

**Order below Ex.3 in Criminal Bail Application No.3776/2017.**

1] The applicants/accused no.1 and 2, in an application for anticipatory bail u/s 438 of Cr.P.C. have moved this application for interim anticipatory bail in connection with C.R.no.347/2017, registered with Shivajinagar police station for the offences punishable u/ss 406,420,34 of the Indian Penal Code and u/s 3 and 4 of the Maharashtra Protection of Interest of Depositors (In Financial Establishments) Act) [hereinafter referred to as the MPID Act, for short).

2] Heard the Ld.Adv.for the applicants Shri Shrikant Shivade and the Ld.Special Prosecutor Shri S.S.Hande.

3] The Ld.Adv.Shri Shrikant Shivade vehemently submitted that though the prosecution has invoked section 409 of I.P.C., the said section is not at all applicable to the applicants/accused. According to Shri Shivade, the applicants do not fall under any of the categories mentioned in the said section. Shri Shivade further submitted that there were series of misfortunes which happened with the applicants. For that purpose, Shri Shivade has taken me through paragraphs no.2.9, 2.10, 2.11 and 2.12 of the main application and argued that in the year 2008, an Israel company viz.GCC Ltd. entered into a joint venture with DSK for development SEZ on 300 acres of land for constructing multi utility services, especially state-of-art diamond industry. As per the terms of the said agreement, the DSK was to acquire the said land and permissions before GCC Ltd. invests money in India as per R.B.I. rules. He further submitted that DSK Group was to acquire land in six months and due to the time constraints, DSK Group completed acquisition of land on war footing, even paying higher prices to the

agriculturists.

4] The Ld.Adv.Shri Shivade further submitted that unfortunately, at that time, an economic depression was set in due to collapse of Lehman Brothers and European market. Consequently, GCC Ltd. who was to fund DSK in SEZ, went into financial crisis and cancelled the project. According to Shri Shivade, this was a bolt from the blue for the DSK Group, which has affected its entire financial equations. According to the applicants, but for these events, DSK Group could have scaled to new heights in the business and the present situation would not have reached.

5] It is further contended that the applicants/accused were then left with no alternative but to construct new township on the SEZ i.e.Golf City and thereafter, the project of Dream City. The said project was launched in the year 2015 and the master plan was also prepared till 2016. However, at that time, the business of real estate was gripped by severe economic depression.

6] The Ld.Adv.Shri Shivade further argued about the various reasons for DSK Group for its failure to return the amount of the depositors after its maturity. Shri Shivade further submitted that the applicants are ready to pay the amount of depositors. According to Shri Shivade, section 3 of the MPID Act is not stringent. He further submitted that there was never any fraudulent intention on the part of the applicants to make default in the payment of amount of depositors. He further submitted that actually section 3 of the MPID Act is not applicable to the facts of the present case.

7] The Ld.Adv.Shri Shivade has also taken me through the documents filed on record and submitted that the applicants shall

repay Rs.15 crores every month and within one year, they will be able to clear all the dues. Shri Shivade also submitted about the worth of the property held by DSK Group and their liability to pay the amount. According to Shri Shivade, if the property in the hands of DSK Group is sold, they will be having many times more money with them, than they are required to return the amount to their investors.

8] The Ld.Adv.Shri Shivade has relied in the case of 1] **Dr.Suresh G.Motwani Vs.State of Maharashtra & Anr. [2003 ALL MR(Cri.) 2212]**, 2] **Copy of the order in Cri.B.A. No. 1263/2014 by the Hon'ble Bombay High Court** and 3] **the copy of the order passed by City Civil Court,Mumbai in B.A.No.24/2016.** Relying on the aforesaid rulings, Shri Shivade submitted that the purpose of MPID Act is to secure the interest of the depositors and if the applicants are sent behind bars, the property held by DSK Group will be sold at very low price and therefore, the interest of depositors may not be protected. Shri Shivade has also filed on record some cheques to show the intention on the part of the applicants to return the amount of the depositors (named in the complaint).

9] The Ld.Adv.Shri Sudhir Shaha has also appeared on behalf of some of the depositors (not named in the complaint) and submitted that those investors want their money back and they do not want to send the applicants in jail. Shri Shaha has agreed with the submissions made by the Ld.Adv.Shri Shivade in respect of repayment of money of the depositors i.e.Rs.15 crores every month.

10] The Ld.Special Prosecutor Shri S.S.Hande has opposed the application by filing say at Ex.11. It is contended in the said say

that so far, 1013 depositors have come forward and have alleged about cheating by DSK Group and the amount of the said cheating comes to Rs.40 crores. It is further contended that as per the letter issued by Corporate Office, Govt.of India, dt.22.9.2010(it should be 22.9.2017), it is informed to the Investigating Officer that the DSK Group has converted the deposits of the depositors to their own use and the investigation of the same is necessary. In the primary investigation conducted, it is revealed that DSK Group has accepted deposits more than the limits permitted by the SEBI. It is also contended by the prosecution that as per the audit report of Shri Ghatpande, there are delays in the repayment of installments of the borrowers obtained from financial institutions, defaults in the payments of the statutory dues, delays about payment of staff salaries etc. According to the said audit report, credit rating of DSK Group has been downgraded to D and these factors cast significant doubt on the company's ability to continue as going concern.

11] It is further contended that DSK group is to pay more than Rs.500 crores to the banks towards the loans raised and after repayment of the said loans, the depositors are to get their deposits back. It is further contended that crimes against DSK Group have been registered even at Mumbai and Kolhapur for cheating and misappropriation of the amounts of deposits by the depositors. Therefore, according to the prosecution, considering the magnitude of the crime registered against the accused, the role of the accused can be seen only after the investigation and therefore, the prosecution has prayed to reject the application.

12] The Ld.Special Prosecutor Shri Hande, in his oral submissions, submitted that so far, 1400 depositors have come forward, alleging fraud and cheating in respect of their deposits

made with DSK Group. He further submitted that the approximate amount to be paid by DSK Group to its investors is Rs.622 crores. According to Shri Hande, so far, DSK Group has not repaid the deposits of 376 depositors even after its maturity. Shri Hande further submitted that though the deposits were accepted by DSK Group for construction development business, the deposits were not used in connection with their construction business. Shri Hande further submitted that as on today, there is encumbrance of Rs.1400 crores on the property of DSK Group. According to Shri Hande, even if the property in possession of DSK Group is sold, the above amount of bank encumbrance is to be satisfied first and then, the amount of deposits of the depositors is to be paid. Shri Hande further submitted that in the year 2017 only, 66 cases u/s 138 of the Negotiable Instruments Act have been filed against the DSK Group in Shivajinagar Court.

13] The Ld.Prosecutor Shri Hande further submitted that this is socio economic offence, which is more serious than the body offences and therefore, he prayed to reject the application. The Ld.Special Prosecutor Shri Hande has relied on certain case law. He has relied in the case of **National Spot Exchange Ltd.Vs.State of Maharashtra and others (MANU/MH/2581/2015)** in support of the contention that financial establishment as defined u/s 2(d) of MPID Act means, any person accepting any deposit under any scheme or arrangement or in any other manner.

14] Shri Hande has further relied in the case of 1] **Vidya Rajesh Kamble Vs.State of Maharashtra (2017 CLU 1424)** 2] **Lohita Jagdhane Vs.State of Maharashtra (2017 CLU 2407)** 3] **Ramesh Rangari Vs.State of Maharashtra (2017 CLU 2886)** and 4] **Copy of the Order of the Hon'ble Bombay High Court**

**in Criminal Appeal No.262/2016 in the case of M/s Popular Stock and Share Services Ltd. Vs.State of Maharashtra and others.** The aforesaid rulings have been relied on in support of the proposition of law that when there are allegations of cheating and forgery, anticipatory bail should not be granted. I have gone through the above rulings very carefully. Nobody can dispute the proposition of law as laid down in it.

15] The Ld.Adv.Shri Shrikant Shivade for applicants, in reply, repelled all the allegations of facts made by the Ld.Special Prosecutor. Shri Shivade has reiterated the same stand that in case, the accused are sent behind bars, the interest of depositors may not be secured. Shri Shivade further submitted that there are some political leaders behind instigating the depositors to file complaints against applicants/accused so as to grab the land of 300 acres, of DSK Group. Shri Shivade further submitted that sec. 4 of the MPID Act has been invoked by the prosecution agency only with a view that the property worth Rs.3500 crores belonging to DSK Group shall be sold at a meager amount (कवडीमोल) to political land sharks (Mafiyas) who are behind all these things. According to Shri Shivade, the prosecution has not given any evidence as to how it has calculated price of the land of 300 acres belonging to DSK Group only at Rs.1100 crores, which in fact, in his opinion, is worth Rs.3500 crores.

16] The Ld.Adv.Shri Shivade further vehemently attacked the conduct of D.C.P. (EOW) Pune in giving the interview to press, by violating of the Judgments of the Hon'ble Bombay High Court as well as the guidelines issued in this behalf. Shri Shivade further submitted that even though no offence prima facie can be made

out against the accused, said D.C.P. is giving interview that more offences have been slapped against the DSK Group. Shri Shivade further submitted that the Investigating officer has informed the Registrar not to register any transaction, that may be made by DSK Group. He further submitted that all the bank accounts of the DSK Group have been blocked/seized. This, according to Shri Shivade, will show that there will not be any fair trial to the accused.

17] The Ld.Adv.Shri Shivade further submitted that the applicants/ accused are moving Registrar of Companies, under section 76 of the Companies Act for seeking time of one year to repay the amounts of deposits. According to Shri Shivade, Registrar of Companies can extend the said period by one year. Shri Shivade further submitted that the first default in making payment of deposit has occurred in the month of March,2017 and therefore, according to Shri Shivade, if the said time is extended, DSK Group can repay the said amount to their depositors by March,2018.

18] The Ld.Adv.Shri Shivade has filed another list of documents Ex.14. Along with the said list, a document i.e.list of 1563 fixed deposit holders, who have accepted refund of their installments as per scheme provided by DSK Group, is filed. Shri Shivade further submitted that the audit reports submitted for the last 3 financial years to Registrar of Companies, do not show any irregularity in the accounting of the DSK Group. Therefore, Shri Shivade submitted that in order to protect the interest of depositors, the conditional bail should be granted to the applicants/ accused. He further submitted that in case, conditional bail is granted, the applicants/accused will sell their land and will not dispose of the sale proceeds without prior permission of the Court.

19] The Ld.Adv.Shri Shivade has relied in the case of 1] **Gurbaksh Singh Sibbia Vs.State of Punjab [(1980) 2 S.C.C.565]** 2] **Siddharam Satlingappa Mhetre Vs.State of Maharashtra [(2011) 1 S.C.C.694]** 3] **Bhardesh Bipinbhai Sheth Vs.State of Gujrat [(2016) 1 S.C.C.152]**. 4] **M.P.Lohia etc. Vs.State of West Bengal & Anr. (2005 AIR SCW 767)** 5] **Kamlabai w/o Surendra Jaiswal @ Zende Vs.State of Maharashtra through P.S.O. [(2002 ALL MR(Cri.) 776]** 6] **Pankaj Vidhyasagar Gupta Vs.State of Maharashtra [(1989(2) BOM.C.R.178)]**. 7] **Jagannath Vs.State of Maharashtra [(1981 Cri.L.J.1808)]** 8] **Arnesh Kumar Vs.State of Bihar & Anr. (2014) 8 S.C.C.273]** 9] **Joginder Kumar Vs.State of U.P. and others [(1994) 4 S.C.C.260]**, 10] **Gold Quest International Pvt.Ltd.Vs.,.State of Tamil Nadu and otehrs [(2014) 15 SCC 235]**. 11] **State of West Bengal and others Vs.Swapan Kumar Guha and others [(1982) 1 SCC 561]**.

20] Relying on the aforesaid rulings, Shri Shivade argued about the concept of anticipatory bail, statutory provisions concerning the personal liberty of the accused and when the anticipatory bail should or should not be granted etc. I have gone through the said rulings very carefully. There cannot be two views about the law laid down in the aforesaid rulings.

21] The Ld.Adv.Shri Shivade vehemently submitted that sec.409 of I.P.C. which carries the punishment up to life imprisonment has been invoked only with a malafide intention that the accused should not get anticipatory bail. According to Shri Shivade, the said section is not at all applicable to the facts of the present case.

22] I have considered the above rival submissions very carefully. I have gone through the documents submitted on record by both sides. The thrust of the main contention of the Adv.for the accused Shri Shivade is that prima facie, no offence alleged against the accused can be made out and therefore, conditional interim anticipatory bail should be granted to the accused. However, I am of the view that on the basis of mere allegation and counter allegations, this court is not in a position to find out prima facie whether the offences alleged against the accused are made out or not. Further more, this exercise is not expected to be done by this court at the very threshold. Expressing any firm opinion about the merits or demerits of the case, in my opinion, would tantamount to conducting a trial without there being any investigation or charge sheet filed against the accused.

23] It is well settled law that the FIR is not an encyclopedia, which would contain all the details of the crime committed. It is further well settled law that the purpose of filing the FIR is only to set the criminal law in motion. The facts on record further prima facie show that the complainant-Jitendra Narayan Mulekar and others have set the law in motion and law will take its own course and after the investigation, the Investigating Officer will decide which offences are made out against the accused.

24] So far as section 3 of the MPID Act is concerned, the Hon'ble Bombay High Court in the case of **National Spot Exchange Ltd. (cited supra)** has ruled in para.no.11 that sec.2(d) defines the term "financial establishment", means any person accepting any deposit under any scheme or arrangement or in any other manner. Therefore, prima facie, it cannot be said that the

provisions of MPID Act cannot be invoked.

25] As per the submissions of the Ld.Special Prosecutor Shri Hande, amount of deposits to be paid to the depositors has come to Rs.40 crores. However, it is submitted on behalf of applicants themselves that as on today, they now owe Rs.209 crores to be paid to the depositors. In view of that, and the fact that large number of investors are coming forward to complain about the cheating by DSK Group, the gravity and magnitude of the charges alleged against the accused, I am of the view that this is not at all a fit case to grant interim anticipatory bail.

26] It may be further noted that the applicants/accused have given alternative schemes for the depositors and that the land of 300 acres belonging to DSK Group, after being sold, would fetch much more amount than they are to pay to the depositors. It is submitted that therefore, the applicants/accused should be set at liberty to sell their land and sale proceeds will be appropriated towards the returns of the amount of depositors. In my opinion, this is only hypothetical. Nobody knows when the said land will be sold and what price it would fetch. Further more, I am of the view that accepting the above terms of the accused for their release, would amount to conduct the investigation as per the whims and wish of the accused. In my opinion, this is not at all permissible. The investigation of serious crime cannot be left at the discretion of the accused.

27] I am of the further view that at present, the protection of the interest of the depositors is of prime consideration and for that purpose, the Investigating Officer will have to see how the said interest of the said depositors can be protected. It prima facie

appears that hundreds and thousands of depositors of DSK Group have become panic for not getting their amount of deposits and therefore, in my opinion, their interest can only be safeguarded by conducting proper investigation by the Investigating Officer.

28] I am of the further view that the grievances raised by Ld.Adv.Shri Shivade about malafides likely to be played by land-sharks /Mafiyas with the help of Investigating Officer while selling the land of 300 acres of DSK Group, are only the allegations. If at all,in the event,the applicants find that some mischievousness is being done in selling the property, they can have the recourse to the law and can seek the legal remedy but in my opinion, for that purpose only, the investigation of the serious offences cannot be thwarted or stalled.

29] Considering the above facts on record, I am of the opinion that this is not at all a fit case to grant interim anticipatory bail. Hence, I proceed to pass the following order:

**Order**

The application stands rejected.

Date -8.11.2017

(J.T.Utpat)  
Special Judge, Pune  
(Under the Maharashtra Protection  
of Interest of Depositors (In Financial  
Establishments) Act).

**Order below Ex.1 in Criminal Bail Application No.3776/2017.**

In view of rejection of the application for interim anticipatory bail Ex.3, the application stands rejected.

Date -8.11.2017

(J.T.Utpat)  
Special Judge, Pune  
(Under the Maharashtra Protection  
of Interest of Depositors (In Financial  
Establishments) Act).

" I affirm that the contents of this P. D. F. file Judgment are same word for word as per original Judgment."

Name of steno : Sou.S.V.Sane  
Name of Court : Shri J.T.Utpat, Special Judge &  
Addl.Sessions Judge,Pune.  
Date : 8.11.2017  
Judgment signed by  
Presiding Officer on. : 8.11.2017  
Judgment uploaded on. : 8.11.2017