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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO.1330 OF 2015

Yogesh Kannubhai Darji ..Applicants.
Vs.
The State of Maharashtra ..Respondent

Ms. Rushita Jain i/b Law Global Advocates for applicant.
Ms. S.S. Kaushik, APP for State.
Mr. Mahesh Tambe, A.P.I., EOW, Unit No.1 present.

CORAM: A.S. GADKARI, J.

DATE : 15th December 2015.

P.C.

1 This is an application for bail, by the applicant in CR No.43 of 2015 dated 3.2.2015 originally registered with Samata Nagar Police Station, Mumbai under Sections 409, 419, 420, 465, 467, 467, 471, 120-B of the Indian Penal Code and subsequently investigated by the Economic Offences Wing, Unit No.1 having renumbered CR. No.6 of 2015.

2 The prosecution case in brief is that the co-accused Nilesh M. Prajapati in connivance and in conspiracy with other accused persons including the Branch Manager namely Shri Ramesh Chorge of the Satara

Sahakari Sahakari Bank Ltd., Kandivli Branch opened a current account with the said bank i.e. Satara Sahakari Bank Ltd. in the name and style of 'Debt Recovery Tribunal' by submitting forged documents. The co-accused namely Nilesh M. Prajapati and Alok Tanna thereafter deposited in the said account the pay orders and cheques collected from different people who are induced to give such pay orders towards the purchase of properties which allegedly were in the custody of the Debt Recovery Tribunal Mumbai, for auction. The co-accused Alok Tanna induced people to deposit the pay orders in the said account opened by Nilesh M. Prajapati to secure/own the flats at lower rates. The said pay orders/cheques so deposited in the account opened with the Satara Sahakari Bank Ltd; after its reliasation of the amounts, was subsequently transferred in the bank accounts of the present applicant, in the Axis Bank, Kandivali (E) Branch, Mumbai. It is the further prosecution case that the amounts so deposited in the accounts of the present applicant were thereafter withdrawn by the applicant and other accused persons and the said amounts were misappropriated. The alleged total amount so deposited in the accounts of the Satara Sahakari Bank Ltd. is Rs.5,59,66,460/-. It is the allegation of the prosecution that the applicant has received Rs.4,41,00,000/- (Four Crore Forty One Lacs) from the account which was opened in the name of Debut Recovery Tribunal. It is the further allegation that the applicant has utilised the said amount for purchasing properties which were later on sold by him.

3 Heard the learned Counsel for the applicant and the learned APP at length.

4 The learned Counsel for the applicant submitted that the other accused persons namely Nilesh M. Prajapati and Alok Tanna were instrumental in pressurising the applicant to deposit the said amounts in his account. She further submitted that as a matter of fact, the applicant has received very meger amount towards the commission for realising the cheques deposited by the other accused persons in his account. She further submitted that the co-accused Alok Tanna used to induced the people and take demand drafts from them which were subsequently deposited in the Satara Sahakari Bank Ltd. bank account opened by the co-accused Nilesh Prajapati. She further submitted that as of today after completion of investigatino, the chargesheet has been filed. She lastly contended that the other two accused persons namely Jignesh Vora and Nilesh M. Prajapati have been released on bail by the Trial Court by its orders dated 20.5.2015 and 30.7.2015 respectively. She therefore submitted that if the applicant is released on bail, he will abide by all conditions and prayed that the present applicant may be released on bail.

5 The learned APP per contra submitted that there is sufficient evidence to show the involvement of the applicant in the present crime. She submitted that out of the amount of Rs.4.41,39,460/-, an amount of Rs.75,11,000/- was transferred by the applicant in his own account at Kandivali branch and also in the name of M/s Janu Jeans House. She lastly submitted that though the chargessheet is filed, the further investigation is in progress about the source of forged stamp papers and rounded seal used in the said crime.

6 I have perused the entire chargesheet annexed to the present application. It is to be noted here that though all the accused persons in the present crime, after their arrest, were granted police custody, the said persons were thoroughly investigated by the police. The statement of various witnesses have been recorded and the trail of money from its receipt till utilisation has been established by the prosecuting agency. As far as the further investigation is concerned, it appears to me that the police have till date not traced out the alleged bogus rounded seal even though applicant and other co-accused persons were interrogated by the police in the custody. While releasing the co-accused Jignesh Vora by order dated 20.5.2015, the Trial Court has observed that the said co-accused had made inducement and had asked various persons to whom such inducement was made to deposit huge amounts by way of demand drafts/cheques in the said account in the Satara Sahakari Bank. In the said order it has been observed that the present applicant had received an amount of Rs.4 crores out the total amount deposited in the said Satara Sahakari Bank. The Trial Court while releasing the principal accused namely Nilesh Prajapati though on conditional bail, on the assurance given by the said accused that the amount of Rs.42.36 lacs which had come to his share will be deposited with the Investigating Officer, his bail application was allowed. In the said order dated 30.7.2015, the Trial Court has observed that the co-accused namely Alok Tanna has received Rs.4.44 Crores and the present applicant has received Rs.75 lacs. During the hearing of the present application when the learned APP was confronted with the said discrepancy in the order with respect to the amount which has been alleged to have been received by the present applicant, the learned APP produced a hand-written chart in blue ink, showing that the applicant is the beneficiary of the approximate amount of Rs.10 lacs. It appears to me that as far as the present applicant is concerned, the Investigating Agency is adopting the stand convenient to it before different judicial forums and the Investigating Agency is not certain about the receipt of the benefits by the applicant.

7 It is further to be noted here that the witness namely Smt.

Kajal Popat, an officer employed with the Axis Bank, Kandivali (E) in her statement has stated that the applicant along with two other persons came to the bank on 5.1.2015 and 9.1.2015 and withdrew the amount of Rs.25 lacs and Rs.20 lacs respectively. She has further stated that the applicant thereafter put the said cash in two enevelopes and the said accomplice took one bag each with them and went away from the bank. She identified the said persons as Alok Tanna and Jignesh Vora. It prima facie appears that the applicant has acted as conduit between the accused persons namely Nilesh Prajapati and Alok Tanna for diverting the amount deposited in the Satara Sahakari Bank Ltd. to be deposited in the his own account and thereafter has withdrawn the said amount and handed it over to the principal accused persons namely Alok Tanna and Nilesh Prajapati.

8 It further appears to me that the co-accused Nilesh Prajapati and Alok Tanna are the masterminds behind the entire crime. The apprehension of the prosecution regarding tampering of the evidence by the applicant if released on bail, can be taken care by imposing the stringent condition on the present applicant. After taking into consideration the entire evidence available on record, I am of the opinion that the applicant has made out a case for his release on bail.

9 Hence, the following order:

(i) The applicant Yogesh K. Darji be released on bail on his furnishing PR bond in the sum of Rs.5 lacs with one or two solvent local sureties in the like amount.

(ii) In addition to the PR bond and solvent sureties, the applicant shall deposit an amount of Rs.5 lacs as a cash bail in the Registry of the Trial Court till the conclusion of trial.

(iii) Before his release on bail, the applicant shall deposit his passport, if he so possesses, with the Trial Court.

(iv) The applicant shall furnish his proof of residence in Mumbai with mobile number to the Trial Court.

(v) The applicant shall not tamper with evidence and/or influence the prosecution witnesses.

10 The application is allowed in the aforesaid terms.

(A.S. GADKARI,J.)