sas

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL BAIL APPLICATION NO.819 OF 2016

Rejaul Nasiruddin Shaikh and Anr. ..Applicants.
V/s.
State of Maharashtra ..Respondent.

Mr.Sachin Dhakephalkar for the applicant.

Mr.Arfan Sait, APP for respondent-State.

CORAM : A.M.BADAR, J.

DATED : 22ND JULY, 2016

P.C. :-

1. Applicants / accused in Crime No.77/2015 for the offence punhishable under section 489(A), (B and (C) read with 34 of the Indian Penal Code registered Samarth Police Station, Pune by this application are praying for releasing them on bail.

2. Heard the learned counsel for the applicant. He argued that there is no iota of evidence to infer that applicants counterfeited the currency notes. The learned counsel further argued that in so far as using as genuine,

forged and counterfeited currency notes and that too knowingly, the evidence of the prosecution appears to be of shaky and independent witness by name Sunder Shetty avers that one person attempted to purchase a packet of cigarette by giving a currency note of Rs.1000/- to him. According to the learned counsel, so far as offence punishable under section 489(C) of the Indian Penal Code is concerned, the same is bailable.

4. The learned counsel place reliance on citation reported in the case of [1]**Rameshwar Ayodhya Saw V/s. State of Maharashtra** wherein this Court was pleased to release the applicant on bail as there was no material on record to indicate that the applicant had used the notes which was found with him. It is also argued that the place of residence of the applicant in other State cannot be a ground for rejecting the bail application. For this purpose, he relied on the citation of the Hon'ble Supreme Court in the case of [2] **Sanjay @ Bablu @ Keja V/s. State of Gujarat**.

5. The learned APP opposed the application by

1 **2009(3) Bom C.R.(Cri) 662**
2 **2001 AIR (SCW) 5188**

contending that the offence is serious affecting the economy of the country. He relied on the judgment of this Court reported in [3]**Kiran Kumar K.Khanda V/s. State of Maharashtra.**

6. Perused the charge-sheet. Both applicants came to be apprehended by a team of police officials on the basis of secret information received by the Crime Branch of anti dacoity squad of Pune. F.I.R. came to be lodged by Santosh Raghunath Pagar, Police Head Constable. The F.I.R. as well as consistent statements of police personnel of the team deputed for the purpose of apprehending accused persons shows that along with the panch witnesses they had been to Santkabir Square Pune. It is also seen that thereafter at hotel Ashoka, presence of two persons were noted by them. The description of those two persons was matching with the information received by the police team. After witnessing the presence of police, the F.I.R. as well as statements of witnesses shows that, both applicants attempted to flee from the spot. The police team was successful in nabbing them from the spot itself. The charge-sheet shows that on the person of applicant Ramzan Bariq Shaikh, 54 counterfeit

3 **2011 CRI L.J. 2748**

currency notes of Rs.1000/- denomination were found and from the possession of Rejaul Shaikh, 26 counterfeit currency notes of Rs.1,000/- denomination were found.

7. The question will be whether applicants were using those currency notes as genuine despite having knowledge about the notes being counterfeit. During the investigation, the Investigating Officer has recorded statement of Sunder Shetty. He runs 'Ashok Paan Shop' near Ashok Permit Room. His statement reveals that two persons had been to his Paan shop and one of them asked for a packet of cigarette by handing over currency note of Rs.1,000/- denomination on 4th June, 2016 just prior to the visit by the police team on the spot. This witness refused to oblige as he was not in a position to refund the rest of the amount. After leaving the Paan shop, immediately thereafter applicants came to be arrested. This evidence collected by the Investigating Officer prima facie goes to show that applicants were attempting to use as genuine the counterfeit currency note. The attending circumstances are also relevant. In all 80 currency notes of Rs.1,000/- denomination which were ultimately found to be counterfeit were in possession of both applicants. How this

counterfeit notes came in their possession will have to be explained by applicants as it is a matter which is especially within their knowledge. Section 106 of the Evidence Act in such situation plays a vital role. Attempts to use those counterfeit currency notes is also reflected from the charge-sheet.

8. The learned APP rightly relied on the judgment of this Court in the case of Kiran Kumar K.Khanda (supra) wherein in para 11, the Division Bench of this Court has observed thus:-

> "11. The Single Bench in the referral order has rightly noted down *that accused No.1 is the resident of Kandivali, accused No.2 is the resident of Khar (East) and accused No.3 is the resident of Malad. The counterfeit notes were not found at the place of their residence or at the place of their work. We agree with the observations made in the referral order. Prima facie, there may not be a case punishable under Section 489-A of I.P.C. in the instant case, but at the same time the offence of trafficking in forged or counterfeit currency notes is an offence which poses a challenge to the economy of the country. These offences, therefore, cannot be viewed lightly. The Courts must be sensitive in dealing with such*

offences and not to delete them without providing an opportunity to the prosecution to prove by leading evidence at the trial. The rapid changing technology in the process of counterfeiting, sale or trafficking transactions, which virtually amount to waging a financial war against the country cannot be lost sight of while interpreting such penal provisions. In a given case the prosecution may be able to prove that in the process of trafficking of counterfeit notes, the handlers of the accused operate from somewhere else and the accused are mere transporters of these notes. In such a situation, it cannot be said that the accused were merely in possession of the counterfeit currency notes. The modus operandi of such crimes has different faces and some of them are veiled. It would be, therefore, imperative that the prosecution is allowed to lead evidence during the trial to lift such veil rather than truncketing it by the interpretatative mechanism before the trial commences. It will be only during the trial that the prosecution would be able to prove whether the possession of the notes was for trafficking."

9. In this view of the matter, I am unable to accept the contentions of the learned counsel for the applicant that at the most it may be said that applicants were just having counterfeit currency notes in their possession. No case for bail is made out. The application is, therefore, rejected.

(A.M.BADAR, J.)