

MHST190008732023



IN THE COURT OF ADDITIONAL SESSIONS JUDGE, WAI

SPECIAL MPID CASE NO. 45 OF 2023

1) Shivaji Tukaram Dhamdhere

2) Mandarani Shivaji Dhamdhere

... Applicants

..Versus..

State of Maharashtra

through A.G.P. & APP. Wai

Police Station Khandala.

... Non-applicant

ORDER BELOW EXH.13

(Passed on this 10th day of June 2025)

1] Instant bail application has been filed under Section 483 The Bharatiya Nagarik Suraksha Sanhita [BNSS] for grant of regular bail inter-alia contending that Police Station Officer, Khandala has registered Crime bearing No. 182/2018 relating to the offences punishable under Sections 420, 406, 409 read with Section 34 of the Indian Penal Code and under Sections 3 & 4 of The Maharashtra Protection of Interest of Depositors (In Financial Establishments) Act,1999 [for short "MPID Act"].

2] In brief, prosecution has alleged that, first informant-Sau.Aruna Ashok Jadhav lodged report at Khandala Police Station, wherein it is alleged that during June 2017 to August 2018, accused Shivaji Tukaram Dhamdhere and Mandarani Shivaji Dhamdhere have

formed Saving Group by name, “Mahalaxmi Narayan Mahila Mahasangh Pune” at Khandala through their Success Group. Accused also established “Shivjeet Mudra Multistate Credit Co-operative Society Ltd.” at Lonand. They enlightened various persons including informant about the various schemes like fixed deposits, Pigmy, Dhanvarsha Lucky-draw coupon, ATM etc. They collected amount of Rs.200/- from each member of said Saving Group by assuring them of attractive interest on the said amount. Accused also told them to purchase the share of Rs.1100/-. As such, accused collected amount of Rs.27,57,257/- from the various ‘Mahila Bachat Gats’ as an investment. But accused being Chairman of Mahalaxmi Mahila Mahasangh Bachat Gat failed to refund the said amount on its maturity and dishonestly misappropriated said amount for their own use. Accordingly, report was lodged with Khandala Police Station against the accused. Consequently, crime was registered in above-stated manner. Applicants were arrested on 06.12.2021. Investigation was started.

3] Applicants have stoutly denied all the allegations and claimed to be innocent one. It is prayed for allowing his bail application. The learned Counsel of accused placed reliance on following judgments of Hon’ble Supreme Court :

1. **Delhi Race Club (1940) Ltd. & Ors. V. State of Uttar Pradesh & Anr., dated 23.08.2024.** This is the case relating to S.420 & 406 of IPC triable by Magistrate Court. But in case in hand, case is relating to offences falling under provisions of MPID Act triable by Sessions Court. Nature of offence is serious one than offence punishable U/ss.406 & 420 of IPC. Its relevant para no.43 is reproduced as under : -

43. “It is high time that the police officers across the country are imparted proper training in law so as to understand the fine

distinction between the offence of cheating viz-a-viz criminal breach of trust. Both offences are independent and distinct. The two offences cannot coexist simultaneously in the same set of facts. They are antithetical to each other. The two provisions of the IPC (now BNS, 2023) are not twins that they cannot survive without each other.”

2. **Order below Exhs.72 & 77 in Spl.MPID Case No.17/2019, decided on 23.09.2024 by Additional Sessions Judge, Pune.** In such order, nowhere it is shown that accused was convicted earlier. Its relevant para no.9 is reproduced as under.

9. “Considering the long period of detention since arrest, no progress in the crime, the recommendation by the UTRC and the observations of Hon’ble Supreme Court in the case of **Javed Gulam Nabi Shaikh Versus The State of Maharashtra And Anr, Cri. Appeal No.2787/2024** and **Delhi Race Club (1940) Ltd. & ors. Vs. State of Uttar Pradesh & anr. Cri. Appeal No.3114/2024**, the accused Mandarani deserves to be enlarged on bail.”

Consequently, bail was granted by concerned Sessions Court.

3. **Order below Exh.289 passed in Spl.MPID Case No. 16/2017 dated 04.11.2024 by Special Judge (MPID), Pune.** The order is passed by Sessions Court, Satara. In such order, nowhere it is shown that accused was convicted.
4. **Javed Gulam Nabi Shaikh Versus The State of Maharashtra And Another, (Criminal Appeal No. 2787 of 2024), dated 03.07.2024 , [2024] 7 S.C.R. 992 : 2024 INSC 645.** Its relevant paras no.18, 19, 20 & 21 are reproduced as under : -

18. “Criminals are not born out but made. The human potential in everyone is good and so, never write off any criminal as beyond redemption. This humanist fundamental is often missed when dealing

with delinquents, juvenile and adult. Indeed, every saint has a past and every sinner a future. When a crime is committed, a variety of factors is responsible for making the offender commit the crime. Those factors may be social and economic, may be, the result of value erosion or parental neglect; may be, because of the stress of circumstances, or the manifestation of temptations in a milieu of affluence contrasted with indigence or other privations.

19. If the State or any prosecuting agency including the court concerned has no wherewithal to provide or protect the fundamental right of an accused to have a speedy trial as enshrined under [Article 21](#) of the Constitution then the State or any other prosecuting agency should not oppose the plea for bail on the ground that the crime committed is serious. [Article 21](#) of the Constitution applies irrespective of the nature of the crime.

20. We may hasten to add that the petitioner is still an accused; not a convict. The over-arching postulate of criminal jurisprudence that an accused is presumed to be innocent until proven guilty cannot be brushed aside lightly, howsoever stringent the penal law may be.

21. We are convinced that the manner in which the prosecuting agency as well as the Court have proceeded, the right of the accused to have a speedy trial could be said to have been infringed thereby violating [Article 21](#) of the Constitution.”

5. **Gaurav Bandu Patil -Vs.- The State of Maharashtra And Another, Bail Application No. 603 of 2024, Bombay High Court, Bench at Aurangabad, dated 19th April, 2024.**

In such cited judgment, Hon’ble High Court had observed that accused was not produced for 70 times from the jail to the Court. It was further observed that no satisfactory reason in this regard was furnished about his non-production. Charge was also not framed. Case was prolonged unnecessarily. In such peculiar facts and circumstances, bail was granted by Hon’ble High Court to the accused.

Such type of fact is not appearing in case in hand.

4] Ld.Counsel for applicants has further mentioned in his bail application about the order passed in **W.P (criminal) No. 406/2013 passed by Hon'ble Supreme Court, on 23.08.2024**. In para no.4, it has been observed that, *“In that view of the matter, it is deemed appropriate to direct immediate implementation of Section 479 of the BNSS by calling upon Superintendents of Jails across the country wherever accused persons are detained as undertrials, to process their applications to the concerned Courts upon their completion of one-half/one-third, as the case may be, of the period mentioned in sub-section (1) of the said provision, for their release on bail. This step will go a long way in easing overcrowding in jails which is the primary focus of this Court in the present petition.”*

However, applicants have not produced copy of above cited case law.

5] Learned APP filed pursis and thereby adopted say filed by Investigating Officer vide **Exh.16** and thereby strenuously opposed regular bail application by contending that both the accused compelled various women to invest their money in various schemes through saving group, 'Mahalaxmi Narayan Mahila Mahasangh'. Information regarding purchase of any movable or immovable property by accused persons, if any, is not yet collected. The defalcated amount is Rs.27,57,257/-. Charge-sheet is filed in the Court vide No.7/2022 on 09.02.2022. During investigation, accused have not co-operated investigation agency. There is every possibility of pressurizing first informant, witnesses/investors at the hands of applicant, in case, they are released on bail. There are various offences registered against the present accused, such as **C.R.No.138/2019 registered with Baramati PS., wherein they are convicted by the Court. C.R.No.142/2019 registered with Phaltan City PS., wherein accused were convicted. Accused are also**

convicted in C.R.No.296/2019 registered with Baramati P.S. C.R.No.79/2019 has been registered against accused for the offence p/u/s. 420, 409, 406 r/w.34 of IPC read with Sections 3 & 4 of MPID Act, which is pending in the Court. Accused have been also involved in C.R.No.199/2019 for the offence p/u/s.420 of IPC, registered with Chandannagar P.S., Pune, which is under investigation. On the basis of these grounds, at last, it is requested for rejecting bail application.

6] I have heard learned Counsel Shri M.Y.Shinde for applicant and learned APP Shri A.R.Kulkarni.

7] In support of his argument on the point that present accused persons have been convicted in the same type of offences in another cases, Ld.APP has filed operative orders of that cases on record. They are as under : -

1. Copy of Operative Order passed in **Spl. MPID Case No.2/2019, passed on 16.01.2025**, by Special Court, Baramati, Dist.Pune;
2. Copy of Operative Order passed in **Spl. MPID Case No.1/2019, passed on 25.07.2023**, by Special Court, Baramati, Dist.Pune;
3. Copy of Operative Order passed in **Spl. MPID Case No.138/2020, passed on 29.08.2023**, by Special Court, Satara.

8] On perusal of case papers, it will find that serious

allegations have been made against applicants. Case papers reveal that huge amount of Rs.27,57,257/- appears to have been defalcated by the accused/applicants. No doubt, investigation has been completed and charge-sheet has been filed in the Court. Charge has been already framed in the Court and consequently trial has been started. The documents annexed with charge-sheet reveal that both the applicants have been involved in such type of other serious crimes and in above mentioned same type of cases, they were convicted. Therefore, mere filing of charge-sheet, that cannot be the ground for releasing applicants on regular bail. Prosecution is ready to conduct the case on day-to-day basis. So far as citations submitted by accused is concerned, they are based only totally different set of facts and circumstances. Therefore, they are not helpful to the accused so as to release them on bail, in case in hand. As such, accused are not entitled for bail. Consequently, for above stated all reasons, application for regular bail is liable to be rejected. In the result, following order is passed.

ORDER

Bail application (Exh.13) stands rejected.

Wai
Date: 10.06.2025

(R.N.Mehare)
Judge, Special Court,
Wai