IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL BAIL APPLICATION NO. 216 OF 2014

Sayyed Masood .. Applicant
Versus
The State of Maharashtra .. Respondent

Mr.P. Janardhanan with Mr.Dinesh Tiwari and Mr.Swapnil Ambure i/b Dinesh Tiwari & Associates for the applicant.
Mr.Mubin Solkar with Ms.Tahera Qureshi, Advocate for Intervenor.
Mrs.S.V.Gajare, APP for the Respondent State.

CORAM : ABHAY M. THIPSAY, J.

ORDER RESERVED : 10th NOVEMBER 2014

ORDER PRONOUNCED : 9th JANUARY 2015

ORAL ORDER :

1 The applicant is the accused in Criminal Case No.894/PW/2010 pending before the Metropolitan Magistrate's 69th Court at Mazgaon, Mumbai. The case arises out of C.R.No.205/10 registered at the Nagpada Police Station in respect of offences punishable under sections 406 IPC, 420 IPC and 120B of the IPC, as also offences punishable under sections 4, 5, and 6 of the Price Money Circulation (Banning) Act, 1978. The applicant was arrested on 28th August 2010. He remained in custody for quite some time. He was released on bail by this Court (Coram R.P. Sondur Baldota, J) by an order dated 12th December 2011. On an application made by the City Group Investors

Association of which the First Informant is the President, the bail granted to the applicant was cancelled by this Court (Coram Abhay M. Thipsay, J) by an order dated 13th July 2013. The challenge to the said order as given by the applicant by approaching Supreme Court of India, failed. The applicant was then again taken into custody. It is thereafter that the present application for bail has been moved, seeking bail afresh.

2 The application was taken up for hearing long back, but the hearing thereof was delayed because of the intervention of the City Group Investors Association, who have vehemently opposed the Bail Application. It may be observed that a number of cases are pending against the applicant, and one of them is a case under the Prevention of Money Laundering Act (PMLA Special Case No.1 of 2013). The applicant's application for bail in that case is also pending before this Court (Bail Application No.1779/13). On the suggestion – or rather the insistence – of the learned counsel for the intervenors i.e. City Group Investors Association, the present application and the said application for bail were heard and considered together. This, undoubtedly, resulted in some delay in disposal of the present Bail Application, but considering the facts and circumstances of the case, it was thought necessary that the question of releasing the applicant on bail in this case should be considered by keeping in mind the pendency of the said Special Case under the PMLA Act against the applicant.

3 Though the applications have been heard together, and common arguments were advanced by the intervenors, the

nature of allegation in the present case and the Special Case being different, and the questions that would arise for consideration in the Bail Application No.1779/13 being different, it is thought proper to decide both the Bail Applications by separate orders.

4 I have heard Mr.P. Janardhanan, the learned counsel for the applicant. I have heard Mrs.S.V.Gajare, the learned APP for the State. I have heard Mr.Mubin Solkar, learned counsel for the Intervenors. I have also taken into consideration the facts of the PMLA Special Case pending against the applicant, and the arguments advanced by the learned Public Prosecution in the Bail Application No.1779/13.

5 The first and foremost submission of the learned counsel for the applicant was that the applicant was already released on bail by this Court on a consideration of the merits of the matter. It is submitted that the bail came to be cancelled on the ground of the violation of the terms and conditions of bail by the applicant. It is submitted that before the bail was granted to him, the applicant had remained in custody for about 16 months, and that after the cancellation of bail, he had again remained in custody for quite some time. It was submitted that considering the period already spent in custody by the applicant as an under-trial prisoner, he may be released on bail. It was submitted that the applicant, if released on bail now, would not commit any breach of the terms and conditions as may be imposed by the Court while releasing him on bail.

6 In fact, considering that the applicant was in custody for a period of about 2 years, and that the trial which is to be held by a Magistrate had not commenced, the applicant could have been released on bail on his assurance to now comply with the terms and conditions as would be imposed upon him without a meticulous examination of the matter, but for the pendency of the application for bail (Bail Application No.1779/13) in the said PMLA case which consumed quite some time.

7 It would be proper to make a brief reference to the nature of allegation against the applicant. The applicant is one of the Directors of M/s.City Limosin India Limited, and some other Companies. The allegation is that the said Company had floated a scheme for investment promising very high returns to the investors which were not realistic. That the investors had been induced to invest monies in the scheme which turned out to be a Ponzi scheme. That the monies of the investors were not returned, and the investors were duped of crores of rupees. The First Informant is one of the investors, and as aforesaid, the President of the City Group Investors Association.

8 Mr.Solkar emphasized the magnitude of the offences allegedly committed by the applicant. He submitted that the investors have been duped, and that, therefore, the applicant should not be released on bail. It is submitted that the applicant has enough resources to pay the amount of the investors back to them, but that he is deliberately avoiding to do so. It is also submitted that the applicant, if released on bail, is likely to abscond.

9 I have carefully considered the matter.

10 As aforesaid, the question of grant of bail to the applicant in the PMLA Special Case is more complex, and this complex question is being dealt with, and decided by a separate order. It is, therefore, not necessary to discuss the considerations or grounds that would be relevant only in the context of the allegations in respect of the offences punishable under the PMLA Act.

11 So far as the present case is concerned, all the offences allegedly committed by the applicant are triable by a Magistrate. The applicant was already released on bail after considering the merits of the matter. Bail granted to him came to be cancelled on the ground that he had failed to abide by a condition imposed upon him at the time of his release on bail. The said condition was to the effect that the applicant should report his attendance once in a week to Nagpada Police Station on every Saturday until further orders. Though some other contentions were also raised, on arriving at a finding that the applicant had failed to abide by the said condition, bail granted to him came to be cancelled.

12 Admittedly, the applicant was thereafter, taken into custody which was some time in December 2013. He continues to be in custody since then.

13 There are a number of cases pending against the applicant which have been filed by different investors in various

parts of the country. In fact, due to the large number of cases which are pending against the applicant, production of the applicant before the Court on the dates of hearing of this case, and even in other cases is becoming difficult for the police machinery.

14 All the cases pending against the applicant are arising out of the same transactions i.e. allegedly inducing the investors to invest monies in the applicant's Company, and deceiving them. The enormity of the crimes allegedly committed by the applicant is sought to be shown by pointing out the number of cases pending against him, and the total amount that is said to be payable by the applicants to the investors in all these cases. The same aspect arises in the PMLA Special Case No.1/13 also. Whatever property belonging to the applicant and his company/companies was found, has been attached in the course of investigation of the said case and the process of attachment is said to be still going on. It would not be proper, therefore, to refuse to release the applicant on bail only on the ground of the pendency of the other cases against him. It cannot be ignored that so far as this case is concerned, the offences allegedly committed by the applicant are triable by a Magistrate, and that the applicant has already remained in custody for a period of more than two years. The trial has not yet commenced, and in the circumstances mentioned earlier, is not even likely to commence soon.

15 Under the circumstances, only on the ground that the investors monies are not being returned to them, further detention of the applicant as an under-trial prisoner, would not be justified. This is particularly so because the applicant has assured that he

will abide by all the conditions, as may be imposed by the Court while releasing him on bail.

16 In the circumstances, the application is allowed.

17 The applicant is ordered to be released on bail in the sum of Rs.2,00,000/- (Rupees Two lakhs) with one surety in like amount, or two sureties in the sum of Rs.1,00,000/- each.

18 The applicant shall report to the trial court on every Monday till the disposal of the case against him. The learned Magistrate, on an application made by the applicant may exempt him from attending the trial court on a given Monday on being satisfied that there are sufficient and just reasons for doing so.

19 Application is disposed of in the aforesaid terms.

(ABHAY M. THIPSAY, J)

20 At this stage, Mr.Solkar, the learned counsel for the intervenor submits that the operation of this order be stayed for enabling the intervenor to approach the Supreme Court of India against this order. I find that the applicant is also an accused in the said PMLA and the order in the Bail Application in that case has not yet been pronounced. It is not likely that the applicant would be actually released from custody soon. The intervenor therefore, is likely to get sufficient time to approach the Supreme Court of India for challenging this order, if so desired.

21 Under these circumstances, the prayer to stay the operation of this order is rejected.

22 The learned counsel for the applicant prays for permitting the applicant to deposit cash in lieu of surety. Prayer rejected.

(ABHAY M.THIPSAY, J)