functions, the applicant explained as to how the money deposited and invested in the various schemes of the companies would be reinvested or used in the share market as well as for trading in bullion and how the returns with such high percentage of interest rates would be made to the depositors. These schemes promised exceptionally high returns, which were in the nature of doubling or trebling of the investments within such short periods of time as of 33 months to 48 months, payment of high interest at the rates ranging from 25% to 75% per annum and so on and so forth. The promise that the amounts deposited would be returned with such high rates of interest being unrealistic, itself is enough to prima facie reveal the dishonest intention. A person like the applicant, who proclaims himself to be an expert in finances and investments, when gives a promise to do something which is far removed from realities of world of finances

would, prima facie, know that the promise is elusive but a layman would not. This is because his expertise in finances would enable him to know the turbulent upheavals witnessing sharp rise and fall in prices of shares and bullion that the share and bullion markets usually pass through and that he does not hold in his hand any magic wand to double or treble the deposits in such short periods of time as of 33 to 48 months. This may not be so of the gullible depositors interested in getting more returns on their deposits. So they would tend to repose their faith in the words and wisdom of the promiser believing that the promiser, an expert in making investments in share and bullion markets and earning huge profits, would be able to do some such similar things with their deposits, little knowing about the volatility of the markets where their deposits are going to be used. Therefore, even if a person like the applicant, who is an expert in making investments in the share markets and earning some profits, cannot, prima facie, assure that the profit that he would earn today, would be of the similar volume or even greater than that tomorrow, rather he would, prima facie, know that what is earned today would be more than lost tomorrow. This is what seems to have prima facie happened in the present case. The result has been that the applicant committed defaults in returning the deposits as per the promises given by him. Even though, the applicant had paid some amounts towards payment of interest initially, prima facie, that was only for creating a facade and a trust bridge between his companies and the depositors so that more and more depositors were tempted to make investment in his companies. In these circumstances, I find that there is enough material at this stage indicating prima facie involvement of the applicant in the offences registered against him.

17. It is the contention of the learned Counsel for the applicant that WW MPL was never involved in receiving payments from the depositors or making payments to them and whatever it did was as a sub-broker for ISE Limited, receiving in the process its brokerage. However, I find that the contention cannot be accepted as many of the receipts and the promissory notes issued in this case were prima facie in the name of the WW MPL. It is also the contention of the applicant that the demand promissory notes are forged. This is something which relates to defence of the applicant and, therefore, it would have to be considered not at this stage, but at the stage of appreciation of the evidence, which stage is yet to arrive.

18. About the contention that the main offence is only under Section 3 of the MPID Act for which the maximum punishment is of six years of imprisonment and the applicant is in jail for almost 2 years, I find that this is not the only offence in which prima facie involvement of the applicant has been found. There are other offences, which are equally or more serious in nature. The offence punishable under Section 409 of I.P.C. is serious in nature. It prescribes maximum punishment of imprisonment for life. Then, there is also a question of the applicant misusing the liberty, if released on confirmed bail. The fact that the applicant was prima facie holding various functions and approaching the distributors in order to allure them to deposit their money in his various companies, as rightly pointed out by the learned A.P.P., would create an impression that the applicant may try to contact the depositors once again and influence them to the prejudice of the interest of the prosecution.

19. In the case of Sanjay Chandra (supra), the Hon'ble Apex Court has held that the purpose of bail is not to impose pretrial punishment as every accused is presumed to be innocent till he is found guilty. But the Hon'ble Apex court has also held that while granting bail, the Court must keep in mind the nature of accusations, the nature of evidence in support thereof, the severity of the punishment which will entail on conviction, the character, behaviour, means and standing of the accused, circumstances which are peculiar to the accused, reasonable possibility of securing presence of the accused at the trial, reasonable apprehension of the witnesses being tampered with, larger interest of public or State and similar other considerations. Here, in this case, I have already found that there is a reasonable possibility of the applicant tampering with the prosecution witnesses, if released on confirmed bail. Besides, the crime is also of very serious nature having its impact on the larger society. Therefore, as held in the case of the **Y.S. Jagan Mohan Reddy vs. Central Bureau of Investigation (2013) 7 SCC 439** referred to me by the learned A.P.P. for the State, which has been followed by this Court in the case of **Sameer Sudhir Joshi vs. State of Maharashtra 2015 (3) Mh.L.J. (Cri.) 97**, the cause of the community, in the instant case, also deserves equal treatment at the hands of the Court, which cause could be better served, if bail is refused to the applicant at this stage and, therefore, following the law laid down in the case of Sanjay Chandra (supra), I am of the view that the applicant is

not entitled to be released on bail.

20. The learned Counsel for the applicant has pointed out to me the order dated 08/10/2015 passed in Criminal Application [BA] No.634/2015, granting bail to Rajesh s/o Suresh Joshi by the learned Single Judge of this Court. He submits that just as in the case of Rajesh Suresh Joshi, in this case also, there is a question involved as to whether the applicant had dominion over the property accepted in the regular course of business of the companies and so the applicant would be entitled to be released on bail when the chargesheet has been filed and investigation is over. In my humble opinion, the ratio of the case of Rajesh Suresh Joshi would not be applicable to the facts of the present case, as I have already found that there is sufficient material prima facie showing the applicant taking active part in alluring the gullible depositors in depositing their hard earned money in his companies and then committing defaults in returning their money with dishonest intention. Besides, the investigation is also not completely over as supplementary chargesheet against some of the accused persons is yet to be filed.

21. Now the question that arises is Whether the applicant should be released on temporary bail so as to enable him to return the deposited amounts to various investors and depositors in a phased manner. By way of additional submissions, the applicant has submitted that his detention in jail for unnecessarily longer period of time has resulted in his business activities coming to a grinding halt, because of which the applicant's companies are facing great difficulty in returning the amounts deposited even though the applicant and other directors honestly want to repay their money. The applicant has also annexed a graphical statement of proposed pay out plan to his additional submissions. The graph indicates that if the applicant is temporarily released for a period of 12 months on conditional bail, he would be able to make total pay outs of about Rs.2.00 crores and if his conditional bail is further extended by six months each, he would be able to make further pay outs of about Rs.23.00 crores. It is also submitted by the learned Counsel for the applicant that the properties worth Rs.40.00 crores to Rs.45.00 crores, gold ornaments worth about Rs.25.00 lakhs and cars worth Rs.60.00 lakhs have already been attached. He further submits that cash amount of Rs.10.00 crores

has been recovered and further cash amount of Rs.5.00 crores has been placed in Court. According to him, if the applicant is released on bail, he would be in a position to assist the competent authority in selling out the attached properties and applying the sale proceeds for equitable distribution amongst all the investors. All these submissions, in my opinion, should have been made in the first instance before the trial Court as the trial Court is in a better position to appreciate the submissions with availability of the material contained in the voluminous chargesheets (1 main chargesheet and 2 supplementary chargesheets) so far filed before it, which are stated to be containing several thousand pages. No doubt, a similar request made earlier by the applicant before the trial Court has been rejected. But it appears that no concrete plan was placed before the trial Court by the applicant at that time and that was the reason why the request was turned down. But, I see no logic in thinking that if a similar request is again made to the trial Court, backed by a concrete proposal and a specific timetable, it would meet the same fate. Of course, it would be the duty of the applicant to submit necessary details before the trial Court and prove his bona fides.

22. In this view of the matter, I find that it would not be appropriate for this Court to consider the prayer for grant of temporary bail at this stage. But, liberty would have to be given to the applicant to approach the trial Court with a prayer for grant of temporary bail, supported by all the necessary details and specific timetable for returning the deposits and investments as per the promises given by the applicant and his companies. In the result, I find that the application deserves to be dismissed.

23. The application stands dismissed. However, liberty is granted to the applicant to renew his request for grant of temporary bail, as observed earlier.

Criminal Application [APPP] No.1169/2016 :

Heard Shri A.S. Jaiswal, learned Senior Counsel for the applicants/intervenors.

For the reasons stated in the application, the application is allowed.

Leave to assist the prosecution is granted.

Criminal Application [APPP] No.1238/2016 :

Heard Shri Tarun Parmar, learned Counsel for the applicant/intervenors.

It is seen that these intervenors, who are claiming to be the victims of fraud, are primarily interested in opposing the bail application, as it is their contention that the applicant has suppressed many material facts and he is trying to mislead this Court by putting forward concocted stories. This purpose of the present application, however, is already served by granting by this Court leave to assist the prosecution by allowing Criminal Application No.1169/2016. Therefore, the application is superfluous and is disposed of accordingly.

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