IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL BAIL APPLICATION NO. 2509 OF 2014

Narendra Rajaram Vichare ...Applicant
Versus
The State of Maharashtra & Anr. ...Respondents

Mr. M. K. Kocharekar i/by Mr. P. V. Vare for the Applicant

Mr. S. H. Yadav, A.P.P for the Respondents No.1-State

Mr. H. S. Venegaonkar, Spl. P.P. for the Respondent No.2

CORAM : REVATI MOHITE DERE, J.

FRIDAY, 24th APRIL, 2015

P.C. :

1. Heard learned Counsel for the applicant and the learned Special Public Prosecutor for the respondent No.2 i.e. the Enforcement Directorate.

2. By this application, the applicant seeks his enlargement on bail in connection with PMLA Special Case No. 1 of 2014 for the alleged offences punishable under Sections 3 r/w 4 of the Prevention of Money Laundering Act, 2002 ('PMLA 2002').

3. It appears that the alleged transaction had taken place in the year 2009. According to the prosecution, Nikesh Shah, the proprietor of Skand Industries along with Santosh Bhosale, proprietor of M/s. Shree Imports had visited the Union Bank of India, MMO Branch, Nariman Point, Mumbai and had tendered 6 pay-in slips i.e. 4 pay-in slips for depositing cash amount aggregating to Rs. 10,87,34,700/- in the account of Manibhadra Trading Co. and 2 pay-in slips for depositing cash aggregating to Rs. 5,06,000/- in the account of Accure Impex Pvt. Ltd., without actually depositing the said cash amounts. It is alleged that the present applicant put the cash received stamp on all the 6 pay-in slips, which were authorised by the Assistant Manager Ashok Zende of Union Bank of India. Thereafter, Nikesh Shah is alleged to have tendered a cheque of Manibhadra Trading Co., the proprietary firm of Tarachand Shah i.e. the father of Nikesh Shah, signed by Tarachand Shah dated 16th October, 2008 for an amount of Rs. 10,87,35,000/- favouring Shree Imports for fraudulent transfer of cash to the account of Shree Imports. It appears that on the same day, the said amount was credited in the account of Shree Imports. Thereafter, Nikesh Shah is alleged to have tendered another cheque dated 5th January, 2009 from the account of Shree Imports favouring “Yourself”

and is also alleged to have submitted RTGS form for transfer of Rupees Ten Crores to the account of P.K. Financial Services, Mira Road, held with HDFC Bank Ltd. It is alleged that the co-accused Ashok Zende, Assistant Manager had verified and authorised the said transfer unauthorisedly as on 5th February, 2009, when Jayshree Gorge, Sr. Manager, was responsible to authorise the transfer of funds through RTGS on 5th February, 2009. In the evening of 5th February, 2009, when the physical cash was to be put in the cash safe, the applicant is alleged to have disclosed that the amount of Rs. 10,92,40,700/- which was mentioned in the 6 pay-in slips was not actually received by him, though he had stamped the slips, on the direction of the co-accused Ashok Zende. It is alleged that Nikesh Shah also tendered 3 cheques on the very same day i.e. 5th February, 2009 for withdrawal of the cash from the account of Shree Imports amounting to Rs. 96,56,000/-. It is alleged that out of this amount, a sum of Rs. 5,00,000/- was given by Nikesh Shah in cash, to the applicant and the remaining balance of Rs. 91,56,000/- was adjusted towards the loss of Rs. 10,92,40,700/- to the bank, thus leaving a total shortage of Rs. 10,00,84,700/- to the bank. When the Branch Head of the Union Bank of India, noticed the aforesaid acts on the next date i.e. on 6th February, 2009, he immediately requested the

Branch Head of the HDFC Bank, Mira Road not to allow the release of the RTGS transfer of Rs. 10 crores sent by the Nariman Point Branch on 5th February, 2009 in the account of P.K. Financial Services. A complaint came to be lodged by the representatives of the Union Bank of India with the Crime Branch, Economic Offences Wing, Mumbai as against the present applicant and the other co-accused under Sections 120B, 420, 467, 468 and 471 of the Indian Penal Code as well as under Sections 13(2) r/w Section 13(1)(d) of Prevention of Corruption Act, 1988. The said complaint was lodged in the year 2009 and charge-sheet was also filed on 30th September, 2009 for the aforesaid offences. Thereafter, the present complaint has been filed under the PMLA 2002 on 14th February, 2014 i.e. after almost 5 years, as against the present applicant and other co-accused.

4. Learned Counsel for the applicant contended that the co-accused Ashok Zende, who was the Assistant Manager of Union Bank of India has been enlarged on bail by this Court vide order dated 17th November, 2014. He submitted that the present applicant is better placed than the co-accused, who was enlarged on bail. He submitted that a perusal of the statement of the applicant under Section 50 of the PMLA 2002 will

show that the applicant had acted at the behest of the co-accused Ashok Zende, who had assured him that he knew Nikesh Shah, and that the money would be deposited by him in the course of the day. He further submitted that the offence alleged under the PMLA 2002 is punishable with imprisonment upto 3 years and that the applicant has undergone almost 8 months of imprisonment. He submitted that in fact, after the complaint was filed under the PMLA 2002 before the Special Court, process was issued, pursuant to which, the applicant appeared before the learned Special Judge. However, the applicant was taken into custody by the learned Special Judge.

5. Learned Special Public Prosecutor opposed the bail application. He does not dispute the fact that till date, the order enlarging the co-accused on bail has not been challenged before the Apex Court.

6. Perused the papers, including the statement of the applicant, which is recorded under Section 50 of the PMLA 2002. It appears that the applicant in the said statement has categorically stated that on 5th February, 2009, when he was at the cash counter, acting as a receiver cashier, Nikesh

Shah tendered 3 pay-in slips of of Manibhadra Trading Co. for an aggregate amount of Rs. 10,86,99,700/- without tendering actual cash and requested to enter the transactions in the Scroll Register. Apart from the aforesaid 3 pay-in slips, Nikesh Shah had also tendered 3 more pay-in slips, without actual remittance of cash. The applicant, in his statement, has stated that as he was instructed by the co-accused Ashok Zende, who was in-charge of the Current Department, that transaction pertaining to Nikesh Shah group accounts should be done with his (Ashok Zende's) knowledge/instruction, and hence, he took these pay-in slips to the Authorization Officer, Ashok Zende to enquire about receipt of cash. He has stated that co-accused Ashok Zende instructed him to put the `cash received stamp' and assured him that the cash would be coming, some time later. He stated that, believing the same, on the instructions of Ashok Zende, he put the 'cash received stamp' on the pay-in slips and entered the same in the Cash Scroll Register and forwarded them to Ashok Zende for authorization. A perusal of Ashok Zende's statement, which is also recorded under Section 50 of the PMLA 2002, shows that the said act was done by the applicant, on his own accord and that the same was not shown to him. The offence alleged under PMLA 2002 is punishable with a maximum imprisonment of 3 years. The applicant has already undergone imprisonment of about 8 months till date. Apart from the said fact, the applicant has been enlarged on bail in the case registered by the CBI, EOW, Mumbai. It also appears that the transaction pertains to year 2008-2009, however, the complaint under the PMLA 2002, has been lodged only on 14th February, 2014, after almost 5 years of the earlier case. The learned Judge of this Court (Coram: Sadhana S. Jadhav, J.) has discussed in detail the provisions of the PMLA 2002 while enlarging the co-accused Ashok Zende on bail vide order dated 17th November, 2014. The present applicant, considering the material on record, stands on a better footing than that of the co-accused Ashok Zende. Hence, the accused is enlarged on bail on the following terms and conditions :

ORDER

(i) The applicant be released on bail on furnishing P.R Bond in the sum of Rs. 50,000/- with one or two solvent sureties in the like amount;

(ii) The applicant shall give an undertaking that the applicant shall not leave Mumbai and Thane till the conclusion of the trial in PMLA

Special Case No. 1 of 2014 without the permission of the Designated Court;

(iii) The applicant shall attend the trial Court on every date of the trial and shall give an undertaking to that effect;

(iv) The applicant shall also inform the Designated Court about change of address, change of cell phone, land line number and any other change in circumstances.

7. The Application is allowed in the aforesaid terms and is accordingly disposed of.

8. Parties to act on the authenticated copy of this order.

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REVATI MOHITE DERE, J.