IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO.1853 OF 2015

Shri. Yogesh Goyal @
Yogesh Sudesh Chaudhary. ....Applicant.
Vs.
The State of Maharashtra. ....Respondent.

Mr.Mahesh Wasvani i/by D. N.Nagda for the Applicant.
Mrs. A.T. Javeri, APP. for the Respondent State.
Mr.M.S.Mohite, for the Original Complainant.

CORAM : A.S.GADKARI, J.
DATE : 12TH FEBRUARY, 2016.

PC:

By this application preferred under Section 439 of the Code of Criminal Procedure, the applicant is seeking bail in CR No.98/2014 registered with the Economic Offences Wing, CB, CID, Mumbai, originally registered with Bandra Police Station bearing CR No.627/2014 under Section 406,420, 465,467,468,471 and 120B of the Indian Penal Code and culminated into Criminal Case No.547/PW/2015 pending on the file of Metropolitan Magistrate, 47th Court Esplanade, Mumbai.

2) The complainant Mr. Shehzad V. Merchant,

authorized representative of M/s. Sabari Exim Pvt. Ltd. has lodged the first information report dated 1.12.2014 originally with Bandra Police Station and subsequently investigated by EOW as stated herein above. It is stated in the said report that the complainant company namely M/s. Sabari Exim Pvt. Ltd. is a private limited company incorporated under the Companies Act, 1956 and having its registered office at Chennani. That, the company is engaged in the business of iron and still imports from all over the world and trading it all over India. For the purpose of business of the said company it often requires to open Letters of Credit with bankers. That, the said process of opening of Letters of Credit is very cumbersome, tedious, time consuming as well as required large amounts of funds that need to be locked in for a certain period. That, in or around March, 2013 Mr. Shashi Kumar, Director of M/s. Sabari Exim Pvt. Ltd. came across with one advertisement in Economic Times published by M/s. Abner Impex offering Letter of Credit. It was published by Mr. Yogesh Goyal (Applicant) of M/s. Abner Impex. In pursuance of the said advertisement, the company of the complainant contacted the applicant by email and also on his mobile phone and made enquiries about the said Letter of Credit. Thereafter, the applicant approached Mr. Shashi Kumar and represented that he is in the business of arranging Letters of Credit and he is in a position to provide Letters of Credit and of foreign banks in an easy, efficient and quick manner. Thereafter, several meetings took place between the complainant and the applicant. During those meetings, the applicant represented the complainant that he was the Proprietor of various firms and more particularly, M/s. Abner Impex, M/s. Kiran Jewellers, M/s. Brown Trading Co., M/s. Ashok Metal Corporation, M/s. Dimpi Exports. That, he had arranged multiple Letters of Credit in the past for several clients. That, the applicant for inducement, showed various Letters of Credit documents which were purportedly arranged by him for his various clients. The applicant also represented the complainant that if the complainant company avail the services of M/s. Abner Impex and others, the process for obtaining Letters of Credit would be without any hindrance and trouble which otherwise the complainant used to face on regular basis. The applicant also represented to the complainant that the complainant will have to pay only 15% of the amount of the Letter of Credit as margin money and further to pay 1% of the amount of the Letter of Credit to him per month for the period of Letter of Credit as his commission. That, due to the representation and assurances made by the applicant during the said meetings the company decided to avail the services of M/s. Abner Impex and other companies of the applicant. The complainant has further stated that during the period of 16.5.2013 to 21.6.2013 the complainant's company transferred Rs.3.08 crores from their account maintained with State Bank of India and Overseas Branch, Chennai to one M/s. Kiran Jewellers, 2) M/s. Brown Trading Company, 3) Ashok Metal Corporation, 4) Dimpi Exports on the directions of the applicant being the 15% margin money required for opening of the Letter of Credit. During the said period the complainant's company at the instance of the applicant also transferred funds to his company namely M/s. Abner Impex to the tune of Rs.3.44 crores for another Letter of Credit. The applicant thereafter neglected to arrange the Letter of Credit on some or other pretext. The complainant has categorically stated that the applicant had received an amount of Rs.6.52 crores. That, after lot of persuasion by the complainant, the applicant returned an amount of Rs.2.10 crores from the account of M/s. Abner Impex and for the remaining amount of Rs.4.42 crores he issued cheques from his account of M/s. Abner Impex and Yes Bank to the tune of Rs.3.08 crores and Rs.2.00 crores as security inclusive of interest. However, the said cheques were dishonored on presentation for the reason “insufficient funds”.The complainant thereafter, tried to contact the applicant however, the applicant was not reachable and untraceable. The emails sent to the applicant were unanswered. It appeared to the complainant that the applicant was absconding and he did not have intention to issue Letters of Credit or repay their dues. The complainant has categorically stated that after making payments to the applicant he failed to comply with the assurances for opening Letters of Credit and on repeated persuasion returned his company Rs.2.10 crores only and intentionally caused wrongful loss to the complainant's company and wrongful gain to the applicant himself and in conspiracy with other accused persons had deceived and cheated the complainant to the tune of Rs.4.42 crores. In the premise, the first information report was lodged by the complainant.

3) Heard the learned counsel for the applicant at length, learned APP and the learned counsel appearing for the original complainant and with their able assistance I have also perused the record annexed to the present application.

4) The leaned counsel for the applicant submitted that in the present case Section 467 of the IPC is not attracted as there is no forgery of any valuable security made by the applicant. He further submitted that the applicant accepted the money under two grounds, one towards margin money and the second for his commission which the complainant company was liable to pay him for the work done by him. He further submitted that the applicant has refunded an amount of Rs.2.10 crores from the account of his firm M/s. Abner Impex an therefore, it shows that there was no intention to cheat the complainant and/or his company. He further submitted that every breach of contract would not give rise to an offence of cheating and only in those cases breach of contract would amount to cheating where there was any deception played at the very inception. It is submitted that if the intention to cheat has developed later on, the same cannot amount to cheating. He submitted that the real test is

whether the allegations in the complaint disclose the criminal offence of cheating or not. In support of his contention he relied on three decisions of the Supreme Court reported in (I) (2015) 8 SC 293 in the case of Vesa Holdings P. Ltd. and ors. Vs. State of Kerala and ors., (ii) (2005) 7 SCC 69 in the case of Vijaya Rao vs. State of Rajasthan and another. and (iii) (2009) 14 SCC 696 in the case of Dalip Kaur and ors. Vs. Jagnar Singh and anr. Lastly he submitted that as the applicant has shown his bonafide by refunding the amount of Rs.2.10 crores it can be presumed that there was no intention on the part of the applicant for committing offence of cheating in the present case. He therefore, prayed that the applicant may be released on bail on any suitable conditions.

5) The learned APP. on the other hand pointed out that the Letters addressed by the complainant company to the firms of the applicant have been forged, to say the signatures of the confirming parties have been forged by the applicant and the co-accused. The said letters are at Pages 160 to 163 of the present compilation. The learned APP. further submitted that the statements of the witnesses recorded by the Investigating Agency also discloses that the applicant since

inception was having intention to cheat the complainant. She further submitted that there are four other cases already lodged against the applicant in different parts of India and according to the Investigating Agency the applicant is a habitual offender. She submitted that present crime is registered on 1.12.2014 and since then the applicant was absconding and was not traceable. That, the applicant was arrested on 24.4.2015 from Hotel Leela,Chandigarh. She contended that if the applicant is released on bail, he may tamper with the evidence, may abscond and will not be available for trial.

6) The record pertaining to the present crime discloses that the applicant initially published an advertisement in the newspapers with a view to attract the probable victims. That, thereafter represented the complainant company that he will be able to get Letter of Credit required by the complainant's company after payment of certain amount. He thereafter lured the complainant company and made the complainant to make huge payment in favour of the firms of the applicant himself. That, the applicant did not provide Letters of Credit as assured by him

to the complainant's company and only with a view to gain the confidence, refunded an amount of Rs.2.10 crores to the complainant after a lot of persuasion. The record further discloses that the applicant did not return the amount of Rs.4.42 crores which was accepted by him for opening Letters of Credit as assured by him to the complainant. It is a fact on record that the cheques issued by the applicant drawn on Yes Bank from his account of M/s. Abner Impex have been dishonored for want of funds. It appears that the applicant in a most systematic and well planned manner has committed the offence of cheating with the complainant. As the applicant was having the intention to cheat the complainant since inception as it is apparent from the facts of the present case, the decisions afore-stated relied upon by the learned counsel for the applicant are of no help to him.

As far as forgery of documents is concerned, it appears that there is substance in the contention of the prosecution that certain documents which were provided by the applicant to the complainant company are forged. It is therefore, prima facie clear that the applicant is the preparator of the crime.

7) It is to be noted here that the applicant is also involved in three other crimes namely CR No.65/2011 registered with Amroha Police Station, District Fhatepursahib, Punjab, CR NO.225/2014 registered with Shakespeare Sarani Police Station, Kolkatta. and in CR No.278/2014 registered with Maheshwaram Police Station Cyberabad, Telangana for same and similar offences. It further appears from the record that when the applicant was on bail in the aforesaid three crimes, it is alleged that the applicant has committed the present crime. The record further discloses that since the date of registration of the present crime i.e. CR No.627/2014 with Bandra Police Station the applicant was absconding for more than 4-months and was arrested on 24.4.29015 from Hotel Leela,Chandigarh by the police. It is thus clear that the applicant is a habitual offender and if released on bail, will abscond and will not be available for trial.

8) In view of the above and after taking into consideration the evidence available on record, I am of the opinion that this is not a fit case to release the applicant on bail. Application is accordingly, dismissed.

(A.S.GADKARI, J.)