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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPEALALTE JURISDICTION

CRIMINAL BAIL APPLICATION No. 116 of 2015.

Ashok Kumar Amarnath Sharma

..Applicant.

Vs

State of Maharashtra

..Respondent.

Dr Nilesh Pawaskar with Mr E.B. Dixit i/by and a/with Mehul A.Rathod for the applicant.

Mr Pradeep Gharat, Special P.P. a/with Smt. Geeta Mulekar, APP for the State

CORAM : A.R.JOSHI,J

DATE : 30th April, 2015

(AT 2:35 P.M. IN CHAMBER No.4)

P.C. :

1) Heard learned Counsel for the applicant and also heard learned Special P.P.for the State on this repeated bail application. This is the third bail application preferred by the present applicant for his release on bail in the matter of offence registered under C.R.No. 67 of 2012 for the offence punishable under sections 465, 467, 468, 471, 420 read with section 120-B of the IPC. While rejecting the earlier bail application vide order dated 5th March, 2014 this Court has detailed various events and circumstances,

prima facie available against the present applicant, so far as defalcation of the huge amount of the complainant bank i.e. the Bombay District Central Co-operative Bank. That time considering the magnitude of the offence and the mid stage of the investigation it was held fit by this Court not to release the applicant on bail at that stage.

2) After the above, second application was preferred, which was also rejected vide order dated 29th September, 2014 and it was specifically mentioned after detailing the events and the circumstances available against the applicant that at that stage also it was not prudent to release the applicant on bail. Under this factual position the present third bail application is brought before this Court.

3) The learned Counsel for the applicant placed reliance on the authority reported in (2014) 3 SCC 202 in the case of **Sanjay Jha Vs. State of Chhattisgarh** and by pointing out the ratio of the above authority it is submitted that even after dismissal of the first application on merits another subsequent application for bail can be allowed as has been done in that particular case. Of course, as argued by the learned Spl.P.P. for the State, the ratio propounded in

any authority on the bail cannot be considered as a binding precedent. However, rationale behind the said decision can be taken into consideration. Needless to mention that each and every bail application is required to be disposed of as per the facts and circumstances and more so on the changed circumstances, if any, if such is a repeated bail application.

4) The factual position is that the applicant was arrested on 20th November, 2013 and the charge-sheet was filed on 14th February, 2014. His first bail application was rejected on 5th March, 2014 i.e. after filing of the charge-sheet and second bail application was rejected on 29th September, 2014. As such by the time of rejection of the second bail application the custody of the applicant in jail was even not more than ten months. Apparently, now the applicant is in custody for more than one and half year and this aspect is much emphasized by the learned Counsel for the applicant, more so, mentioning that a balance is required to be struck between the period of custody and the magnitude of the offence and moreover the availability of the applicant during the trial.

5) Counter to the above, the learned Special P.P. pointed out that this is a case of fraud practiced on the bank by different

persons including the officers of the bank and that the magnitude of the offence is to such an extent as to defalcation of the amount is more than Rs. 120 crores. On this subject, it is brought to the notice of this Court, even by the learned Spl.P.P. that though this is the magnitude of the total quantum of the defalcated amount, so far as the present applicant is concerned, at this stage his involvement is for the amount about Rs. 33 crores. It is also submitted that apart from C.R.No. 67 of 2012, there is no other crime pending against the applicant.

6) Now, considering the circumstances in totality and considering the custody of the applicant since November, 2013 and considering that only one CR, at least at this stage, is pending against him and the charge-sheet is already filed, though further investigation is going on, in the considered view of this Court, this application is required to be viewed in different perspective. More so, it is brought to the notice of this Court that during the custody of the applicant not for a single day he has been taken out for interrogation by the Investigating Agency or for getting further particulars from him, which otherwise would necessitate his further custody. Admittedly, gathering of the investigation in this matter

has been done and also can be done in future by way of seizure of the documents from the bank and other institutions. As such, the custody of the applicant in that sense so far as custodial interrogation or otherwise is considered, is not warranted. Now, the question will remain as to availability of the applicant for trial. For this, it is submitted on behalf of the applicant that he can be directed to attend the investigating agency on any day and that he can attend the Court on each and every date and will not tamper with the prosecution witnesses in any manner through himself or through his associates.

7) Considering the above submissions by imposing certain conditions the present application can be allowed. Hence, order.

ORDER:-

- 1) The bail application No. 116 of 2015 is allowed;
- 2) The applicant be released on bail on his executing a P.R. bond in the sum of Rs.10,00,000/- (Rupees Ten lakhs) with one or more sureties for the like amount.
- 3) After availing the bail, the applicant shall attend the concerned Investigating Agency on every Monday between 10.00 A.M. to 12.00 noon till further orders.

- 4) The applicant shall deposit his Passport, if any, with the Investigating Agency.
- 5) Any attempt directly or indirectly to tamper with the prosecution witnesses shall be a cause for the cancellation of the bail on the appropriate application preferred by the prosecution.
- 6) Bail before the trial Court;
- 7) With these directions bail application is disposed of.

(A.R.JOSHI, J.)