IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL APPLICATION (BAIL) NO. 242/2013
AND
CRIMINAL MISCALLENAOUS APPLICATION NO. 247/2013
IN
CRIMINAL APPLICATION (BAIL) NO. 242 OF 2013

CRIMINAL APPLICATION (BAIL) NO. 242/2013

Shri Amit Anand Pai Raikar
@ Amit Pai
Age 41 years, residing at,
D-6, Kamakshi Sadan,
Anand Pai Farms, Dhauji,
Old-Goa, Goa
Presently in Judicial Custody,
Sub-Jail Mapusa
Through, his next friend.
Mr. Ajit Anand Pai
Brother of the Applicant/ Accused,
Age 38 years, residing at
D-6, Kamakshi Sadan,
Anand Pai Farms, Dahuji,
Old-Goa, Goa. .. Applicant/ Accused.

Versus

1. The State of Goa
Through Public Prosecutor
High Court of Bombay at Goa.

2. Sr. Inspector of Police
Porvorim Police Station
Porvorim – Goa. .. Respondents.

AND

CRIMINAL MISCALLENAOUS APPLICATION NO. 247/2013
IN
CRIMINAL APPLICATION (BAIL) NO. 242 OF 2013

Shri Amit Anand Pairaikar alias Amit
Manager, Major of Age,
Goa Urban Co-Operative Bank Ltd.,
St. Inez Branch, St. Inez, Goa.

And permanent resident of D-6,
Kamakshi Sadan,
Anand Pai Farms,
Dhauji, Old Goa,
Goa 403 403. .. Applicant.
(Original Accused)

V/s.

State .. Respondent.

And

M/s. Goa Coastal Resorts and
Recreation Private Limited,
A Company duly incorporated
In terms of the Companies Act,
1956, having its registered
Office at Hotel Neo Majestic,
Plot No. 104/1A, Porvorim,
Bardez, Goa.
Through its Director,
Mr. Tarun Khattar,
Major of age. .. Intervener.
(Original Complainant)

Mr. S. D. Lotlikar, Senior Advocate with Ms. M. Furtado, Advocate for the applicant.

Mr. S. R. Rivankar, Public Prosecutor for the respondents.

Mr. A. B. De Sa, Advocate for the intervener.

Coram :- **U. V. BAKRE, J.**

Reserved on : 20th December, 2013

Pronounced on : 21st December, 2013.

ORDER :

Heard the learned Counsel for the parties.

2. The applicant, who has been arrested on 22/11/2013 in Crime No.168/2013 registered with Porvorim Police Station for offences punishable under Sections 489-A, 489-B, 489-C, 420, 465, 467, 468, 472, 474, 475, 409 read with Section 34 of Indian Penal Code ('IPC' for short), has filed the above Criminal Application (Bail) No. 242/2013 for bail whereas the complainant, M/s. Goa Coastal Resorts and Recreation Private Limited, through its Director, at whose instance the said crime has been registered, has filed the above Criminal Misc. Application No. 247/2013, praying for leave to intervene in the bail application.

3. A reply resisting the application has been filed on behalf of the respondents. The intervenor has also resisted the application on the grounds stated in the application for intervention.

4. Shri Tarun Khattar, the Director of M/s. Goa Coastal Resorts and Recreation Pvt. Ltd., Porvorim, Goa has lodged a complaint on 20/11/2013 with Porvorim Police Station alleging as follows:- Between 11/11/2013 to 18/11/2013, the applicant and the Manager of Goa Urban Cooperative Bank Ltd., St. Inez Branch and other unknown persons, with their common intention, dishonestly induced the complainant to deliver casino gaming chips worth Rs. 6 Crores by taking a sum of Rs.6 Crores in cash from the complainant in lieu of following pay orders :

> “a) Pay Order bearing No.'004524' 4034160041 dated 19.10.2013 for the sum of Rs. 80,00,000/- drawn on Goa Urban Co-operative Bank Ltd.
>
> b) Pay Order bearing No.'004523' 4034160041 dated 19.10.2013 for the sum of Rs. 60,00,000/- drawn on Goa Urban Co-operative Bank Ltd.
>
> c) Pay Order bearing No.'004525' 4034160041 dated 19.10.2013 for the sum of Rs. 90,00,000/- drawn on Goa Urban Co-operative Bank Ltd.
>
> d) Pay Order bearing No.'004544' 4034160041 dated 11.11.2013 for the sum of Rs. 1,70,00,000/- drawn on Goa Urban Co-operative Bank Ltd.
>
> e) Pay Order bearing No.'004545' 4034160041 dated 11.11.2013 for the sum of Rs. 2,00,00,000/- drawn on Goa Urban Co-operative Bank Ltd.”

The present applicant signed the necessary receipts acknowledging the receipt of the said amounts. When the said pay orders were presented for payment in the Ratnakar Bank, Porvorim, they were dishonoured on the ground that they were fake/forged. It was, therefore, alleged that the accused persons cheated the complainant and committed the said offences.

5. Mr. Lotlikar, learned Senior Counsel appearing on behalf of the applicant, submitted that the applicant, after his arrest on 22/11/2013, was remanded to police custody for 14 days till 06/12/2013 and since then, he is in judicial custody. He further submitted that the investigation in the case is almost complete and hence, the presence of the applicant in judicial custody is no more required. He further submitted that at the casino all the set up is available for minutely checking the pay orders to find out whether they are fake or forged and the complainant has manipulated his running account existing with the Company in order to harass him and pressurize him. Learned Counsel pointed out that there is no allegation that the chips were used by the applicant and any loss was caused to the complainant. He submitted that the applicant has already been interrogated in police custody and the investigation is substantially complete. According to him, the only objection is that offence is economic offence and that the same is punishable with life imprisonment. He submitted that the bank notes being pay orders, they are not currency notes which can be circulated. He further submitted that life imprisonment is the maximum punishment which can be imposed in such case. He relied upon the order dated 17/05/2012 passed by this Court in Criminal Miscellaneous Application (Bail) No. 106/2012 and the order dated 12/09/2013 passed in Criminal Application (Bail) No. 172/2013. Learned Senior Counsel submitted that the conditions as deemed fit can be imposed on the applicant so as to take care that he does not tamper with the evidence or does not flee from justice. He submitted that since presently the applicant is in judicial lock-up and further since the investigation is almost complete, the applicant is now entitled to bail.

6. On the other hand, Mr. Rivankar, learned Public Prosecutor submitted that whether the accused played the games by using chips and whether he caused loss to the complainant or not, is not relevant. He submitted that since the applicant was in possession of fake bank pay orders and since he used them for purchasing the chips, the offences are complete. He read out the statements of various witnesses which reveal that the accused had purchased chips by handing over the pay orders to the concerned employees. Learned Public Prosecutor submitted that in CCTV footage, one more person is seen along with the applicant and that he has been arrested. According to learned Public Prosecutor, there is a big racket behind this offence and many things have to be unearthed. He pointed out that the Goa Urban Co-operative Bank has also lodged a complaint dated 18/11/2013 at Panaji Police Station and an additional complaint on 20/11/2013. He submitted that there is strong prima facie evidence against the applicant and the investigation is still at preliminary stage and some of the accused persons are still absconding. He further submitted that the fact as to where the work of preparing fake pay orders is done, is yet to be found out. He further submitted that it is to be found out as to from where the applicant procured the said Magnetic Ink Character Recognition(MICR) instruments. He submitted that other accused persons are yet to be traced. Learned Public Prosecutor relied upon the following judgments :

(i) “**State of U.P. Through CBI V/s. Amarmani Tripathi”** [(2005) 8 SCC 21].

(ii) **“K. Hashim V/s. State of T.N.”** [(2005) 1 SCC 237].

(iii) **“The State of Maharashtra V/s. Esarar Ahmedkha S/o. Osmankha and another”** [2013 ALL MR (Cri) 3984].

(iv) **“Nimmagadda Prasad V/s. Central Bureau of Investigation”** [(2013) 7 SCC 466].

(v)**“Mr. Scott Mendonca V/s. Police Inspector, Margao Town Police Station, Margao and another”** CRMAB No. 208 of 2013.

(vi)**“Shri Umesh Pujari V/s. State of Goa and others”** CRMAB No. 174 of 2013.

7. Mr. De Sa, learned Counsel appearing on behalf of the intervener submitted that maximum sentence provided for the offence is life and this Court will have to consider the bar which is contained in Section 437(1)(i) of Cr.P.C. According to Mr. De Sa, the applicant has committed serious economic offences having wide scale ramifications vis-a-vis the economic/

Banking sector by illegally procuring banking papers and thereafter, printing the pay orders with special ink (MICR ink), which ink and which papers are not available in the market for general use. He submitted that considering the punishment prescribed for the offences under Sections 489-A, 489-B and 489-D of IPC, there being reasonable grounds to believe that the applicant has committed the said offences, he should not be released on bail. Mr. De Sa relied upon the following judgments :

(i) **“Gurcharan Singh and others Vs. State (Delhi Administration)** [AIR 1978 SC 179]**”**

(ii) “**Hanuman s/o Vishwanath Nehare Vs. State of Maharashtra & Others”**; [2001 Bom. C. R. (Cri.) 879]

(iii) “**State of Maharashtra Vs. Popatlal Samnaji Jain @ Masjid @ Raju etc**.”, [2005(1) Bom. C.R.(Cri.) 680]

(iv) “**Bhupinder Singh and others Vs. Jarnail Singh and another”**, [(2006)6 SCC 277]

8. I have gone through the material on record and that which was made available to me by the learned Public Prosecutor and I have considered the submissions made by the learned counsel on behalf of the parties.

9. In the complaint dated 19/11/2013 registered on

20/11/2013, the complainant has stated that on 11/11/2013, the applicant visited “Off-Shore casino” of the complainant and purchased gaming chips worth Rs. 6 Crores by taking a sum of Rs. 6 Crores in cash from them in lieu of the pay orders. Actually, according to learned Public Prosecutor, cash of Rs. 6 Crores was not taken by the applicant, but he had purchased gaming chips worth Rs. 6 Crores by handing over the pay orders drawn on the Goa Urban Co-operative Bank Ltd. in the said amount. Whatever may have been stated in the complaint, in this regard, however, there are on record statements of at least four witnesses which reveal that gaming chips were issued to the applicant after he handed over the pay orders. Ratnakar Bank Ltd. where the pay orders were presented for payment returned them unpaid, being fraudulent instruments. The statement of the Manager of Goa Urban Co-operative Bank Ltd. reveals that the said pay orders were MICR instruments and were not issued by his bank. The said pay orders were found to be fake. There is, therefore, sufficient evidence on record to establish that the applicant used fake pay orders drawn on Goa Urban Co-operative Bank Ltd. and purchased the gaming chips. As has been rightly contended by learned Public Prosecutor, it is not relevant whether the applicant actually used the said gaming chips for playing games and thereby caused loss to the complainant or not. As soon as the accused was found in possession of the fake pay orders i.e. bank notes and used the same for purchasing gaming chips, the offences, inter alia, under Sections 489-A, 489-B and 489-D of IPC are complete.

10. Section 489-A of IPC provides as under :

> 489-A. Counterfeiting currency-notes or bank-notes-
> Whoever counterfeits, or knowingly performs any part of the process of counterfeiting, any currency-note or bank-note, shall be punished with imprisonment for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.
>
> **Explanation-** For the purposes of this section and of sections 489B, 489C, 489D and 489E, the expression "bank-note" means a promissory note or engagement for the payment of money to bearer on demand issued by any person carrying on the business of banking in any part of the world, or issued by or under the authority of any State or Sovereign Power, and intended to be used as equivalent to, or as a substitute for money.

Section 489-B of IPC provides as under :

> 489-B. Using as genuine, forged or counterfeit currency-notes or bank- notes-
> Whoever sells to, or buys or receives from, any other person, or otherwise traffics in or uses as genuine, any forged or counterfeit currency-note or bank-note, knowing or having reason to believe the

same to be forged or counterfeit, shall be punished with imprisonment for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Section 489-D of IPC provides as under :

489-D. Making or possessing instruments or materials for forging or counterfeiting currency-notes or bank-notes-
Whoever makes, or performs, any part of the process of making, or buys or sells or disposes of, or has in his possession, any machinery, instrument or material for the purpose of being used, or knowing or having reason to believe that it is intended to be used, for forging or counterfeiting any currency-note or bank-note, shall be punished with imprisonment for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

11. In the case of ***"K. Hashim"***(supra), the Apex Court has observed that Section 489-A to 489-E deal with various economic offences in respect of the forged counterfeit currency notes or bank notes and object of the legislature in enacting these provisions is not only to protect the economy of the country but also to provide adequate protection to currency notes and bank notes. It has been held that if the material shows that the accused knowingly performed any part of the process by counterfeiting, Section 489-A becomes applicable. Section 489-B relates to using as genuine forged or counterfeited currency notes or bank notes. It is observed that the object of legislature in enacting this Section is to stop the circulation of forged notes by punishing all persons who knowingly or having reason to believe the same to be forged do any act which could lead to their circulation. The Apex court further held that the wording of Section 489-D is very wide and would clearly cover a case where a person is found in possession of machinery, instrument or materials for the purpose of being used for counterfeiting currency notes, even though the machinery, instruments or materials so found were not all the materials particularly required for the purpose of counterfeiting. The above offences prescribe punishment with imprisonment for life or with imprisonment which may extend to 10 years and fine. The complaint lodged by Mr. Tarun Khattar, the Director of Goa Coastal Resorts and Recreation (P) Ltd. and the statements of various witnesses, who are connected with the said Company prima facie establish the involvement of the applicant in the above offences as well as the other offences. Though it is the contention of learned Senior Counsel appearing on behalf of the applicant that nothing further remains to be investigated, however, a perusal of the reply filed on behalf of the respondents reveals that the investigation is still at a preliminary stage. The whereabouts of the other associates of the applicant are yet to be traced. It is still to be found out as to from where the accused persons received the fake pay orders. The *modus operandi* as to how the applicant and others obtained the banking papers, the MICR instruments etc. is yet to be unearthed. The police want to investigate about the broader conspiracy regarding the forgery of fake pay orders and to find out whether any foreign agencies are involved in the same.

12. In the ***"Criminal Miscellaneous Application (Bail) No. 106/2012"***, the accused was arrested on 26/07/2011 and the investigation was complete and even charge-sheet had been filed and the case was committed to the Court of Sessions and charges were ordered to be framed against the accused persons. By order dated 17/05/2012, the accused in the said case was granted bail under certain conditions. In ***"Criminal Application (Bail) No. 172/2013"***, the only offence was under Section 408 read with Section 34 of IPC and the learned Additional Public Prosecutor had not disputed the position that the investigation was substantially complete. The punishment provided for Section 408 of IPC is 7 years or less and fine. The present case cannot be compared with the above two cases relied upon by the learned Counsel for the applicant.

13. In the cases of ***"State of U.P. through (CBI)"*** **and** ***"Nimmagadda Prasad"***(supra), the matters to be considered in an application for bail have been stated. They are (i) whether there is any prima facie or reasonable ground to believe that the accused had committed the offence; (ii) nature and gravity of the charge; (iii) severity of the punishment in the event of conviction; (iv) danger of accused absconding or fleeing if released on bail; (v) character, behaviour, means, position and standing of the accused; (vi) likelihood of the offence being repeated; (vii) reasonable apprehension of the witnesses being tampered with; and (viii) danger, of course, of justice being thwarted by grant of bail.

14. In the case of ***"Nimmagadda Prasad"***(supra), it has been observed that economic offences constitute a class apart and need to be visited with a different approach for the matter of bail. The economic offence having deep rooted conspiracies and involving huge loss of public funds needs to be viewed seriously and considered as a grave offence affecting the economy of the country as a whole and thereby posing serious threat to the financial health of the country.

15. Section 437(1)(i) of Cr.P.C. provides that a person accused of or suspected of the commission of any non-cognizable offence shall not be released on bail by the Magistrate, if there appears reasonable ground for believing that he has been guilty of an offence punishable with death or imprisonment for life. In the case of ***"Gurcharan Singh and others"***(supra), it has been held that from the language of Section 437(1) of Cr.P.C., it is difficult to reach to a conclusion that the Sessions Judge or the High Court need not bear in mind the guidelines which the Magistrate has necessarily to follow in considering the bail of an accused. It has been held that it is not possible to hold that the Sessions Judge or the High Court, certainly enjoying wide powers, will be oblivious of the considerations of the likelihood of the accused being guilty of an offence punishable for death or imprisonment for life. It has been held that since the Sessions Judge or the High Court will be approached by an accused only after the refusal of bail by the Magistrate, it is not possible to hold that the mandate of the law of bail under Section 437 of Cr.P.C. for the Magistrate will be ignored by the High Court or by the Sessions Judge.

16. In the case of ***"Hanuman s/o Vishwanath Nehare"***(supra), a learned Single Judge of Nagpur Bench of this Court has referred to paragraph 3 of the judgment in the case of "Santosh Bhaurao Raut Vs. State of Maharashtra", reported in 1989 Cri. L. J. 205, wherein, inter alia, it is observed that Section

437(1)(i) says that a person accused of or suspected of the commission of an offence punishable with death or imprisonment for life, shall not be released on bail if there appears reasonable ground for believing that he has committed such an offence. It is further observed that therefore, even if the law prescribes death or imprisonment for life as the maximum imposable sentence, Section 437(1)(i) of Cr.P.C. is attracted and the offender is deprived of the right to get bail.

17. Therefore the maximum punishment provided for the offences is bound to be taken into account by this Court. It is pertinent to note that MICR ink is not available in the market. The printing machine used for such ink is also yet to be recovered. It should be kept in mind that even the Goa Urban Cooperative Bank Ltd. has lodged complaints dated 18/11/2013 and 20/11/2013 against the present applicant and others. The respondents have stated that if the applicant is released on bail, he will jump the bail and is likely to threaten the complainant and the other witnesses.

18. Considering all the aspects, I am of the considered view that the applicant should not be released on bail at this stage where the investigation is not yet completed.

19. Hence, the bail application is rejected. Intervention application gets disposed of accordingly.

U. V. BAKRE, J.

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