MHKO010034152021

IN THE COURT OF ADDL SESSIONS JUDGE, KOLHAPUR AT KOLHAPUR

Spl.Case No. 216 of 2021

Nandlal Kesar Singh
Age – 55 years,
R/o.- Borivali, Mumbai
… Applicant

// **Versus** //

State of Maharashtra, … Opponent

Appearance -
Advocate Shri. Hulyalkar - For the applicant
APP Shri. S.S. Rote - Absent

Order below Exh. 4

1) This is an application filed by the applicant seeking bail under section 439 of Cr.P.C. in regard with C.R.No. 436/2018 of Shahupuri Police Station for the offences punishable under Section 406, 420, 467, 468 r/w.34 of Indian Penal Code and u/s. 3 and 4 of MPID Act.

2) The complainant is a senior citizen and resident of Kolhapur. Applicant/accused is director of Phenominal Health Care Services Ltd. The company had given advertisement at various places at Kolhapur about their various insurance schemes like free

medical, insurance, free medical check up, accident insurance and other investments. They lured the investors that if money is invested in the scheme of their company, in 9 years they will get double amount of investment. By reading said advertisement informant went at the office of accused persons. The applicant/ accused who is Director alongwith co-accused, vice chairman and directors introduced complainant themselves. They induced the complainant, if she invested money in their company, the company will bare all expenses of hospital admission. They also lured complainant she will give free check up in the hospital of their panels. On the inducement of accused persons complainant and her family members invested Rs. 3,18,000/- in various policies of accused persons. Likewise the other acquaintance of complainant also invested money between the year 2007 to 2014 in the various schemes of accused persons. Inspite of maturity of policy accused persons did not pay anything and also did not provide any mediclaim and free check up facility. In the year 2007 when she went at the office of accused persons their office was closed, therefore, she approached to accused at their Andheri office. Applicant/accused was present there. He has given assurance to the complainant that price of their office is Rs. 50 crore and they will return her money after selling office but thereafter he switched off his phone. Complainant also tried to contact with other directors. They had also given assurance but thereafter they also switched off their phones. In May 2019, complainant read news of newspaper about various complaints are lodged against accused company at various districts of Maharashtra. She came to know that accused cheated 600 – 700 investors like her. Thereafter FIR came to be lodged against accused persons.

3) The Ld. Advocate for applicant/accused argued that there is 11 year delay for lodging FIR. Transaction is from the year 2007 to 2018. In the present case charge sheet is already filed. The properties of applicant/accused situated in Kolhapur and Pune is already attached by investigating agency. Today also applicant/ accused has filed 7/12 extract of his properties through his Advocate on record. There are various cases filed against applicant/accused and he is released on bail by all the courts. Due to demonetization in the year 2016 and thereafter due to pandemic of Covid-19 applicant/ accused has sustained huge loss, therefore, he could not able to return money of investors. His intention is never to cheat the investors. He is ready to abide conditions imposed by the court. Hence, prayed to release him on bail.

4) Notice of the present application issued to Shahupuri police station. The IO filed his say thereby strongly objected present application on the ground that in the FIR specific role is assigned to applicant/accused. This is economic offence. All the investors are from middle class and poor family. Investigation in respect of attaching property of applicant/accused is in progress. If the applicant/accused released on bail, he may dispose of his properties and there is a chances that he may abscond. Hence, prayed to reject the application.

5) In the present case bail application came to be filed on 17/01/2022. The copy of said bail application received by DGP office on 18/01/2022. Thereafter on 31/01/2022 APP Shri S.S. Rote filed say on record. Thereafter matter is adjourned for various dates as the Advocate for applicant/accused is absent. On

23/02/2022 the application came to be filed on behalf of the Advocate of applicant/accused that as angiography of Advocate was done, therefore, he is not able to present before court. Thereafter time to time this matter adjourned as nobody present therefore, matter kept for order on 10/03/2022. The order was partly dictated and it was kept for order today. The Ld. Advocate for applicant/accused present today at 11.00 am and submitted that he is ready to argue. Meanwhile Advocate Shri. Rote also present before the court. He also inquired with Bench Clerk about bail application. He was informed that the Advocate for the applicant/accused is present and it is kept in afternoon session for argument. Thereafter the Ld. Advocate for applicant/accused filed documents and citations. The DGP also filed appearance of APP Shri. S.S. Rote on record. In afternoon session the Ld. APP absent. The Ld. Advocate for applicant/accused argued bail application thereafter till 05.30 pm, PO wait for APP Shri. Rote and also sent message to DGP office to arrange APP. The Ld. APP Shri. S.S. Rote absent and he sent message through DGP staff he went to Kagal court for his personal cases. It shows that prosecution is not interested in contesting bail application.

6) After perusal of statement of witnesses enclosed with charge sheet, it is observed that many witnesses are invested their money in the various insurance schemes of the applicant/accused company on the inducement of the applicant/accused and co-accused. After perusal of charge sheet 56 investors invested Rs. 26,89,991/-. During investigation, investigating agency already attached the properties of the applicant/accused. The description of said property is mentioned in column No. 7. The valuation of the

said properties is more than Rs. 1 crore and amount due from applicant/accused is more than Rs. 52,30,204/-.

7) The Ld. Advocate of applicant/accused relied on the citation of Hon'ble High court in ABA No. 232 of 2020 in **Vishnu Pandurang Dalavi Vs. State of Maharashtra**. In said case also the applicant/accused without prejudice to their rights in that case they furnished details of the property which is available for attachment under the provisions of MPID Act and also filed undertaking on record. On the basis of undertaking and details of property which are available for attachment the Hon'ble High court granted ABA to that accused.

8) In the present matter charge sheet is already filed and some of the properties of applicant/accused are attached by IO and some of the properties yet to be attach. The Ld. Advocate for applicant/accused filed undertaking at Exh. 10 and also enclosed 7/12 extract of property of accused which are not yet attached. In the undertaking it is stated that the value of the properties which he has furnished 7/12 extract before the court is more than Rs. 50 lakh. Till conclusion of trial they will not sell the said properties and whatever amount investigating agency will get after selling said properties applicant/accused has no objection to give said amount to informant and other investors.

9) Considering the citation relied by applicant/accused, undertaking given by the Ld Advocate for applicant/accused and fact that charge sheet is already filed, by giving direction to the IO to attach the property of the applicant/accused which is mentioned in 7/12 extract of the said properties filed by Ld. Advocate for

applicant/accused before the court, I proceed to pass following order -

O R D E R

1. Bail application (Exh. 4) is hereby allowed.

2. The applicant/accused Nandlal Kesar Singh be released on bail in C.R.No. 436/2018 lodged with Shahupuri Police Station on his executing P.R. & S.B. of Rs. 2,00,000/- with one solvent surety of like amount, on following conditions:-

a) He shall furnish cash surety of Rs. 2,00,000/- (Rs. Two Lakh) and it shall remain with the court till conclusion of trial.

b) He shall surrender his passport before this court.

c) The IO shall attach the properties of applicant/accused enclosed with list filed on record on 11/03/2022.

d) He shall not tamper with the prosecution evidence and shall not pressurize the prosecution witnesses.

e) He shall attend attend police station on second Saturday of every month between 11.00 am to 01.00 pm till conclusion of trial.

f) He shall provide his permanent residential address, change in address alongwith addresses of two relatives with their contact numbers before Investigating Officer.

g) He shall not leave the jurisdiction of India without prior permission of the court.

h) He is also directed to attend the court on the given dates without fail.

i) Violation of any condition, his bail shall automatically stands canceled.

j) Copy sent to DGP office, Kolhapur to take action against concerned APP.

'Pronounced in open Court '

Digitally signed by Surekha Ragho PatiL
Date: 2022.03.14 17:21:37 +0530

(S.R. Patil)

Date: 11/03/2022 Addl.Sessions Judge, Kolhapur.

I affirm that the contents of this P.D.F. File Judgment/Order are same,word to word, as per the original Judgment/Order.

Name of the Stenographer	Sau. S.S. Gosavi
Name of Court	Addl. Sessions Judge, Kolhapur.
Date of Dictation	11/03/2022
Order signed by the P.O. on	14/03/2022
Order uploaded on	14/03/2022