

ORDER BELOW APPLICATION EXH. 04 IN
SPECIAL CASE (MPID) NO. 03/2018

1] This is second application filed by the applicant/accused Mohan Ramkrushna Chavdekar for grant of regular bail as per the provision Section 439 of Cr. P. C. in Crime No. 555/2017 under Sections 409, 403, 417 and 420 of Indian Penal Code and Sections 3 and 4 of MPID Act of Vijapur Naka Police Station, Solapur.

2] The facts of the application are that, on 11.10.2017 the complainant Santosh Subhash Surwase lodged his complaint before Vijapur Naka Police Station, Solapur alleging that he is working in the field of construction as a Contractor since 7-8 years. He knows accused No. 2 Siddheshwar Nagnath Mittha, a Proprietor of Ganesh Cad Plotting since 5-6 years. The accused Siddheshwar Nagnath Mittha prepares plan of construction and therefore they worked together. On 15.02.2015 Siddheshwar Nagnath Mittha stated to him that, there is opportunity for investment and keep with him 6-7 lakhs, due to said investment the complainant will get 5 crore. On the say of said Siddheshwar Mittha, in the month of March 2015, he paid Rs. 3,50,000/- in cash in his office and given two blank cheques signed by him for the purpose of security of remaining 3 lakhs. Thereafter, he paid remaining 3 lakhs to him but Siddheshwar Mittha not returned back two cheques to him. He stated that, the commission and profit will be deposited in his account of Bank of Maharashtra, branch Asara, Solapur.

3] It is further alleged by the complainant, thereafter, after

some days he inquired with said Siddheshwar Mittha that, where he invested his amount, but he stated that, he will arrange meeting with the senior partners of the company. That in the month of March 2015 one day at about 03.00 pm, Siddheshwar Mittha called him at Hotel Balaji Sarovar, Solapur and introduced to him with applicant/accused Mohan Chavadekar and co-accused Jeetendra Waychal. Thereafter, he introduced to him with co-accused Rohan Kowli and Batul Lokhandwala. All accused persons dreamed to him for being a rich person. All the accused persons given understanding to him as to working culture of company and stated him to prepare a list of interested persons who will invest the amount in the company and promised to him that, after registration of 6 members, he will get commission of Rs. 12,000/-. On the increase of members, he will get more profit.

4] It is further alleged by the complainant, accused Siddheshwar Mittha demanded amount of Rs. 8 lakhs on the name of family members of him, thereby he paid amount of Rs. 7 lakhs by the way of demand draft on 23.04.2015 to him. Thereafter, accused persons given identity numbers of investment on the name of family members of him. Thereafter, on the say of accused Siddheshwar Mittha and Jeetendra Waychal, he called his friend Pravin Jain. Said Pravin Jain invested amount of Rs. 3,51,000/- in the said company. Said Pravin Jain was joined below him in chain system of the company. By the same procedure Vijay Shinde invested amount of Rs. 2,64,000/-, Girish Pukale invested amount of Rs. 2,64,000/-, Ganesh Lingshetti invested amount of Rs. 3,51,000/-, Ratan Lingshetti

invested amount of Rs. 1,50,000/-, Subhash Surwase invested amount of Rs. 1,60,000/-. So total amount of Rs. 33,40,000/- is invested by him, his family members, and friends.

5] It is further alleged by the complainant, on the say of accused persons, he along with all investors have attended V-Con Event at Maleshia with their own expenses. Thereafter, in April 2016, on the say of accused Batul Lokhandwala, he along with 45 investors attended meeting at Maleshia with their own expenses. The expenses of Rs. 1,50,000/- spend by him for attendance of said event. But, thereafter, he has not get return any investment. Therefore, they approached to the accused persons and inquired, they replied that to improve the members and thereafter only they return back the invested amount. Thereafter, he and other investors continuously approached to the accused persons for the purpose of repayment of commission and profit, but accused persons deliberately avoided by stating so many reasons to repay the commission, profit and investment to him and investors. Therefore, ultimately on 11.10.2017 he filed complaint against the accused persons alleging that accused persons misappropriated total amount of Rs. 1,04,66,768/- to him and others also cheated him and other investors.

6] On the basis of his above complaint above number crime under above mentioned Sections registered by Vijapur Naka Police Station, Solapur. After registering the crime, Vijapur Naka Police arrested the applicant/accused on 18.04.2018. Thereafter, initially the applicant/accused remanded in police custody and then the

applicant/accused was remanded in judicial custody. Then the investigating machinery completed investigation in this crime and filed charge sheet in the Court. Previously the applicant/accused was filed one Criminal Bail Application No. 223/2018 for anticipatory bail, but during pendency of the said application meantime the police arrested him and therefore, the said application was not pressed. Then the applicant/accused was filed one Regular Bail Application and the said bail application was rejected by this Court on 18.05.2018. But now the investigation in this crime is completed and police machinery has also submitted charge sheet against applicant/accused and therefore, there is change in circumstances and hence the applicant/accused has filed present bail application on the following grounds.

7] It is alleged by the applicant/accused that, he himself is purchaser of the product and customer of QNET Company. He is absolutely innocent and has not committed any alleged act. Considering the allegations in between seller and customer, at most it will be civil dispute which will come under the Consumer Protection Act. No any positive and concrete material even after having thorough investigation to sustain the charge against him.

8] It is further alleged by the applicant, as per the story of complainant and prosecution itself, not a single piece, has been given by the complainant to him. As on today investigation is completed and charge sheet is filed. Hence, no any purpose will serve by keeping him behind bars. He is reputed person from the society. If the

applicant granted bail no any injustice would cause to the State/complainant. He will not tamper with prosecution witnesses and evidence of prosecution if any as well as he is already co-operated and in future also will co-operate to the investigating officer, if bail is granted to him. He is ready to furnish surety as per the order of Court. On all those grounds, he lastly prayed that his bail application be allowed.

9] The Ld. APP Shri. Kazi has resisted the application by filing say at Exh.5 and strongly opposed the bail application of the applicant/accused. It is contended by him, the offence committed by the applicant is serious in nature as well as the offence committed by the applicant is also economical in nature. The involvement of the accused in the commission of offence is prima facie seen. The ingredients of offence under Sections 409, 403, 417 and 420 of Indian Penal Code and Sections 3 and 4 of MPID Act are squarely applicable against applicant. There is strong prima facie evidence against applicant and in such circumstances if the applicant is released on bail then he will tamper the prosecution evidence and witnesses. He will abscond and will not be available for trial. It is also contended by him if the applicant/accused released on bail, then the investment amount will not be recovered and there is a danger for amount being disbursed as well as the if the accused released on bail, then he will definitely abscond. It is also contended by him, applicant/accused committed misappropriation of total amount of Rs. 1,04,66,768/- and he cheated the complainant and several investors. Therefore, considering the nature of offence, he lastly prayed that the

bail application be rejected.

10] Heard the argument of both sides. Perused the charge sheet on record. The learned advocate for the applicant has argued that, applicant is arrested by police on 18.04.2017 in Crime No. 555/2017 of Vijapur Naka Police Station, Solapur which has registered at the instance of complainant Santosh Subhash Surwase having allegations that the QNET company Indian Private Limited of QNET, then they will get huge profit and due to that inducement the only complainant Santosh Surwase and other persons purchased the product from the said company, but they did not get expected profit, benefit as assured by them. He further argued that, the applicant/accused participated in the said act by inducing the complaint to purchase the product etc.

11] The learned advocate for the applicant/accused has further argued that, QNET Company is a Hongkong based direct selling and multilevel marketing company, whose business is basically marketing of product directly to the consumers. The executive of the company used to arrange seminars. Customers used to buy the said product from the company. That whatever the amount invested by the complainant and other persons is directly with the company only. Not a single pai came directly in the pocket of applicant. That, so far the alleged investors is concern, present applicant not directly made any transaction with those investors. So also, no any assurance or promise given directly to those persons after investment, the complainant and other persons received holiday packages from the QNET Company(Under Indian Subsidiary Vihanna Direct Selling India Pvt.

Ltd. Of QNET). He further argued that, according to informant of the applicant the complainant and other persons also got huge profit from the said company. That so far as complainant Santosh surwase is concern, he has invested Rs. 5,83,687/- and received product worth Rs.5,83,687/- and in addition to this he earned commission of Rs. 5,85,729/-. He further argued that, the agreement was in between complainant Santosh Surwase and QNET company.

12] The learned advocate for the applicant has further argued that, the said company is working is like a MLM (Multi Level Marketing) and the applicant is also one is the customer investor f the said company. Said complainant and other persons are under wrong impression that applicant is liable for the business of the company and applicant received huge benefit etc. The applicant is only independent customers of the said QNET company and except that the applicant is not having any kind of concern to the said transaction of the company. The applicant never induced the said complainant or anybody to invest the amount into the QNET Company and for their business only, they suo motu approached and made transaction with company. The applicant never cheated to complainant Santosh Surwase or any other persons nor applicant has committed any offence as alleged by the complainant.

13] The learned advocate for the applicant further argued that, prior to the registration of this crime also the complainant approached to Jodbhavi Peth, Police Station, Solapur with one complaint application against the Jeetendra Waychal and others. In

the said thorough enquiry has been completed by the police and disposed off the said complaint application concluding no any offence is going to make out. He further argued that, prior to that this complainant Santosh and others was filed one complaint application to the Police Commissioner also in that Jeetendra Waychal and other approached to the Hon'ble Sessions Court wherein Sessions Court granted relief of 72 hours notice to th said Jeetendra Waychaland granted protection to the said person. He further argued that, applicant arrested detained in PCR for considerable period. No any incriminating circumstances as against the applicant found during investigation. The charge sheet is filed after thorough investigation. As on today investigation in respect of the applicant is completed, nothing remains for investigation to detain applicant in custody. Therefore, there is no necessity to keep the applicant behind bars.

14] The learned advocate for the applicant/accused has further argued that, it is well settled that in bail applications, generally, it has been laid down from the earliest times that the object of bail is to secure the appearance of the accused person at his trial by reasonable amount of bail. The object of bail is neither punitive nor preventative. Deprivation of liberty must be considered a punishment, unless it can be required to ensure that an accused person will stand his trial when called upon. He further argued that, courts owe more than verbal respect to the principle that punishment begins after conviction, and that every man is deemed to be innocent until duly tried and duly found guilty. It was appreciated that detention in custody pending completion of trial could be a cause of great hardship. From time to

time, necessity demands that some un-convicted persons should be held in custody pending trial to secure their attendance at the trial but in such cases, 'necessity' is the operative test. He further argued that, in this country, it would be quite contrary to the concept of personal liberty enshrined in the Constitution that any person should be punished in respect of any matter, upon which, he has not been convicted or that in any circumstances, he should be deprived of his liberty upon only the belief that he will tamper with the witnesses if left at liberty, save in the most extraordinary circumstances. He further argued that, apart from the question of prevention being the object of a refusal of bail, one must not lose sight of the fact that any imprisonment before conviction has a substantial punitive content and it would be improper for any Court to refuse bail as a mark of disapproval of former conduct whether the accused has been convicted for it or not or to refuse bail to an un-convicted person for the purpose of giving him a taste of imprisonment as a lesson.

15] In support of his above submissions, he relied the decision in case of ***Sanjay Chandra v. Central Bureau of Investigation, reported in 2012 Cri. L. J. 702***, in which their Lordships of Hon'ble Supreme Court has held in para 14 as follows.

“14) In bail applications, generally, it has been laid down from the earliest times that the object of bail is to secure the appearance of the accused person at his trial by reasonable amount of bail. The object of bail is neither punitive nor preventative. Deprivation of liberty must be considered a punishment, unless it can be required to ensure that an accused person will stand his trial when

called upon. The courts owe more than verbal respect to the principle that punishment begins after conviction, and that every man is deemed to be innocent until duly tried and duly found guilty. From the earliest times, it was appreciated that detention in custody pending completion of trial could be a cause of great hardship. From time to time, necessity demands that some un-convicted persons should be held in custody pending trial to secure their attendance at the trial but in such cases, 'necessity' is the operative test. In this country, it would be quite contrary to the concept of personal liberty enshrined in the Constitution that any person should be punished in respect of any matter, upon which, he has not been convicted or that in any circumstances, he should be deprived of his liberty upon only the belief that he will tamper with the witnesses if left at liberty, save in the most extraordinary circumstances. Apart from the question of prevention being the object of a refusal of bail, one must not lose sight of the fact that any imprisonment before conviction has a substantial punitive content and it would be improper for any Court to refuse bail as a mark of disapproval of former conduct whether the accused has been convicted for it or not or to refuse bail to an un-convicted person for the purpose of giving him a taste of imprisonment as a lesson".

16] Per contra the learned APP Shri. Kazi has argued that, after careful perusal the entire charge sheet on record prima facie it appears that there is strong evidence against the applicant about his involvement and active participation in commission of the crime. He further argued that it is well settled that mere filing charge sheet is not sufficient to change the circumstance, in case at hand, because in case at hand there is strong prima facie evidence against applicant

about his involvement and active participation in commission of the crime. He further argued that after perusal of the entire statements of witnesses on record as well as the other case papers of charge sheet on record prima facie it appears that the applicant and co-accused persons misappropriated total amount of Rs. 1,04,66,768/- of complainant and other investors and the applicant and other co-accused cheated the complainant and co-accused persons. He further argued that, after considering the entire charge sheet on record prima facie it appears that the ingredients of Sections 409, 403, 417 and 420 of Indian Penal Code and Sections 3 and 4 of MPID Act are squarely applicable against applicant/accused. He further argued that after considering the entire charge sheet on record prima facie it appears that the offence committed by the applicant/accused being of very serious nature and much graver. He further argued that, it is well settled that socio-economic offences constitute a class apart and need to be visited with a different approach in the matter of bail. He further argued that usually socio-economic offence has deep rooted conspiracies affecting the moral fiber of the society and causing irreparable harm, needs to be considered seriously.

17] The learned APP has further argued that, after considering the well settled law as well as the entire charge sheet on record, as per the prima facie evidence against the applicant/accused the huge amount misappropriated by the applicant/accused and other co-accused and they cheated the complainant and other investors. He pointed out that if the applicant released on bail there is possibility of tampering the evidence of prosecution by using fraud and tricks

again. Therefore, Court is required to balance the individual interest of the applicant against the societal interest in the light of gravity of the offences and lastly he pointed out the bail application is fit to be rejected.

18] In support of his above submissions, he relied the decision in following cases.

A] In case of ***Sameer vs.State of Maharashtra, reported in 2017 ALL MR (Cri) 3972***, in which his Lordships of Hon'ble Bombay High Court, Nagpur Bench has held in para 14 as follows.

“ 14. The above discussion would only show that although this applicant is in jail for about three and half years and the trial of the case against him has not yet acquired desired momentum, blame for his detention and tardy progress of trial cannot be entirely put upon the State. Applicant and other co- accused to have their some share and this is when they are equally obliged in law to render their cooperation in expeditious disposal of the trial of the case against them. One of the offences with which this applicant has been charged with an offence under [Section 409](#) IPC. This offence attracts maximum punishment of imprisonment for life and apart from the punishment, the impact of the crime prima facie committed by this applicant on the society at large, is much graver. Therefore, one would have to say that at this juncture, it would be too early to say that just because the applicant is in jail for a period of three and half years and more and the prosecution evidence is voluminous entailing delayed trial, the applicant would be entitled to be released on bail. After all, this Court is required to balance the individual interest of the

applicant against the societal interest in the light of gravity of the offences alleged and punishment prescribed for these offences. Taking over all view of the matter, I am of the opinion that the applicant would not be entitled to be released on bail”.

B] In case of ***The State of Bihar & Anr. vs. Amit Kumar @ Bacha Rai***, reported in ***2017 ALL MR (Cri) 3998 (S. C.)*** , in which Their Lordships of Hon'ble Supreme Court has held in para 14 as follows.

“We are also conscious that if any undeserving candidates are allowed to top exams by corrupt means, not only will the society be deprived of deserving candidates, but it will be unfair for those students who have honestly worked hard for one whole year and are ultimately disentitled to a good rank by fraudulent practices prevalent in those examinations. It is well settled that socio-economic offences constitute a class apart and need to be visited with a different approach in the matter of bail. [Nimmagadda Prasad vs. BI (2013) 7 SCC 466: [2013 ALL SCR 2184]; Y. S. Jagan Mohan Reddy vs. CBI, (2013) 7 SCC 439: (2013 ALL SCR 2224]. Usually socio-economic offence has deep rooted conspiracies affecting the moral fiber of the society and causing irreparable harm, needs to be considered seriously”.

19] While considering the above submissions made by both parties and after careful perusal the entire charge sheet on record prima facie it appears that the applicant alongwith other co-accused persons induced the complainant and other investors to invest

amount in their company on the pretext of getting lucrative returns. The complainant and other investors fell pray to their inducement and they invested an amount to the tune of Rs. 1,04,66,768/- in the company of applicant and applicant and other co-accused misappropriated the amount. Moreover, after careful perusal the entire charge sheet on record as well as the list of investors and the amount deposited by them in the company of applicant prima facie it appears that the involvement of applicant and his active participation is in the commission of the crime.

20] I have also gone through the ratio laid down by the Hon'ble Supreme court in case of *Sanjay Chandra vs. Central Bureau of Investigation* cited as supra. After considering the ratio laid down in above relied case law and the facts in case at hand as per my considered view the ratio laid down in above case law is not helpful to the contention of the applicant in case at hand. Because in case at hand there is strong prima facie evidence against the applicant about alongwith co-accused persons he cheated the complainant and other investors as well as alongwith co-accused persons he misappropriated total amount of Rs. 1,04,66,768/-. I have also gone through the ratio laid down by the Hon'ble Bombay High Court in case of *Sameer vs. State of Maharashtra* as well as I have also gone through the ratio laid down by the Hon'ble Supreme Court in case of *State of Bihar and Anr. vs. Amit Kumar @ Bacha Rai*, both cited as supras. After considering the ratio laid down in above case laws and facts in case at hand as per my considered view the ratios laid down in above cases are squarely applicable to the prosecution case at hand. Because in

case at hand also offence committed by the applicant is socio-economic offence and therefore, these type of offences have deep rooted conspiracies affecting the moral fiber of the society and causing irreparable harm and therefore, these types of offences need to be considered seriously. After considering the entire charge sheet on record prima facie it appears that there is strong evidence against the applicant. Therefore, considering the gravity of the offence and several other crucial factors, as discussed above, I hold that the applicant is not entitled for bail. Therefore, in such circumstance, I have no hesitation to hold that the application is fit to be rejected. In the result, I proceed to pass the following order.

O R D E R

The bail application at Exh. 4 stands rejected.

Date : 25/09/2018

(M.V. Morale),
Additional Sessions Judge,
Solapur

C E R T I F I C A T E

I affirm that the contents of this PDF file Judgment/Order is same word to word as per the original Judgment.

- (a) Name of the Stenographer : Kore S.R., Stenographer (HG)
- (b) Court : District Judge-2, Solapur.
- (c) Order signed by P.O. on : 25/09/2018
- (d) Order uploaded on : 26/09/2018

