Vidya Amin

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO. 1354 OF 2015
WITH
BAIL APPLICATION NO. 1355 OF 2015

Mohammed Najir Ahmed Ali Khan @ Nanabhai ... Applicant
Vs.
The State of Maharashtra ... Respondent

Mr. V.V. Purwant, Advocate for the applicant.
Mrs. S.S. Kaushik, APP for the State.
Mr. Pravin Salunkhe, A.P.I., Mira Road Police Station present.

CORAM: **MRS.MRIDULA BHATKAR, J.**
DATE: **20th April, 2016.**

P.C.:

Both these Applications are moved for bail, as the applicant/accused is prosecuted for cheating and misappropriation punishable under sections 420, 406 r/w. 34 of the Indian Penal Code and section 3 of MPID Act. The nature of the offence is same and therefore, both the Bail Applications are decided together by a common order.

2. In Bail Application No. 1355 of 2015, the offence is registered at the instance of Mohd. Iqbal Mulla in C.R. No. I-399 of 2013 with Mira Road Police Station. It is the case of the complainant that Dr. Ismail Khan, who is Managing Director of GWD (Ghodwadi), Ajmera Farms Pvt. Ltd. gave advertisement in Urdu newspaper that by purchasing one share of the company for Rs.30,000/-, a person can earn Rs.1,000/- every week for a period of one year. Believing on this advertisement, the complainant

Mohd. Iqbal Mulla purchased one share on 25th June, 2012 and received Rs.1000/- per week till October, 2012. So his other 9 relatives and friends purchased many shares totalling Rs.67 lakhs. However, they realized that after 23rd October, 2012, payment of Rs.1,000/- per week was stopped from the company. On enquiry, he found that the company was closed and Ismail Khan was absconding and through this company, total 1076 shares were sold and Ismail Khan has collected an amount of Rs.5,41,80,000/-. The applicant/accused is brother of Dr. Ismail Khan and therefore he helped the principal accused in collecting the amount and in working for the company.

3. In Bail Application No. 1354 of 2015 one Mohd. Shaikh Abdul Rafiq Shaikh gave information to the police on 14th October, 2012 which is registered at C.R. No. I-343 of 2012 with Mira Road Police Station. It is the case of the complainant that he read one advertisement that the company is selling magical pen which could read Quran, pursuant to which the complainant contacted the Manager of the GWD Soft Pvt. Ltd., i.e., Dr. Ismail Khan and believing on him, the complainant invested Rs.30,000/-, as Dr. Ismail Khan promised the complainant that Rs.1000/- per week would be given to him for 48 weeks and the capital amount of Rs.30,000/- would be returned and winner of lucky draw would be sent to Haj Pilgrimage. The complainant's friends also invested the amount. For some

period, money was given but in October, 2014 they realized that Ismail Khan had closed down his office and is absconding. The applicant/accused was helping the principal accused in this transaction. The applicant/accused was arrested on 9th March, 2014. Hence this Bail Application.

4. The learned counsel for the applicant/accused has submitted that there is no evidence against the applicant/accused of cheating. The principal accused Ismail Khan was active in committing an offence of cheating. In the statements, the witnesses have mentioned that applicant/accused was helping the principal accused in the administration of the company. The applicant/accused did not receive any money out of that. He did not withdraw any amount. The applicant/accused is innocent.

5. Learned APP submitted that the applicant/accused is a brother of the principal accused Ismail Khan, who is arrested and behind the bars. The applicant/accused has helped him and in the statement of the witnesses, the name of the applicant/accused is taken. The learned APP submitted that applicant/accused has no permanent residence and he keeps on changing his house. She apprehends that the applicant/accused is likely to jump the bail.

6. Perused the FIR, statements pointed out by the learned counsel for the applicant/accused and learned APP. Learned APP, on instructions from Investigating officer, submitted that entire amount of approximately Rs. 7 lakhs was deposited in the account of the companies and the amounts were withdrawn from time to time by the principal accused Ismail Khan, who is behind the bars. Thus, the case of the applicant/accused differs from the case of principal accused. Considering this and as the applicant/accused is in prison since last 2 years, I am inclined to grant bail to the applicant/accused in both the Bail Applications on the following terms and conditions:

O R D E R

(i) Applications are allowed.

(ii) The applicant/accused be enlarged on bail on furnishing P.R. Bond in a sum of Rs.1,00,000/- with one or two solvent sureties in the like amount, out of which one should be a local surety;

(iii) The applicant shall not tamper with the evidence.

(iv) The applicant shall not indulge into any criminal activity, while on bail;

(v) The applicant shall not abscond and furnish the telephone number and temporary/permanent address to the police.

(vi) The applicant is directed to give details of his relatives.

(vii) The applicant shall make himself available and attend all Court dates;

(viii) The applicant shall not jump the bail.

(ix) The applicant shall not leave India without the prior permission of the Court.

(x) The applicant shall deposit his passport, if he has.

(xi) In the event of breach of any of the above conditions, the prosecution will be at liberty to move the Court for cancellation of bail.

7. The Application stands disposed of on above terms.

(MRIDULA BHATKAR, J.)