

MHKO010051002022



ORDER BELOW EXH. 174 IN SPECIAL (MPID) CASE No.285/2022

The accused No.8- Swapnil Shivaji Koli has filed this application for bail under section 439 of the Criminal Procedure Code. It is his second bail application and he contends that no other bail application is pending in any other Court. The first bail application (Exh.138) was rejected on 27/04/2023 when further investigation was in progress. Now the supplementary chargesheet is submitted. This application is filed on the ground of change in circumstances as the charge-sheet has been filed and no more detention of this accused is required and also on the ground of parity.

2. This accused was arrested on 03/04/2023 in C.R.No. 739/2022 registered in Shahupuri Police Station under Section 420, 406, 409 read with 34 of the Indian Penal Code, 1860 r/w. Section 3, 4 and 6 of the Maharashtra Protection of Interest of Depositors Act,1999 with Section 21 of the Banning of Unregulated Deposit Schemes Act, 2019.

3. The indictment of the applicant is that the accused No.4 to 8 (original accused No. 1 to 5 -Koli family) formed a company by name 'Grobuzz Trading Services' and floated various schemes for investments and invited general public to make investment in that company assuring them that the company will give 15% returns in 10 months. As the schemes were attractive, several persons invested the amount in the company but the company could not give the agreed returns. The complainant Raghunath Khodke lodged the complaint and based on it, the crime was registered against the accused. It was disclosed during the investigation, there are other three sister concerns of the 'Grobuzz Trading Services' namely, 'G.B. Welfare Partnership Firm', 'Grobuzz India Urban Nidhi Ltd.' and 'Grobuzz Multi Trade LLP Ltd'. The present applicant was alleged to be actively participated in the

business of those companies. He is the nephew of the prime accused Vishwas Koli. During investigation, it is disclosed that this accused was in Government service and was working as the Gramsevak. He was dealing with cash transactions of those companies of which the members of Koli Family were the directors/partners. It is alleged that during investigation, it was found that there were 26,382 investors who have invested an amount of about 218 Crores and the returns of about 90 Crores have not been paid to the investors.

4. According to the applicant, he is not the partner or director of any of the companies but he himself was one of the investors. He had obtained loan of Rs.20,10,000/- from Employees Credit Society and had invested the same in Grobuzz Trading Services. The applicant had no authority in any of the companies and the accused Vishwas Koli had sole signing authority. He has not personally made any offer to any investor nor received any deposit amount by assuring him to give such returns and therefore, no offence is made out against the applicant. No witness has named him to be the person to whom he has paid any amount or who offered him to invest any amount in those companies. The investigation is completed and chargesheet is filed. All the record has been seized and all the bank accounts of the companies have been freezed. The applicant is ready to co-operate the investigating agency and will abide by all the conditions that would be imposed by this Court. Hence, he prays that he be released on bail.

5. The say of prosecution was called and the prosecution has resisted this application by filing say (Exh.180). Heard Shri. A.A. Dange the learned advocate for the applicant, Shri. Onkar Parab, the learned advocate appearing on behalf of the informant, who has produced certain documents on record to oppose this bail application. Shri. S.S. Rote, the learned APP has opposed this application on the ground that during investigation, the active involvement of this accused has been disclosed and knowing fully well that he is a Government servant, he has not come on record and was dealing with

cash transactions. Certain photographs with bundles of cash were produced on record wherein this accused was saying that “*this can happens only in Grobuzz*”. The informant has filed on record certain scree shots of Whatsapp messages circulated in the group members of the investors, in which, this accused was promoting the business of these companies.

6. The learned advocate for this accused has relied upon the judgments of the Hon’ble Bombay High Court in *Sunil Koppal Vs. State of Maharashtra [Cri. Application No.7561 of 2005]*, *Rajesh Joshi Vs. State of Maharashtra [Bail Application No.634/2015]*, *Raj Mohammad Choudhary Vs. State of Maharashtra [Cri. Bail Application No.1347/2020]*, *Dr. Krishna Appayya Patil Vs. State of Maharashtra [Anticipatory Bail Application No.25/2014]* and *Amrutlal Yadav Vs. State of Maharashtra[Criminal Bail Application No53/2021]*. In all these judgments, the accused have been released on bail even arrested for the offences under MPID Act.

7. One of the accused in this case i.e. accused No.6- Sourabh Sagar Koli has been released on Anticipatory bail by the Hon’ble High Court in Anticipatory Bail Application No.311/2023 on 12/6/2023. A copy of the said judgment has been produced and according to me, the observations made therein would be important while dealing with this bail application. Para-4 to Para-6 of the said order read as under -

“4. According to the report, only role attributed to the applicant is that he collected amounts. According to him, there is no material to indicate that he is the beneficiary of the amount received from the investors.

5. Learned APP, based on material on record, does not dispute the submission and states that the material on record indicates that the applicant collected the amounts from the investors, but there is no material to show that he is the ultimate beneficiary of the amount received by him.

6. Having considered the case papers and the material on record in the form of charge-sheet, it prima facie appears that the role of the applicant is restricted only to the extent of collection of amount from the investors. Prima facie there is no material to show that the applicant is the ultimate beneficiary of the amount received by the company. The investigation is complete. Charge-sheet is filed. Hence, custodial investigation of the applicant is not necessary”.

8. If the case of present accused is considered in the light of above observations, the present accused would stand on better footings. Unlike Sagar Koli, he is not the director of any company. There is nothing on record to show that he has derived benefits out of the investments made by any of the investors. The investigation is completed and the charge-sheet is filed. The Whatsapp chats show that he had promoted the business of the companies by sending messages in the group of investors but in view of the observations of the Hon'ble High Court, that cannot be taken as a ground to reject the bail prayer of this accused. The accused is a Government servant and he will not flee away. The conditions as imposed by the Hon'ble High Court can also be imposed. As such, I do not find any reason to apply different parameters to this accused to reject his prayer for bail. When the co-accused makes out a case for anticipatory bail, this accused who is behind the bar since 3/4/2023, would certainly be entitled to be released on bail now when he stands on equal or even better footing than the accused released on an anticipatory bail. The change in circumstances and the ground of parity is now available to this accused.

9. In view of these reasons, I hold that this accused can be released on bail. The accused have been released on bail under similar circumstances in other judgments cited by the learned advocate. However, when this Court has precedent arising out of the very same case, it is not necessary to refer all those judgments in detail. Suffice to say that this accused would be entitled to be released on bail. Hence, the order.

ORDER

1. Bail application is allowed.
2. The applicant Swapnil Shivaji Koli (accused No.8) arrested on 3/4/2023 in connection with C.R.No. 739/2022 registered in Shahupuri Police Station under Section 420, 406, 409 read with 34 of the Indian Penal Code, 1860 r/w. Section 3, 4 and 6 of the Maharashtra Protection of Interest of Depositors Act, 1999 with Section 21 of the Banning of Unregulated Deposit Schemes Act, 2019, be released on bail on his furnishing P.R. Bond in the sum of Rs.1,00,000/- (Rupees One Lakh Only) with one or two sureties of the like amount on following conditions :-
 - a) The applicant shall furnish the proof of his permanent residence and his contact number and shall update this information whenever there is any change.
 - b) The applicant shall furnish and undertaking that he shall not transfer or create any charge on his immovable property and shall not transfer any amount standing in his name in his bank accounts to any third person without permission of this Court.
 - c) The applicant shall attend all the dates fixed by this Court.
 - d) The applicant shall not directly or indirectly make any inducement, threat or promise to any witness acquainted with the facts of the case so as to dissuade him from disclosing such facts to this Court or to any police officer.
3. The breach of any of the conditions would entail a ground for the prosecution to apply for cancellation of bail.

Date: 12/09/2023

Sd/-
(**S.R. Salunkhe**)
Special Judge (MPID),
Kolhapur.