Order below Exh.56 in Special Case (MPID) No.2/2017
(State Vs. Gautam)

1) The applicant original accused No.3 Heeralal Vaishnav has filed present application (Exh.56) under Section 227 of the Criminal Procedure Code to discharge him from offence punishable under Sections 420, 406, 409, 109 r/w 34 of the Indian Penal Code and under Section 3 of the Maharashtra Protection of Interest of Depositors (in Financial Establishments) Act, 1999 (in short "MPID Act).

2) On the report of informant Sultan Kalusab Shaikh Crime No.427/2016 for above said offences is registered at Shivaji Chow Police Station, Latur. The informant alleged in the report that accused No.2 and the informant were working in MS.E.B. and informant is retired from service. Accused No.2 informed the informant that his brother-in-law i.e. accused No.1 is main agent of B.N. Gold Real Estate and Allide Ltd. Latur and New Delhi (referred as Company) and if amount is invested in fixed deposit in said company, then the amount will be double within the period of six years and said period is seven to eight years in other Banks. Accused No.2 also told the informant that if amount deposit monthly amount, then company gave interest @ 12% and persuaded the informant to deposit his money received after retirement from the service in said company. The accused No.2 repeatedly persuaded him to deposit amount in said company by further giving assurances that he will receive the benefits from time to time. Believing on him, the applicant

deposited amount of Rs.9,00,000/- on different dates in different schemes through accused No.1 in his name and in name of family members. He deposited money in the office of said company situated at Barure Complex, in front of Bus Depot Ambajogai Road, Latur through accused Nos.1 and 2. He deposited said amount as both the accused assured him that he will receive all the benefits after maturity. For initial some period, he received cheque of interest amount. He also alleged that other persons have deposited amount of Rs.48,00,000/- on persuasion of accused Nos.1 and 2 in different schemes of B.N. Gold Real Estate and Allide Ltd. Latur and New Delhi. But they have not received amount as per policy on maturity. They visited the office of said company at Barure Complex, Ambajogai Road, Latur but the said office is found to be locked. They demanded money from accused No.2, but he only assured about the refund of money. Thus he alleged that accused No.2 is agent of the company and accused No.1 is main agent of company and they along with directors of the said company, induced several persons to invest money into their company by informing that they will receive more interest and double amount within less period. But did not return their amount and closed their office and thereby cheated to several persons for amount of Rs.64,85,400/-.

3) The applicant was arrested on statement of other investors and copies of certificates about their investment in the company are collected by the Investigation Officer during investigation. He arrested other accused also. Directors of the

company are still absconding. After completion of investigation prosecution has filed chargesheet against present applicant/accused along with other three accused for offences punishable under Sections 109, 406, 409, 420 of the Indian Penal Code and Section 3 of MPID Act by further mentioning that they have cheated for amount of Rs.16,43,45,385/- to several investors and further still investigation is going on under Section 173(8) of the Criminal Procedure Code.

4) The applicant has filed present application contending that provisions of Section 4(3) of MPID Act provides procedure in the interest of depositors and Collector is empowered to refer the matter to Police for investigation and there is bar to the depositors to make complaint directly to the Police Station for investigation. He further contended that name of the applicant is not mentioned in the FIR. Though chargesheet is filed there is nothing to show that present applicant has played any role in the commission of offence at Latur. The applicant is not Promoter, Director etc. of the said company and he is not responsible in the management or conducting business or affairs of the said company and, therefore, he can not be implicated into offence of present case. He is resident of Indore, Madhya Pradesh and never visited Latur. The investigation officer did not collect any material like photographs, audio or video recording to support allegations that applicant visited Latur and attended the meetings of the company at Latur. He denied that he acted as announcer of the company in any meeting at Latur. Nothing incriminating article

is seized at his instance. Ingredients of Section 406, 409 and 420 of the Indian Penal Code could not be made applicable to the applicant. The applicant did not receive any amount from any depositor and, therefore, provisions of MPID Act are also not applicable to the case of the applicant. If prosecution case is accepted which shows that the depositors have paid money to the company and they have not received those money after maturity then the company is the accused and not the applicant. Besides it is also contended that if company did not repay deposits of the depositors then it is a civil dispute and depositors can file civil suit or consumer case against the company. Thus there is no legal evidence to connect the applicant with any of the alleged offence is contention of the applicant Heeralal.

5) Learned advocate for the applicant vehemently argued on behalf on said points in support of application and relied on following case laws in support of his argument that there is no material to frame charge against applicant Hiralal Vaishnav and the application needs to be allowed.

(1) State through Central Bureau of Investigation Vs. Dr. Anup Kumar Srivastava : ((2018) 1 Supreme Court Cases (Cri.) 86.

(2) Vijay Rao Vs. State of Rajasthan and another : ((2005) 7 Supreme Court Cases 69.

(3) R Kalyani Vs. Janak C. Mehta And Others : ((2009) 1 Supreme Court Cases 516.

6) Learned AGP for State argued that the bail application (Exh.42) of the applicant Hiralal Vaishnav was rejected by this Court on 29.12.2017. His bail application No.99/2018 is rejected by the Hon'ble High Court on 23.02.2018 holding that there is prima facie case against applicant Hiralal Vaishnav. Special Leave Petition No.2840/2018 filed by the applicant Hiralal Vaishnav is dismissed by the Hon'ble Supreme Court on 10.04.2018. The Hon'ble Supreme Court further directed the Trial Court may expedite the hearing and conclude the trial at the earliest but not later than one year. But to cause further delay in the trial, malafidely applicant filed present application on 24.04.2018 with ill motive that trial should not be proceeded further. He further argued that when Hon'ble High Court has held that there is prima facie material against the applicant Heeralal Vaishnav and rejected his bail application, the applicant could not contend that there is no material against him and he is entitled to be discharged.

7) From the above said facts of the case, following points arise for determination. Findings against them are recorded for the reasons given below :

Sr.No.	Points	Findings
1	Whether there is sufficient ground to proceed against applicant Heeralal for alleged offences ?	In the affirmative.
2	What order ?	As per final order.

R E A S O N S

As to Point Nos.1 and 2 :

8) Argument of learned advocate for applicant is correct to the extent that name of applicant Heeralal Vaishnav is not mentioned in the FIR and in statements of most of the witnesses. But there are statements of witnesses Vishwanath Makud, Mudatsar Shaikh and Dagdu Dalave that the applicant Heeralal Vaishnav remained present in the meetings of the company held in Latur by its directors and represented the company. Those meetings were held to lure the persons to deposit or invest their amount in the company. Thus role of the applicant is revealed during investigation and, therefore, only because his name does not appear in the FIR it could not be held that he is entitled to be discharged. The statement of above named witnesses is that the present applicant Heeralal Vaishnav participated in the meetings organized by the company/by the directors of the company and he used to participate for making necessary announcements during the meetings. Therefore, only because he is neither director etc. of the company, it could not be concluded that he did not play any role in above said crime. As per investigation, the applicant has acquired huge/various immovable property in the State of Madhya Pradesh and it is sufficient to draw an inference that he must have derived the benefits by actively participating in luring investors in depositing the money in the company. Thus it can be said at this stage that the applicant has received benefits by participating in the above said crime and it is sufficient to show prima facie complicity of the applicant Heeralal Vaishnav in the commission of above said

crime. The Hon'ble High Court has considered all these points while rejecting bail application No.99/2018 on 23.02.2018 of accused Heeralal. Thereafter the applicant Heeralal Vaishnav has preferred Special Leave to Appeal (Cri.) No.2840/2018 to Hon'ble Supreme Court in which also bail was not granted to the applicant and as per order dated 10.04.2018, the special leave petition was dismissed. The Hon'ble Supreme Court passed the order that the Trial Court may expedite the hearing and conclude the trial at the earliest but not later than one year. Thus as per above said order of Hon'ble Supreme Court also the applicant/accused should have proceeded for trial so that it can be concluded within stipulated period. But instead of doing so, the applicant filed present application thereafter on 24.04.2018. Therefore, argument of learned AGP needs to be accepted that only to prolong hearing of the trial applicant moved the present application malafidely.

9) Case law **R Kalyani Vs. Janak C. Mehta And Others : ((2009) 1 Supreme Court Cases 516** relied on by the learned advocate for applicant could not be made applicable in the facts of the present case. In that case there was no transaction between accused and the persons who have been cheated and, therefore, it is held that question of any representation which is one of the main ingredient for constituting an offence of cheating would not arise. But in the present case there are statements of above three witnesses that the present applicant attended meetings of the companies and made announcements to lure the persons to invest money into the company.

10) Case law **Vijay Rao Vs. State of Rajasthan and another : ((2005) 7 Supreme Court Cases 69** relied on by the learned advocate for applicant is also not applicable in the present case. In that case also ingredients to attract offence under Section 420 of the Indian Penal Code is lacking and, therefore, proceeding against accused is quashed. But in view of above said statements of three witnesses, there are ingredients of offence of cheating against the applicant in present case.

11) Learned advocate for the applicant lastly relied on the case law **State through Central Bureau of Investigation Vs. Dr. Anup Kumar Srivastava : ((2018) 1 Supreme Court Cases (Cri.) 86**. It is held in the said case law that

> Criminal Procedure Code, 1973 - Ss.227, 228 and 240 - Framing of charge - Duty of courts pertaining to - Framing of charge is first major step in criminal trial where court is expected to apply its mind to evidence placed before it and consider possibility of discharging accused or requiring him to face trial - At stage of framing of charge, trial court is not to examine and assess in detail material produced by prosecution nor to consider sufficiency of material to establish offence alleged - Accused may be discharged where court on basis of evidence placed before it finds that no offence is made out or there is legal bar to prosecution or where there exists no ground to proceed against accused or where matter is so predominantly civil in nature that it leaves no scope for element of criminality nor does it satisfy ingredients of criminal offence with

which accused is charged - On other hand, where court finds that there is ground for presuming that accused has committed offence, it shall frame charge - Presumption is not presumption of law as such - Satisfaction of court regarding existence of constituents of offence and facts leading to that offence is sine qua non for exercise of such jurisdiction which may even be weaker than a prima facie case.

12) As per this case law, where the Court finds that there is ground for presuming that accused has committed offence then it shall frame charge. In present case as discussed earlier, there is prima facie case against the applicant as held by the Hon'ble High Court while rejecting his bail application.

13) Perusal of Section 3 of the MPID Act does not provide that only Collector is empowered to lodge complaint to Police. Section 4 provides separate remedy to attach property of the financial establishments so that amount of depositors could be secured and repaid to them. Thus the argument advanced on behalf of the applicant could not be accepted that unless Collector files report or complaint to the Police Station, FIR could not be registered for offence under Section 3 of the MPID Act.Besides the criminal law can be set in motion by anyone and not necessarily by the affected person unless contrary is specifically provided. Therefore, such argument on behalf of applicant could not be accepted. For the same reason further argument that the depositors have other remedy to file civil suit

or consumer case to recover their deposited amount also could not be a ground to hold that the applicant has not committed any crime. Considering facts of the case, even if argument of learned advocate for applicant is accepted that the company is not made as an accused in the case, still the applicant could not be discharged in view of above said involvement in the commission of crime as per statements of those three witnesses.

14) All above said material discussed above show that there is prima facie case to proceed further against the applicant Heeralal Vaishnav. Record further revealed that Special Leave Petition No.2840/2018 of the present applicant Heerala Vaishnav was dismissed by Hon'ble Supreme Court on 10.04.2018 with further direction to this Court to include the trial within period of one year. Immediately thereafter the applicant filed present applicant on 24.04.2018 and this shows that the applicant malafidely filed present application only with an intention to prolong the hearing of the case. Therefore, affirmative finding is recorded against the point No.1 and following order is passed.

O r d e r

Application (Exh.56) is hereby rejected.

(V.D.Nimbalkar)
Date : 04.07.2018. Additional Sessions Judge-1,Latur.

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