(2003) 05 BOM CK 0004

In the Bombay High Court

Case No : Bail Application No. 1888 of 2003

Dr. Suresh G. Motwani APPELLANT

Vs

State of Maharashtra and Another RESPONDENT

Date of Decision : 15-05-2003

Acts Referred:

Companies Act, 1956 — Section 58A
Criminal Procedure Code, 1973 (CrPC) — Section 156(3), 160, 437(1), 439(1)
Maharashtra Protection of Interest of Depositors (Financial Establishment) Act, 1999 — Section 3, 4
Penal Code, 1860 (IPC) — Section 120B, 406, 420

Citation : (2004) 50 SCL 9

Hon'ble Judges : D.G. Karnik, J

Bench : Single Bench

Advocate : Adik Shirodkar, C.S. Kapadia and Kumar Tolani, Rajendra Solankar, For some of the investors and S.J. Ahuja and D.F. Karai, Party in person, for the Appellant; D.P. Adule, APP, for the Respondent

Final Decision : Allowed

Judgement

D.G. Karnik, J.—Heard Shri Adik Shirodkar, Sr. Counsel for the applicants and Mr. D.P. Adsule, APP for the state. With the permission of the Court, Shri Rajendra Solankar, Advocate representing Bombay Depositors and Financial Brokers Welfare Association as also Investors who requested to be heard, were also heard.

2. Dr. Suresh Motwani, applicant in Bail Application No. 1888/03 is the chairman of Roofit Industries Limited and Sun Earth Ceramics Limited (hereinafter referred to as "the Companies") both of which are public limited companies. Mr. Madan Relwani applicant in Bail Application No. 1889/03 is a non executive Director of Sun Earth Ceramics Limited. Both the Companies had accepted deposits from the members of the public and it is alleged that the companies have committed default in payment of the principal amount and interest on the deposits. Dr. Motwani was arrested on 8th May 2003 and Mr. Relwani was arrested on 9th May

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2003 in respect of the alleged offences committed by the two applicants by non payment of the deposits to the deposit holders. Both of them are charged u/s 406, 420, 120B of the Indian Penal Code read with Section 3 and 4 of Maharashtra Protection of Interest of Depositors (in financial establishments) Act 1999 (for short MPID Act") and the common offence has been registered against both of them in NERC No. 1 of 2003. As the offence alleged arise out of the same transactions and the common offence has been registered, both the Bail Applications are being decided by this common order.

3. The facts in brief may be narrated as under:-

4. Both the two companies are incorporated and registered as Public Limited Companies and are in existence for last many years. Till about the year 2000, the companies showed profits. The companies invited fixed deposits from the members of the public painting the rosy picture about the profitability of the Companies. It is alleged that soon thereafter, the companies started making losses and were unable to repay the deposits. The applicants allege that companies were unable to pay their fixed deposit holders due to poor market conditions, recession, non disbursement of sanctioned limits by banks and financial institutions and international ban on cement asbestos sheets which contributed 70% of the turnover of one of the companies. In short, the applicants plead that losses were incurred by companies on account of circumstances beyond their control. The learned counsel for the investors however says that the balance sheet of the companies were doctored and investors were lured to make fixed deposits of the on the basis of false and doctored balance sheet with an intention to deceive and cheat the fixed deposit holders. It is neither necessary nor possible, at this stage, to decide which of the rival contentions is true.

5. The Companies being short of funds and facing liquidity problem started making default initially in the payments of the interest and then in payment of the principal as the fixed deposits matured. The aggrieved investors first approached the police some time by middle of the year 2002. According to the investors, the police were lax in investigation and therefore they moved the Special Judge under MPID Act who passed an order on 30th November 2002 directing the concerned Officers in the Economic Offence Wing, Crime Branch, Bombay Police to investigate the case and submit the report u/s 156(3) of the Code of Criminal Procedure within a month. It appears that the court was not satisfied with the report submitted late by the police. Therefore, in Miscellaneous Application No. 208/03 in Miscellaneous Application No. 649/02, the learned Special Judge passed a further direction directing the Investigating Officer to file a further report on (i) the progress of investigation, (ii) what steps were taken for arresting the applicants the applicants and (iii) recording the statements of the witnesses or investors. The learned Special Judge also observed that though the matter was of a serious nature, it was investigated by a Police Sub Inspector, though it should be entrusted to the Senior Police Officer for investigation. A

copy of the order was sent to the officer of the Commissioner of Police. It is then that the police machinery woke up and arrested the applicants on 8th and 9th May 2003. After the arrest, the applicants were produced before the Special Judge with a request that they be remanded to the police custody. The applicants applied for bail. The prayers of the applicants for bail was rejected and the applicants were remanded to Police custody till 25th May 2003. Thereafter, the applicants have approached this Court for bail by the present applications on 12th May 2003.

6. At the hearing, some of the investors were present through their Counsel Shri Rajendra Solankar and about a dozen persons claiming to be the investors were also present in persons. They sought permission of the Court for being heard. The permission was granted and they were also permitted to file the affidavits, if any. The only issue that arises for my consideration is whether the applicants should be released on bail and if so, subject to what terms and conditions.

7. Shri Suresh Babu Kilje, Police Inspector has filed Affidavits dated 14th May 2003 and 15th May 2003. On behalf of the investors, Shri Shyam Gopaldas Ahuja and Dinshaw Framrose Karai have filed affidavits dated 15th May 2003. The learned counsel for the applicants states that as the applicants were in Police custody, they could not swear the affidavits. However, draft of the affidavit signed by Mr. Madan Relwani, the applicant, giving the details of the properties held by him and containing an undertaking and he could not alienate the properties has been filed with an endorsement at the bottom that he would affirm the affidavit in the court within two working days from the date of his release on bail. The learned counsel stated that Dr. Motwani has been taken to Kurkum, Tal. Baramati for investigation and therefore, though the draft affidavit was prepared could not be signed by him. The unsigned draft affidavit is filed along with an affidavit of Gurbax Motwani, father of the applicant, duly sworn in and by giving the same details as are contained in the draft affidavit of the applicants Dr. Suresh Motwani. The learned counsel for the applicant undertakes to file the affidavit duly sworn in by Dr. Motwani within a couple of days of release of Dr. Motwani.

8. The learned Asstt. Public Prosecutor submitted that bail should not be granted to the applicants on two grounds"

i) The police were still carrying on the investigation into the alleged offences and the presence of the applicants was necessary for the purpose of their interrogation and investigation and in particular to find out (a) where the applicants had invested the money of the depositors? (b) Whether the money was diverted by the applicants? and (c) What were the properties acquired by the companies or the applicants with the help of the money of the investors?

ii) The applicants have not co-operated in the investigation so far and therefore, their presence in the police custody is needed for further investigation.

9. Intervening investors and Shri Rajendra Solankar appearing for some of them

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also submitted that bail should not be granted to the applicants on the following grounds:-

iii) The applicants were guilty and had committed a fraud of several crores of Rupees. If the applicants are released on bail within a week of their arrest, it would send wrong signals. Deterrence by way of detention of the applicants in police custody was needed so that future scamsters would think twice before indulging in economic offences.

iv) The arrest and detention of the applicant in police custody was the only means for recovery of the money of the fixed deposit holders. The repayment, if any, would come only on account of the pressure on the applicants if they are detained in the police custody for sufficiently long period of time.

I proceed to examine the grounds on which the bail is opposed.

Regarding ground Nos. (iii).

10. When the person charged with an offence is apprehended and the Court often remands him to the police custody (for a period not exceeding 15 days) to facilitate the investigation into the alleged crime. This detention is not by way of punishment and has wrongly been understood to be punitive detention by the people in general and the investors in this case in particular. Pre-trial detention, whether it be in the police custody or in Judicial custody, is never by way of a punishment to condemn the accused even before the trial. The accused who is charged with whatever offence, howsoever heinous, is entitled to a fair trial and is not remanded to police custody by way of punishment. The contention of the investors that the applicants should b e denied bail to set an example to the prospective scamsters proceeds on the wrong assumption that the police custody is by way of a punishment. In Bhagiratsingh Judeja v. State of Gujarat reported in 1994 Cri LJ 160, the Supreme Court in paragraph No. 5 states thus:-

"But even where a prima facie case is established, the approach of the Court in the matter of bail is not that the accused should be detained by way of a punishment, but whether the presence of the accused would be readily available for trial or that he is likely to abuse the discretion granted in his favour by tampering with evidence."

Regarding ground No. (iv)

11. Criminal Prosecution is not a proceeding for recovery of the dues of the investors but is meant for punishing the guilty. Assuming however, that in case of economic offences, the object of criminal prosecution is to protect the investors and help them in recovery of the money, I fail to see how the detention of the applicants in the jail would aid the recovery. The money, if at all, would come out of the running of the business of the companies. If the applicants are in police custody, certainly the companies would not be able to carry out the business as effectively as they would be if the applicants are out of custody. There is therefore, no substance in contention Nos. (iii) and (iv) which are hereby

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rejected.

Regarding contention Nos. (i) and (ii):-

12. In paragraph No. 9 in his affidavit dated 15th May 2003, Dinshaw Framrose Karia, an Advocate of this Court who is also an investor has stated that depositors had complained to the Dy. Commissioner of Police, Economic Offences Wing, about the alleged offences by the applicants as early as June 2002. In paragraph No. 5 of the Affidavit dated 14th May 2003, Shri Suresh Babu Kilje, the Investigating Officer, has stated that their office received an application (about the applicants'' crime) from Mr. Rakesh Agarwal on 19th July 2002. They carried out the preliminary investigation and even sent summons to Dr. Motwani u/s 160 of the Code of Criminal Procedure. It appears that the police had commenced the investigation in July 2002 or thereabout. On the basis of a complaint filed by the investors, the Special Judge passed on order on 30th November 2002 directing the police to investigate into the alleged offence and submit report u/s 156(3) of the Code of Criminal Procedure. In paragraph No. 6 of the Affidavit dated 14th May 2002, the Investigating Officer stated that accordingly, they carried out the investigation, registered the case bearing No. NECR No. 1 of 2003 and have submitted a report to the Special Judge on 8th January 2003. It thus appears that the investigation was completed by 8th January 2003. For what further investigations the custodial presence of the applicants is needed before the police? Is it the case of the police that despite the order of the Special Judge dated 30th November 2002, they had still not carried out the complete investigation? Is it their case that they did not interrogate the applicants and/or examine the witnesses including the investors? These questions remain unanswered. May be that on reading the report submitted by the police, the Special Judge was not satisfied and directed further investigation by Senior Police officers but, that does not per se mean that the custodial presence of the applicants is needed for further investigation. The applicants can be directed to attend the police station as and when required without they being in police custody. After all, liberty of a citizen who is not yet proved to be guilty of a crime is dear to the Courts. Except for a bare allegation that custodial presence of the applicants is needed for further investigation, no details are furnished as to why these investigations cannot be carried out without the applicants being in custody.

13. The allegation that the applicants have not co-operated with the police in the investigation also does not appear to be correct. A copy of the report submitted to the Special Judge on 8th January 2003 in pursuance of an order passed by it u/ s 156(3) of the Code of Criminal Procedure is not annexed to the affidavit nor is made available to this Court. The learned App could not state whether in the said report dated 8th January 2002, the police have stated that the applicants had not co-operated with them in the investigation. It appears that only on account of the observations made by the learned Special Judge on the report of the police dated 8th January 2002, that the police have woken up and are now complaining

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about the non co-operation by the applicants. In the draft affidavit of Dr. Suresh Motwani and sworn affidavit by his father, he has stated that Dr. Suresh Motwani and his father had called on the then Jt. Commissioner of Police Mr. Wagal and had explained the position. Dr. Motwani had voluntarily deposited the passport with the Investigating Officer in the month of January 2003. He did visited Europe for business in March 2002 and on his return, redeposited the passport with the Investigating Officer. The passport is still with the Investigating Agency. This shows not only the co-operation by Dr. Motwani but also his desire to remain in the country and be available for investigation and trial when required. It is further admitted that in April 2003, the companies deposited a sum of Rs. 20,00,000/- and a further sum of Rs. 50,00,000/- by cheques with the Investigating Officer to prove their bonafide intention of repayment to the investors. The remand application itself mentions the deposit of said amounts. That amount of Rs. 70,00,000/- has been deposited in the separate account opened in the bank with the permission of the Special Judge. In paragraph No. 3(ii) of the Bail Application, the applicant has stated that applicant had undertaken to the Special Judge to make payment of Rs. 50,00,000/- every month. The applicants had also made an application u/s 58-A of the Companies Act to the Company Law Board for reschedulement of the deposits. The Company Law Board however directed the applicants to move the Board for Industrial and Financial Reconstruction (BIFR) for appropriate orders as a reference which was made under the Sick Industrial Companies (Special Provisions) Act. May be that the applicants made a misadventure in the business. On ultimate trial, the applicants may or may not be convicted but no case is made out for custodial presence of the applicants for the purpose of investigation.

14. In Gurcharan Singh v. State (Delhi Administration) reported in AIR 1978 S.C. 179, the Supreme Court laid down the factors to be taken into consideration while granting the bail. In paragraph 24 of the judgment, the Supreme Court observed:

"The overriding considerations in granting bail to which we adverted to earlier and which are common both in the case of Section 437(1) and Section 439(1), Cr.P.C. of the New Code are the nature and gravity of the circumstances in which the offence is committed; the position and the status of the accused with reference to the victim and the witnesses; the likelihood, of the accused fleeting from justice; of repeating the offence; of jeopardising his own life being faced with a grim prospect of possible conviction in the case; of tampering with witnesses; the history of the case as well as of its investigation and other relevant grounds which, in view of so many variable factors, cannot be exhaustively set out."

It is not alleged by anybody that the applicants are likely to tamper with the witnesses or interfere in the course of investigation. The First two grounds are not substantiated and ground Nos. (iii) and (iv) are not relevant. The only question therefore, that remains is that what should be the conditions subject to

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which bail should be granted.

15. In Hussainara Khatoon and Others Vs. Home Secretary, State of Bihar, Patna, , the Supreme Court laid down that Courts must abandon the antiquated concept under which pretrial release is ordered only against bail with sureties. That concept is outdated and the experiences shown that it has more harm than good. The applicants have deposited a sum of Rs. 70,00,000/- and have further undertaken to the Special Judge to deposit a sum of Rs. 50,00,000/-. Taking into consideration the overall circumstances and balancing the need to protect the investors against the right of liberty of the applicants until conviction and ensuring their presence during the trial, I pass the following order which shall come into effect on the cheques of Rs. 20,00,000/- and Rs. 50,00,000/- already deposited being passed.

ORDER

16. The applicants be released on P.R. Bond of Rs. One crore each and a total cash security of Rs. 70,00,000/- (Rupees Seventy Lacs only) The amount of Rs. 70,00,000/- already deposited by the applicants in the Court would be treated as cash security and shall remain with the Court. Needless to say that the applicants shall abide by undertaking voluntarily given by them to the Special Judge to pay Rs. 50,00,000/- per month. The applicants shall attend the office of the Investigating Officer everyday between 10.00 a.m. to 6.00 p.m. for interrogation and investigation for an initial period of 7(seven)days from the date of their release and shall thereafter attend the office of the Investigating Officer twice a week for such hours (not more than four hours at a time(on such days and such time as may be required by the Investigating Officer.

17. The applicants shall also submit to the Investigating Officer all their contact telephone numbers including mobile numbers and addresses where they can be reached at any time, when required by the Investigating Officer.

18. The passport already deposited by the applicant Dr. Motwani shall be retained by the Investigating Officer. The applicant Mr. Madan Relwani shall forthwith submit his passport to the Investigating Officer. The applicants shall not leave the country without prior permission of the Special Judge or this Court and shall not leave Bombay for a period of more than two days at a time without prior intimation to the Investigating Officer.

19. All concerned to act on a copy of this order duly authenticated by the Court Sheristedar.

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