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HIGH COURT OF CHHATTISGARH, BILASPUR**MCRCA No. 1347 of 2023**

- Kuleshwar Sonkar S/o Late Jeewan Lal Sonkar, Aged About 41 Years R/o Sonu Niwas, Durga Chowk, Koliyari, Tehsil And District Dhamtari, Chhattisgarh

---- **Petitioner****Versus**

- State Of Chhattisgarh Through - Station House Officer, P.S. - City Kotwali, District Dhamtari, Chhattisgarh

---- **Respondent**

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For Applicant	Mr. Abhishek Sinha, Senior Advocate with Mr. Sharad Mishra, Advocate
For Respondent /State	Mr. Rajeev Bharat, Government Advocate

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SB.: Hon'ble Mr. Justice Deepak Kumar Tiwari
Order On Board

11/3/2024

1. Heard.
2. This is the fourth application filed by the applicant under Section 438 of the Code of Criminal Procedure for grant of anticipatory bail to the applicant, who is apprehending his arrest in connection with Crime No.126/2019 registered at Police Station City Kotwali, District Dhamtari, Chhattisgarh for the offence punishable under Sections 420 & 34 of the IPC and Sections 3, 5 & 6 of the Prize Chits and Money Circulation Scheme (Banning) Act, 1978 read with Section 10 of the CG

Protection of Depositors Act, 2005.

3. The first anticipatory bail application of the applicant was dismissed on merits vide order dated 26.9.2019 passed in MCRCA No.792 of 2019. The second anticipatory bail application of the applicant was also dismissed on merits vide order dated 25.6.2021 passed in MCRCA No.1571/2020. Thereafter, the applicant preferred SLP (Criminal) No.6923/2021, which was dismissed as withdrawn. The Hon'ble Supreme Court has passed the following order in the aforesaid SLP :

“After the matter was argued for some time, learned counsel appearing for the petitioners seeks permission to withdraw the present Special Leave Petition. The permission, as prayed for, is granted.

The Special Leave Petition stands dismissed as withdrawn.”

4. After withdrawal of the aforesaid petition before the Hon'ble Supreme Court, the petitioner had preferred the third anticipatory bail application i.e. MCRCA No.1079 of 2022, wherein, the petitioner has sought interim anticipatory bail. This Court granted interim anticipatory bail to the applicant by order dated 9th September 2022 and observed that the aforesaid order shall remain in force till final disposal of the main bail petition. However, when the matter came up for final hearing before this Court on 17.4.2023, learned counsel for the applicant submitted that no liberty was sought before

the Hon'ble Supreme Court to file a fresh application/petition, therefore, he prayed for withdrawal of the bail application. Considering such prayer, the bail application was dismissed as withdrawn. Thereafter, the petitioner approached the Supreme Court seeking clarification by filing Miscellaneous Application No.1304/2023 in SLP (Crl.) No.6923/2021 (Arising out of the impugned final judgment and order dated 21.9.2021 passed in SLP(Crl.) No.6923/2021), wherein, following was materially observed vide order dated 7.7.2023 :

"At an earlier instance, an application filed by the petitioner had been dismissed by the High Court against which an SLP was filed and was later withdrawn. Subsequent thereto, a fresh application was filed before the High Court. In that regard, all that is necessary to be clarified is that there would be no impediment for the High Court to consider and dispose of the said application filed before it on its own merits and in accordance with law. All contentions in that regard are left open to be urged before the High Court."

Thereafter, the present fourth anticipatory bail application has been filed by the applicant.

5. Prosecution case, in brief, is that complainant Mordhwaj Kumbhkar lodged an FIR bearing No.126/2019 stating that on the allurements of Director, Managers and Office Bearers of Mahanadi Advisory Services Pvt. Ltd., he had collected

money to the tune of Rs.1,46,41,897/- from 67 persons by floating fraudulent schemes between the period 2010 -2016 giving inducement of attractive returns to the depositors. When the deposits were at the verge of maturity, the Company got closed and all its offices in the locality concerned and all the persons concerned went into hiding. Apart from the complainant, numerous other agents working for the Company, had also collected money from different persons, which was received as deposits by the Company and that runs into crores of rupees.

6. Learned Senior Counsel for the applicant would submit that the applicant is innocent and has been falsely implicated in the case. The applicant has already resigned from the Directorship of the Company on 2.9.2017 and the resignation letter is filed as Annexure A-8. Further, as per the document with regard to Details of the Directors issued by the concerned Company (Annexure A/12), the applicant has resigned from the Company on 2.9.2017 and it also shows that he had worked in the Company w.e.f. 29.4.2010 till its cessation. He submits that the present FIR was lodged on 14.3.2019 (Annexure A-7), therefore, the present applicant is not responsible for the acts of the subsequent Directors of the Company. He would further submit that the complainant himself is a co-accused in the instant matter since he was also an Agent in the Mahanadi Advisory Services Private Ltd. He also submits that no money was not collected and deposited

in the personal account of the present applicant. He would submit that full amount has been refunded to the complainant and further, the amount so paid exceeded the amount claimed in the FIR and the document in this regard is filed as Annexure A-13. He submits that the applicant had no intention to cheat any of the investors. The term "fraudulent default" has been defined under Section 2(i) read with Section 10 of the Protection of Depositors interest Act, 2005 (in short "the Act, 2005") and perusal of the above Section would show that the said offence would not attract in the present case. He would further submit that during pendency of the earlier anticipatory bail application bearing MCRCA No.1079 of 2022, this Court had already granted interim anticipatory bail to the applicant till final adjudication of the main bail petition. He submits that the applicant has cooperated with the investigation and also properly replied to the questionnaire, which was supplied by the Investigating Officer vide Annexure A-23. He would further submit that the other co-accused have been enlarged on bail and there is no chance of flight-risk or tampering of evidence as the investigation has been completed and the evidence is based on document on record. Hence, considering all these aspects on merits, the applicant may be extended the benefit of Section 438 of the Cr.P.C.

7. On the other hand, learned counsel for the State would submit that as per the information provided by the SEBI,

Mahanadi Advisory Services Private Ltd. collected money from the General Public without any authority and thereby, violated the Acts and Rules of the Securities and Exchange Board of India Act, 1992 (in short "the SEBI Act, 1992") and the Reserve Bank of India Act, 1934 (in short "the RBI Act, 1934"). He would further submit that Section 45 S of the RBI Act, 1934 clearly stipulates that the deposits are not to be accepted in certain cases. The relevant provision reads thus :

45 S. Deposits not to be accepted in certain cases--(1) No person, being an individual or a firm or an unincorporated association of individuals shall, accept any deposit--

- (i) if his or its business wholly or partly includes any of the activities specified in clause (c) of section 45-1; or
- (ii) if his or its principal business is that of receiving of deposits under any scheme or arrangement or in any other manner or lending in any manner:

Provided that nothing contained in this sub-section shall apply to the receipt of money by an individual by way of loan from any of his relatives or to the receipt of money by a firm by way of loan from the relative or relatives of any of the partners.

- (2) Where any person referred to in sub-section (1) holds any deposit on the 1st day of April, 1997 which is not in accordance with sub-section (1), such deposit shall be repaid by that person immediately after such deposit becomes due for repayment or within three years from the date of such commencement, whichever is earlier:

Provided that if the Bank is satisfied on an application made by any person to the Bank that such person is unable to repay a part of the deposits for reasons beyond his control or such repayment shall cause extreme hardship to him, it may, by an order in writing, extend such period by a period not exceeding one year subject to such conditions as may be specified in the order.

- (3) On and from the date of 1st day of April, 1997, no person referred to in sub-section (1) shall issue or cause to be issued any advertisement in any form for soliciting deposit.

Explanation.--For the purposes of this section, a person shall be deemed to be a relative of another if, and only if,--

- (i) they are members of a Hindu undivided family; or
- (ii) they are husband and wife; or
- (iii) the one is related to the other in the manner indicated in the List of Relatives below:--

List of Relatives

1. Father, 2. Mother (including step-mother), 3. Son (including stepson), 4. Son's wife, 5. Daughter (including step-daughter),

6. Father's father, 7. Father's mother, 8. Mother's mother, 9. Mother's father, 10. Son's son, 11. Son's son's wife, 12. Son's Daughter 13. Son's Daughter's husband, 14. Daughter's husband, 15 Daughter's son, 16 Daughter's son's wife, 17. Daughter's daughter, 18, Daughter's daughter's husband. 19. Brother (including step-brother), 20. Brother's wife, 21. Sister (including stepsister), 22. Sister's husband].]

8. Learned counsel for the State would further submit that as per Section 12 of the SEBI Act, registration of stock-brokers, sub-brokers, share transfer agents etc is required. He would submit without obtaining any permission as required under the law, the Promoter, Director, Partner and Manager, in a calculative manner, with an intention to defraud the depositors, collected huge money from the General Public, therefore, an offence under Section 10 of the Act, 2005 squarely attracts in the present case. He would further submit that in the FIR itself, it is revealed that the complainant, who was also an agent, collected money from 67 depositors to the tune of Rs.1,46,41,897/- under various investment plans of the Company. Similarly, various other agents were also engaged in collecting amount from the investors, which would show that huge fraud has been committed with the General Public. He would submit that it is not in dispute that the applicant was one of the Directors during the period 2010 – 2016. The applicant has not filed any document relating to the assets and liabilities and left overs of the said Company in its balance sheet at the time of cessation to show that the Company had sufficient balance. He would submit that the present bail petition is also not

maintainable as this is the fourth application filed by the applicant for grant of anticipatory bail. He would further submit that the earlier two anticipatory bail applications had been dismissed on merits and thereafter, the applicant approached the Supreme Court, wherein also, after arguing for sometime, the matter was withdrawn on 21.9.2021. Thereafter, the third anticipatory bail application i.e. MCRCA No.1079/2022 was filed before this Court, in which, though on the medical ground, the applicant was granted interim anticipatory bail on 9.9.2022 by this Court, but when the matter was heard finally, the applicant himself withdrew the said application on the ground that no liberty was sought from the Supreme Court to file a fresh application/petition and therefore, the interim bail application is in the teeth of the subject order passed by the Supreme Court. Lastly, he submits that in such backdrop, this fourth application has been filed after seeking a clarification in the order dated 21.9.2021 passed in SLP Criminal No.2923/2021 and thereby, the order dated 7.7.2023 (Miscellaneous Application No.1304/2023) was passed. Hence, the applicant is not entitled for anticipatory bail.

9. Heard the rival submissions of learned counsel for the parties and perused the documents annexed with the bail petition with utmost circumspection.
10. The earlier two anticipatory bail applications of the applicant have been dismissed on merits, in which, the grounds taken

by the applicant i.e. (i) the amount was not deposited in the personal account of the applicant; (ii) the applicant has resigned on 2.9.2017; and (iii) the complainant himself is a co-accused since he was an Agent in the said Company, have already been taken into consideration. Even while dismissing the earlier anticipatory bail application i.e. MCRCA No.1571/2020 , this Court has categorically observed in the order dated 25.6.2021 that the discharge of co-accused persons from the offence under Section 10 of the Chhattisgarh Protection of Depositors Interest Act, cannot be made a ground for anticipatory bail to the applicant for the reason that the applicant(s) is not facing trial and therefore, the discharge of the other co-accused persons shall not have any effect or give any benefit to the applicant. Further, in the present bail application, the applicant is taking a plea that he was the Director of the Company and had resigned from the office on 2.9.2017, however, at the time of hearing of the first bail application, he did not reveal the said fact and stated that the complainant himself was the employee of the Company and was hired as a consultant on contract and thus, this would go to show that he was aware of the affairs of the Company. He lastly submits that at the time of consideration of the first bail application on 26.9.2019, an argument was also advanced by the applicant that at that time, only Rs.25 lakhs remained to be paid to the investors and now, the argument is advanced by learned

Senior Counsel for the applicant that complete amount has been refunded to the complainant.

11. At this juncture, on a query being made to learned Senior Counsel for the petitioner with regard to refund of money to other investors, he fairly submits that he is not aware as to whether the amount has been refunded to the other investors or not.

12. Considering the facts and circumstances of the case, this Court is not inclined to extend the benefit of Section 438 of the Cr.P.C. to the applicant.

13. Accordingly, the bail application is dismissed.

Sd/-

(Deepak Kumar Tiwari)
Judge

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