

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL BAIL APPLICATION NO. 1961 OF 2016
WITH
CRIMINAL BAIL APPLICATION NO. 215 OF 2017

Bakhtiyar Aalam Najmul Hoda ...	Applicant
Vs.	
The State of Maharashtra ...	Respondent

Mr. Omkar Nagwekar, Court appointed Advocate for the applicant. (in BA No.1961/2016).

Mr. S.G.Rajput, Advocate for the applicant in BA No.215 of 2017.

Mr.Arfan Sait,APP, for the State.

Mr. Sawant, PI, Crime & Mr. P.B.Sawant, API, ATS Police Station present.

CORAM: SMT.SADHANA S.JADHAV, J.

DATE : 6th March, 2017.

P.C.

Heard. Criminal Bail Application NO.1961 of 2016 was received through jail seeking enlargement on bail in Crime No.6 of 2014 registered at the instance of ATS Police Station, Nagpada Unit, Mumbai, for the offences punishable under Sections 489(B), 489(C) read with Section 34 of the Indian Penal Code and under Sections 15(1)(a)(iiia) read with Sections 16 and 18 of the Unlawful Activities (Prevention) Act, 1967.

2. This Court had requested learned Advocate Mr. Nagwekar to espouse the cause of the applicant. he had graciously accepted to do so. He has put in his best efforts to espouse the cause of the applicant. However,

in the interregnum, the applicant has filed an application seeking enlargement on bail through Advocate Shri S.G.Rajput and the same is being heard.

3. It is the case of the prosecution that the ATS Nagpada Unit had received a secret information to the effect that a person named Mohammed Suber Musa Malik Shaikh and his associates were in possession of counterfeit notes and they were in the process of circulating the same in Mumbai. It was also informed that on 12.4.2014 the said gang was to circulate the notes near Shree Ramdev Hotel Opp. National Park, Western Express Highway, Borivai (East). On the same day, in the afternoon, they had apprehended three persons. The said persons were identified by the secret informer. All the three persons were taken into custody. They had disclosed their notes. The applicant was one of them and he was found in possession of Rs.45,000/- currency notes. The investigation is completed and charge-sheet is filed.

4. The learned counsel for the applicant vehemently submits that the applicant was only found in possession of counterfeit notes and that there is no material on record to indicate that he was to circulate the said notes or that he was the manufacturer of the said notes. The report of

Reserve Bank of India would clearly indicate that the sample notes are not genuine Indian Bank notes and they are 'high quality counterfeit notes.' According to the learned counsel for the applicant, the offence punishable under Sections 489(C) of the IPC is a bailable offence and therefore, according to the learned counsel, the applicant deserves to be enlarged on bail.

5. At this stage, the learned APP has drawn attention of this Court to a Judgment of the Hon'ble Division Bench delivered in the case of **Kiran Kumar K. Khanda vs. State of Maharashtra 2011 Cri. L.J.2748**, wherein the Hon'ble Division Bench (Coram: .H.Marlapalle, J. & U.D.Salvi,J.) was called upon to decide the issue as to whether an accused found in possession of counterfeit notes would be entitled to be enlarged on bail as Section 489(C) is a bailable offence . The Hon'ble Division Bench has observed that there was no explanation by the accused for being in possession of the counterfeit notes and that mens rea would play a pivotal role. The Hon'ble Division Bench has also considered that the intention of the accused as to whether he desires to circulate the same can be proved by a collateral circumstance that he had palmed off such notes before, or that he was in possession of such notes in such large number, that his possession for any other purpose was inexplicable. In any case, the Court cannot be

oblivious of the fact that mens rea and intention are the ingredients which can be inferred on the basis of circumstantial and substantive evidence which can be adduced at the time of trial. The culpability of the accused is writ large on the basis of record. The applicant has criminal antecedents. He is in close association with the people who are involved in trafficking and circulating counterfeit notes. Hence, the applicant does not deserve to be enlarged on bail. The application is rejected.

6. The learned Court appointed Advocate Shri Nagwekar stands discharged. His professional fees are quantified at Rs.1,000/- (Rupees one thousand only), to be paid to him within three months from today.

7. Office is directed to send a copy of this order to the applicant in Mumbai Central Prison, Mumbai.

(SMT. SADHANA S.JADHAV, J.)