IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL BAIL APPLICATION NO. 392 OF 2017

Narendra Chotalal Patel ...Applicant
Versus
The State of Maharashtra & Anr. ...Respondents

Mr. A.H.H. Ponda i/b Mr. Milan A. Hebballi for the Applicant

Mr. M. G. Patil, A.P.P for the Respondent No.1-State

Ms. Rebecca Gonsalvez, Spl. P.P. for the Respondent No.2-CBI

CORAM : REVATI MOHITE DERE, J.
THURSDAY, 7th SEPTEMBER, 2017

P.C. :

1. Heard learned Counsel for the parties.

2. By this application, the applicant seeks his enlargement on bail in connection with R.C. No. 13/E/99/Mumbai registered by the respondent No.2-CBI, EOW, Mumbai, for the alleged offences punishable under Sections 120B r/w 420, 465, 467, 468 and 471 of the Indian Penal Code; and under Sections 13(1)(c) and 13(1)(d) of the Prevention of Corruption Act.

3. Learned Counsel for the applicant, at the outset, does not dispute the fact, that the applicant was absconding from 2001 till he was arrested in September, 2016. He, however, submits that the applicant is in custody since September, 2016 and the prospect of the trial commencing in the immediate near future and concluding expeditiously, is bleak, considering that there is no progress in the trial, since January, 2017. He relied on Sections 4(4) and Section 22(b) of the Prevention of Corruption Act and Section 309 Cr. P. C. in support of his submission, that the applicant is entitled to a speedy trial. He also relied on the judgment of the Apex Court in the case of ***Sanjay Chandra v. Central Bureau of Investigation***[1]**.** He further submits that the applicant's passport expired on 30th May, 2017 and therefore, the question of applicant leaving the Country, also does not arise. He submits that the applicant is ready to abide by any of the conditions that may be imposed by this Court. Learned Counsel relied on the Roznama of the proceedings to show that after 25th January, 2017 i.e. after the date of framing of charge, there has been no progress in the trial. He submits that infact, on 13 consecutive dates, the applicant was not produced before the Special Judge and that since 20th July, 2017, the

1 (2012) 1 SCC 40

Court is vacant. He further submits that even otherwise, the maximum sentence awarded to the co-accused, who were convicted, was three years.

4. Ms. Gonsalvez, learned Counsel for the respondent No. 2-C.B.I, opposed the bail application. She submitted that the applicant was enlarged on bail in 2001 and that, since 2001, till 2016, the applicant was absconding. She submitted that a non-bailable warrant was issued as against the applicant; and later the applicant was declared as a proclaimed offender and was arrested in Gujarat, only in September, 2016. Learned Counsel for the respondent No. 2 does not dispute the fact that the Court is vacant. However, she requests that the Principal Judge of the Sessions Court, Greater Mumbai, be directed to transfer the applicant's case to some other Court, who can expeditiously decide the said case. She further submits that the C.B.I will not examine more than 25 witnesses. According to her, the applicant is the main accused, who has forged the documents and has caused wrongful loss to the State Bank of India, to the tune of Rs. 1.60 crores. Learned Counsel for the C.B.I has filed a reply affidavit of Shri A. V. Pawar, Inspector of Police, Central Bureau of Investigation, Economic Offences Wing, Mumbai.

5. Perused the papers. A complaint was lodged as against the present applicant, Homi Patrawala, Narendra Chotalal Patel, Vrushali Namjoshi, Umakant G. Shirodkar and other unknown persons, by Shri K. P. Rau, Dy. General Manager (Vigilance), State Bank of India, Mumbai, alleging offences punishable under Sections 120-B r/w 420, 467, 468 and 471 of the Indian Penal Code and under Sections 13(2) r/w 13(1)(c) and 13(1)(d) of the Prevention of Corruption Act, for causing wrongful loss of Rs. 1.60 crores to the State Bank of India.

6. After completion of investigation, charge-sheet was filed in the said case on 31st January, 2001. In the said charge-sheet, it is alleged that all the accused, including the applicant conspired during the period July, 1996 to April, 1997 and cheated and caused wrongful loss to the State Bank of India. It is alleged that the applicant forged the signature of Shri Hussainali Sultanali Nensey and Mrs. Nissa H. Nensey on a bank document i.e. STDR, cheques and loan documents, etc. and dishonestly presented the same to the bank and illegally withdrew funds from their account. According to the prosecution, the bank employees, abusing the official

position, dishonestly processed the said documents produced by the applicant and co-accused and allowed the funds to be withdrawn.

7. The applicant was enlarged on bail on 2nd April, 2001 on PR Bond of Rs. 75,000/- with a surety in the like amount. While enlarging the applicant on bail, the learned Sessions Judge directed the applicant not to leave the limits of India, without taking prior permission of the Court and the applicant was to furnish change of address, if any, in future. It is not in dispute, that the applicant left the Country in October, 2001 in breach of the condition imposed by the trial Court vide order dated 2nd April, 2001. Pursuant thereto, the trial of the applicant was separated from that of the other co-accused. The trial proceeded against the other co-accused and co-accused were convicted of the offences with which, they were charged.

8. It is not in dispute that the applicant was arrested in Gujarat on 15th September, 2016 and is in custody since then. It appears from the records, that the learned Special Judge was constrained to issue a non-bailable warrant on 16th September, 2002, however, the same could not be executed on the address given by the applicant. On 12th March, 2003,

notice was issued to the surety, however, the surety informed the Court that she was not aware about the whereabouts of the applicant, pursuant to which, the surety bond was forfeited. A proclamation was issued and the applicant was arrested, when he visited India in September, 2016. It appears that the applicant holds a Green Card of U.S.A. It appears that the passport of the applicant has expired on 30th May, 2017.

9. Be that as it may, considering the conduct of the applicant, that he was absconding for almost 15 years, the possibility of him absconding again, cannot be ruled out. It appears that charge was framed in the said case in January, 2017 and the Roznama shows that the applicant was not produced for almost 13 dates, before the trial Court. It also appears that since July, 2017, the Court is vacant.

10. In the facts, considering the conduct of the applicant and the possibility of the applicant again absconding, cannot be ruled out. Hence, the application is rejected. However, since, the applicant is in custody for almost 1 year, the trial of the applicant is expedited.

11. Since the Court is vacant, it would be appropriate to direct the Principal Judge, City Civil & Sessions Court, Greater Mumbai, to assign the Special Case CBI No. 12 of 2001 to any other Special Court, competent to take up the said case, as expeditiously as possible, and in any event, within one week from the date of receipt of this order.

12. The learned Judge, to whom the case will be assigned, shall conclude the case as expeditiously as possible and preferably within nine months from the date of assignment of this case by the learned Principal Judge.

13. The Deputy Commissioner of Police (Arms), Tardeo, to ensure that the applicant is produced before the learned Judge, on every date, so that, the trial can be concluded within the stipulated period.

14. It is made clear that if, for not fault of the applicant, the trial does not conclude within nine months from the date, the matter is assigned to a new Court, the applicant would be at liberty to file an application for bail, afresh, which will be considered on its own merits.

15. Registry to communicate the above order to the learned Principal Judge, City Civil & Sessions Court, Greater Mumbai, for information and necessary action. Ms. Gonsalvez shall also produce copy of this order before the learned Principal Judge. Learned A.P.P to communicate the order to the Deputy Commissioner of Police (Arms), Tardeo, who shall take steps and ensure, that the applicant is produced before the concerned Judge, on every date, given by the trial Court.

16. All concerned to act on the authenticated copy of this order.

REVATI MOHITE DERE, J.