

ORDER BELOW BAIL APPLICATION (EXH.NO. 223) IN
SPL.C.(M.P.I.D.) NO.2 OF 2017
STATE VS. GAUTAM AND OTHERS.

Applicants shown as intiallay shown as accused Nos. 7 & 9, namely Ashish Murliprasad Gupta and Munindar Lalchand Likhare filed present application claiming bail under Section 167(2) of the Criminal Procedure Code in Crime No. 427 of 2016 of Shivaji Nagar Police Station, registered on 12.12.2016 for offences under Sections 420, 406, 409, 109 r/w. Sec. 34 of the Indian Penal Code and for offence punishable under Sec. 3 of the M.P.I.D. Act.

2. The prosecution allegation is that people were lured to invest amount in B.N. Gold, Read Estate and Allied Ltd. and B.N.G. Global India Ltd. Co., by giving promise that they will receive more returns on invested-deposited amount. It is alleged that present applicants are Directors of the Company and they conducted Seminars / meetings in a Hotel and their office at Latur and therein, they gave information to people how the Company is able to give more returns. After, tenure of invested schemes was over, in which people have invested amounts, the Company did not return their amount. Therefore, informant Sultan Shaikh lodged report on 12.12.2016 at Shivaji Nagar Police Station, Latur and Crime No. 427/2016 for above said offence is registered. It is alleged that several people invested amount of Rs.12,57,10,810/- in those Companies in between 01.05.2012 to 15.12.2015 and those amounts was not returned to them and offence is committed.

3. The Investigation Officer got custody of both applicants from other similar crime registered against them and they were produced before this Court on 22.11.2018 and they were remanded to police custody till 27.11.2018. Investigation Officer sought their judicial custody on 27.11.2018 by mentioning amount of cheating and fraud as Rs. 16,43,85,385/-. Therefore, both applicants were remanded to Judicial Custody on 27.11.2018 and they were transferred to the crime from which their custody was obtained in this crime.

4. Perused application, reply filed by prosecution opposing application and record and proceeding of the case. Heard Ld. Advocate for the parties.

5. The prosecution did not file charge-sheet against both applicants within 90 days, from the date of their production in this Court on 22.11.2018. On the contrary, investigation officer filed report under Sec. 169 of Cr. P.C. on 15.05.2019 (Exh. 101) against both the applicants. The Ld. in-charge Additional Sessions Judge passed order thereon directing investigation officer to submit the report in prescribed final report format. Said order dated 15.05.2019 is not complied by the investigation officer till today.

6. Present application is filed on 04.02.2020. The prosecution filed reply (Exh. 232) on 18.02.2020 opposing present application without complying order dated 15.05.2019 passed on application (Exh. 101) or without filing charge-sheet against the applicants.

7. The reply reveal that the investigation officer recorded statement of two witnesses Shivaji Sagar and Pravin Kandharkar on 15.02.2020 i.e. after filing present bail application by the applicants. Ld. A.P.P. Shri S.R. Mundada argued that in the statement of witness Muddassar Ahemad Shaikh, recorded on 17.12.2016; he stated that both applicants used to attend and give speech in the meetings of Company at Latur. Similar are the statements given by above stated two witnesses. But, neither the reply filed by the prosecution nor Ld. A.P.P. advanced any argument as to how default bail could be rejected, when prosecution failed to file charge-sheet against applicants within period of maximum 90 days in the present case. The investigation officer is also present, but he could not make any statement about filing of charge-sheet against applicants, may be because of filing of report under Sec. 169 of Cr. P.C. on 15.05.2019 (Exh. 101).

8. Ld. Advocate for applicants relied on the case law of **Uday Mohanlal Acharya Vs. State Of Maharashtra [AIR 2001 SC 1910]** in support of his argument that the application is liable to be allowed, in absence of filing of charge-sheet within stipulated period under section 167 of Cr.P.C.. The Hon'ble Supreme Court held in abovesaid case that provisions of Sec. 167(2) of Cr.P.C. are applicable in a crime registered under the provisions of M.P.I.D. Act also and accused in said offence could be released on bail under that provision.

9. In present matter, the abovesaid facts proved that prosecution failed to submit charge-sheet against applicants within period of 90 days, after they were produced before the Court on 22.11.2018, or even till today. Therefore, the applicants are entitled to be released on default bail under Sec. 167 (2) of Cr.P.C. Hence, following order is passed.

Order

1. The application is allowed.
2. Applicant/accused Nos. 7 & 9 namely; Ashish Murliprasad Gupta and Munindar Lalchand Likhare, be released on bail under Section 167 (2) of Cr.P.C. in Crime No.427 of 2016 of Shivaji Nagar Police Station, registered on 12.12.2016 for offences under Sections 420, 406, 409, 109 r/w. Sec. 34 of the Indian Penal Code read with Sec. 3 of M.P.I.D. Act registered with Shivaji Nagar Police Station, Latur, on executing P.R. Bond of Rs. 20,000/- with one surety in the like amount.
3. Applicants shall not tamper with the prosecution evidence and witnesses in any manner.
4. Applicants are directed to assist concerned police officer for investigation purpose.
5. Grant of bail to both applicants under section 167(2) of Cr.P.C. be communicated to Superintendent of Police to take further necessary action against erring officer.

Date : 18.02.2020.

(V.D.Nimbalkar)
Additional Sessions Judge, Latur.