IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL BAIL APPLICATION NO. 476 OF 2017

Nasser Abdul Salam Ghori & anr. …Applicants

Versus

The State of Maharashtra …Respondent

WITH

CRIMINAL BAIL APPLICATION NO. 418 OF 2017

Dharmesh Bhupendra Soni …Applicant

Versus

The State of Maharashtra …Respondent

WITH

CRIMINAL BAIL APPLICATION NO. 745 OF 2017

Akhilesh Ajay Singh …Applicant

Versus

The State of Maharashtra …Respondent

WITH

CRIMINAL BAIL APPLICATION NO. 819 OF 2017

Jagdish Ramniklal Kanani …Applicant

Versus

The State of Maharashtra …Respondent

Mr. H. H. Ponda a/w. Mr. Gaurav Parkar for applicant no.2 in BA/476/17.
Mr. V. S. Jabra for the applicant in BA/418/17.
Mr. Sudeep Pasbola a/w Mr. Bhavesh Thakur i/b. Mr. Rahul Arote for the applicant in BA/745/17.
Mr. Amit Desai, Senior advocate a/w. Gautam Tiwari for the applicant in BA/819/17.
Mr. Arfan Sait, APP for the respondent – State in BA/476/17 a/w.

BA/418/17.
Mr. A. R. Kapadnis, APP for the respondent – State in BA/745/17.
Smt. Veera Shinde, APP for the respondent – State in BA/819/17.

CORAM : PRAKASH D. NAIK, J.

DATE : 4th AUGUST, 2017.

P.C. :

1. The applicants in the aforesaid applications have preferred these applications for bail under section 439 of Criminal Procedure Code. The applicants are implicated as accused in C.R. No.I-596/2016 registered with Kashimira Police Station, Thane rural. The offences were registered under sections 419, 420, 384, 468, 471, 201 read with 120B of IPC and section 20, 21 of Indian Telegraph Act as well as section 66(b)(d), 71 and 72 of Information and Technology Act.

2. The applicants preferred application for bail before the Sessions Court which were rejected. The applicants have therefore approached this Court seeking bail. The investigation is completed and the chargesheet has been filed.

3. The brief facts of the prosecution case are as follows;

a) The FIR was lodged by Shri R. P. Bayes working as Police

Inspector attached to Crime Branch Unit-I Thane on 5^{th} October, 2016. It is alleged that the information was received by the police that within the jurisdiction of Commissioner of Police Thane and in Thane rural, there are several illegal Call centers in operation. The persons working in Call Centers by impersonating themselves as officers of American Revenue Department used to call American citizens and threatened them that they are involved in evasion of taxes or they are tax defaulters.

b) The callers from the Call centers used to inform the victims that the charges were ready against them and revenue and local police will arrest them and they will be subjected to the imprisonment. It was also informed that their driving licenses would be cancelled and their property would be confiscated by adopting different coercive methods. The callers used to induce them to make settlement with IRS department. The voice message was left on their message boxes and in reply to the message the victim used to call back and at that time the Call Centers would create fear of tax default amongst them.

c) On account of fear, the American citizens used to agree for settlement. The victims were directed to make the payments in dollar via purchase of gift card from the departmental store. Thereafter, the victims were supposed to inform 16 digits gift card number to the caller and used to feel relief of tax burden.

d) The persons running the bogus Call centers used to receive confidential details about the American citizens from their contacts in foreign countries. Upon receipt of information, the police formed six teams and simultaneously conducted raid on the Call Centers alongwith panchas. The police carried out raids on Hari Om IT Park at Mira Road as well as several other Call Centers. The police accosted accused. During the raid several articles were seized from the spot, such as server with monitors, lap tops, computer hard disk and DVR. The foreigners were threatened by the accused by using VOIP (voice Over Internet Protocol) impersonating themselves as officers of Internal Revenue Services. The present FIR was registered in relation to raid carried out at Hari Om IT Park building at Thane. The FIR was registered on 5th October, 2016.

7. Bail Application No.476 of 2017 is preferred by applicants / accused Nasser Abdul Salam Ghori (accused no.5) and Wasim Salim

Qureshi (accused no.6.), Bail Application No.418 of 2017 is preferred by the applicant/accused Dharmesh Bhupendra Soni, Bail Application No.745 of 2017 is preferred by applicant / accused Akhilesh Ajay Singh where as Bail Application No.819 of 2017 was preferred by applicant / accused Jagdish Ramniklal Kanani.

8. The applicants were represented by different advocates.

9. Mr. H. H. Ponda, learned counsel appearing for the applicants in Bail Application No. 476 of 2017 submitted that there is no necessity of detaining the applicants in custody till the trial is over. The investigation is completed and the chargesheet has been filed. The applicants are in custody from date of arrest and no purpose would served by continuing their custody. It is submitted that the applicants were allegedly acting at the behest of the principal accused. Master mind behind the commission of crime is somebody else and not the applicants. It is submitted that the applicants were working as the manager / director with I-SERVER BPO owned by one Mohd. Ali Moorzaki. Out of 50 accused 33 were granted bail by lower Court. The investigation is completed and the police have filed a chargesheet on 2nd December, 2016 which is voluminous and

consisting about 6000 pages. It is submitted that considering the number of witnesses and the voluminous documents, the trial will not be completed within a short span of time. It is submitted that the offence under the IT Act is bailable in nature and for other offences the maximum sentence which can be imposed by the trial court is up to imprisonment for seven years. It is submitted that the leave & license agreement was executed on 5th August, 2016 between one Shri Umesh Kothari and Shri Mohd. Ali Moorzuki who is one of the director of I-SERVER BPO Private Limited. As per the said agreement, the licensee was permitted to use the premises running its BPO on 3rd floor of the building namely Hari Om IT Park at Mira Road, Thane. It is submitted that similar agreements were also executed with other premises at the instance of the Principal accused. The applicants are not the persons who devised the plan to dupe the foreigners. The applicants were arrested on 5th October, 2016 and since then they are in custody. Learned counsel also pointed out the statement of one Bhavesh wherein it is alleged that applicant no.1 was parted with sum of Rs.35 lakhs. It is the prosecution case that applicant no.2 had received an amount of Rs.13 lakhs. It is submitted that apart from the above circumstances, there is no other evidence to connect the applicants in the said crime. It is submitted that the guidelines laid down by the Supreme Court in the case of ***Arnesh Kumar vs. State of Bihar (2014) 8 SCC 273*** were not followed. It is submitted that the applicants are in custody for a long period of time and the investigation is also completed further detention is not necessary. The offences were triable by the Magistrate. In support of his submissions reliance was placed on the following decisions;

a) Sandeep Jain NCT 2000 Cr. L.J. 807
b) Chandraswami and anr. Vs. CBI 1997 CCR 29 SC
c) Gurucharan Singh v. Delhi Administration 1978 Cri L.J. 129
d) Khemlo Sawant vs. State 2002 (1) Bom. Cr.689
e) Sanjay Chandra v. CBI 2012 (1) SCC 40

It is submitted that in the aforesaid decisions, the Supreme Court as well as this Court has observed that bail ought not to be denied to teach lessons to person whose offence is yet to be proved. The object of bail is neither punitive nor preventive. It is also observed that detention in custody pending completion of trial could be a cause of great hardship.

10. Learned counsel appearing for the applicant in Bail Application No.418 of 2017 submitted that he is adopting the arguments advanced by the learned counsel for the applicants in the aforesaid application. The applicant in this application was also arrested in

connection with the aforesaid FIR. The application for bail preferred by the applicant was also rejected by the Sessions Court. The applicant was arrested on 5th October 2016. The investigation is completed and the chargesheet has been filed against the said applicant.

11. Learned APP Shri Sait opposed the application for bail preferred by the aforesaid applicants. It is submitted that there is strong evidence against the applicants about the commission of the offence. It is submitted that the applicants had indulged into serious crime and had deceived the American citizens. The applicants had knowledge of acts committed by them and they cannot feign ignorance by stating that they had no knowledge about the intention of the principal accused. During the course of investigation, enormous evidence is collected against the applicants showing their involvement in the crime. It is submitted that all the accused have acted in connivance with each other and they were part of the conspiracy to extort money from the American citizens. It is submitted that investigating authority has established link between accused which shows that they were acting in furtherance of common intention. It is submitted that applicant Nasser Ghori, Wassim

Qureshi, Dharmesh Bhupendra Soni had played active role in commission of crime. It is submitted that no license was issued for conducting the Call Center. He relied upon the panchanama dated 4th October, 2016 wherein it is recorded that the police and the panchas had visited the building viz. Hari Om IT Park where the illegal Call Center was being operated and at that time the applicants were present at the said premises and they were supervising the activities of the operators. The calls were made to the victims from the said Call Center. It is submitted that the applicants were party to the crime. The calls were made to the victims stating that the callers were attached to IRS and by threatening the victim they were induced to part with huge amount. The applicants have knowledge about all these activities and they cannot absolve themselves by stating that they were only supervising the activities. It is submitted that the conversation exchanged between the parties shows involvement of applicants. It is submitted that the applicant Dharmesh Soni had conversation with the other persons which reflects his involvement in the crime. He relied upon the statement of Yogesh Bhai Patel recorded on 14th October 2016 wherein it is stated that the said witness is employed with Arvind Bhai Angadia and Company. He has stated that a lady name Reema had approached the office of his employer and had requested to transfer amount to Nasser Ghori and others. On the said request, the amount was remitted to the applicant no.1 Nasser Ghori on 22nd June, 2016, 29th July, 2016, 1st August, 2016, 5th August, 2016, 8th September, 2016, 13th September, 2016, 17th September, 2016 and 22nd September, 2016. Learned APP also pointed out the statement of Shri Umesh Kothari. In the said statement, it is stated that the witness is in construction business and had constructed the building viz. Hari Om IT Park. It is stated that in May, 2016, one of the agent had approached Akhilesh Singh (applicant in Bail Application No.745 of 2017) and represented that they are in need of the premises on the 7th floor on rental basis. After negotiation, the premises was let out to Akhilesh Singh who paid an amount of Rs.1 lac as a token amount and the balance was paid subsequently towards the deposit. Thereafter on 16th June, 2016, similar understanding was executed in respect of the premises on the 5th floor of Hari Om IT Park by Shri Akhilesh Singh. It is further stated that the premises on 3rd floor were also remitted by the director of I-SERVER BPO Mohd. Ali Moorzuki. Similar transactions were executed by Akhilesh Singh in respect of the premises on the 6th floor and second floor. The documents were executed in the office of the Sub Registrar on 5th August, 2016. The documents in relation to the premises situated on the 3rd floor of the said building was executed in the name of Mohd. Ali Moorzuki wherein the applicant / accused Dharmesh Soni acted as witness. He further pointed out the statement of Mohammed Sayyed recorded on 24th November, 2016 wherein it is stated that applicants Nasser Ghori, Dharmesh Soni and Wasim Qureshi were acting as Manager of the aforesaid Call Center. It is also mentioned that the accused Nasser Ghori, Dharmesh Soni and Wasim Qureshi used to collect the numbers of American citizens and messages were sent to them via voice call as well as through computer on their phones. The entire process of working has been narrated by the said witness. It is also stated that the aforesaid applicants were in contact with the main accused Sagar @ Shaggy Thakkar. It is stated that Sagar Thakkar used to remit the money from Angadia to Nasser Ghori, Dharmesh Soni and Wasim Qureshi. He further submitted that there were calls interse between all the accused persons who were in touch with each other which is established by the call records. The details of CDR were pointed out by the learned APP. It is submitted that all these accused had knowledge about the crime and they had acted in connivance with each other. The money was accepted through Hawala transactions. It is submitted that although chargesheet is filed still further investigation is going on and even foreign agencies are also investigating the crime and therefore bail should not be granted to the applicants. It is submitted that Mohd. Moorzuki who was the partner of the Call Center on the third floor was directly connected with the aforesaid applicants. It is submitted that the decisions of the Supreme Court relied upon by the advocate for the applicants were delivered in the in facts of the said cases. The applicants herein have committed serious crime whereby loss is caused to the victims. The crime committed by accused has international ramification. Hence, their bail applications should be rejected.

12. Learned counsel for the applicant in Bail Application No.745 of 2017 has submitted that he is adopting argument advanced by the counsel for the applicants in the aforesaid applications and in addition it is submitted that the applicant was arrested on 3rd November, 2016. It is submitted that the role that has been attributed to the applicant is about liasoning with the owners of the premises where the Call Centers were started. It is submitted that he is not the principal accused and he cannot be attributed the role which is assigned to the master mind of the crime. It is submitted that

statement of Sonakshi Morya was recorded on 5th November 2016. Her statement under section 164 of Cr.P.C. was also recorded subsequently. In the said statement witness has stated that there were three floors in the premises in the building where she was working and each floor has a different manager and the applicant was the manager on the second floor. It is, therefore, submitted that the applicant has been referred to as a manager and beyond that he has not been attributed any role. It is submitted that the other managers and the other staff were granted bail by the lower Court. It is submitted that he is not involved in the affairs of the Call Center nor he is beneficiary of ill gotten money. The prosecution case is that the person who is running business of Call Center was Sagar Thakkar and Tapan Gupta and they had collected money in the form of American Dollars. The applicant was allegedly at the most conducting the activities of the Call Center. The investigation is completed and the chargesheet has been filed and therefore bail may be granted to the applicant.

13. Learned APP Shri. Kapadnis opposed this application for bail. It is submitted that the evidence against the applicant is already pointed out by learned APP while opposing the aforesaid

applications. He submitted that the applicant was not acting simpliciter as a manager, he has played a vital role in the crime. He was part of the whatsapp group between the accused who used to pass on information for operating the transactions. He had executed an agreement with the owner of the premises in the bogus name. Learned APP pointed out the statement of Sudhir Shetye recorded on 27th October, 2016 wherein it is sated that the applicant had approached Shri Gautam Das with a reason that he is in need of the internet connection of Hatchway Fiber to conduct the business of Call Center on the 7th floor of IT Park. Thereafter, Shri Das visited the said Call center and there was discussion amongst them and after negotiations purchase order was placed by the applicant. The witness also referred to role of Wasim Qureshi which shows that all of them were acting in connivance with each other. He also relied upon the statement of Gautam Das which corrobotes the conversation of the aforesaid witness. He pointed out the statement of Umesh Kothari who also attributed the role to the applicant as a person who had visited the office of the said witness alongwith one agent Kiran Shah for obtaining the premises situated at 7th floor of the Hari Om IT Park on rental business. He has also relied upon the statement of Suresh Patel, Prakash Parmar, Ganesh Telli, Smt. Shahida Yadgir, Sarvar Hussain Shaikh, Soni Pariyal, Uma Shankar Modi, Vishal Maithil, Rahul Patil which attribute the overact to the applicant as a person involved in setting up the call centre. It is also submitted that the applicant had received about 200 dollars from the co-accused and hence it is prayed that the application may be rejected.

14. Learned senior advocate Shri Desai representing the applicant in Bail Application No.819 of 2017 submitted that the applicant is in custody from the date of arrest and on completing the investigation the chargesheet has been filed against him. It is submitted that the offence is punishable with maximum imprisonment upto 7 years and no purpose would be served by detaining the applicant further in custody. He submitted that law in relation to custody as laid down by the Apex Court has been pointed out by the learned counsel for the co-accused and he reiterated the same principle in support of the applicant's application for bail. It is submitted that the applicant is not the principal accused. His name is not reflected in the FIR. There were three FIR registered with different police station. The applicant is being implicated in connection with C.R. No.I-596/2016. Other persons have been granted bail by the subordinate Court. The applicant is not concerned with Call Center at Hari Om IT Park. The

applicant was arrested on 16^{th} October, 2016 on the basis of the statement of the co-accused. It is submitted that on the basis of visiting card of I-SERVER communications, it is inferred that the applicant is connected with the said Call Center. There are no allegations against the applicant that he was either caller or closure. There is no evidence that the applicant was involved in training the staff of the Call Center. As per the chargesheet role attributed to the applicant after the registration of the FIR is that the applicant was the owner of three such presmises where Call Center's were operated and that the applicant was having full control over the Call Center running in the premises. However, there is no evidence to support the said fact. It is submitted that the applicant is not connected with the said crime. There is no material to indicate involvement of the applicant in the crime. No search was carried out at the applicant's premises on 4^{th} October, 2016, since there was no information with regards to any illegal activities being carried out at the applicant. Based on the statement of the co-accused which is not tenable in law, the applicant was apprehended in the crime. On 16^{th} October, 2016 after arrest of the applicant his mobile phones have been seized and several pictures of Western Union Receipts, money Gram Voucherz, driving license and ID proof of U.S. citizens were extracted by the

FSL officers. The said documents cannot be considered as incriminating material against the applicant. The office premises situated at Prestige Industrial Estate and residential building of the applicant were searched but nothing incriminating was found. The applicant was not the director or the owner or the manager of any of the Call Centers raided on 4th October, 2016 and 5th October, 2016. There is no material substantiating that the applicant is the owner of three places where search operation were carried out, which places were allegedly used for conducting illegal Call Center. The applicant was arrested much later and there is no direct or indirect involvement of the applicant in the crime. The role of the persons who were granted bail was more severe in comparison to the applicant. There is no evidence showing that the applicant has received money from any US Citizens. There is no material suggesting that the applicant has been paid any money by any of the victims or they had paid any money at the instance of the applicant. The statement of the employees at Prestige Industrial Estate were relied upon by the prosecution against the applicant. In the other Call Centers employees were made accused. However, in respect to the aforesaid Call Center, the employees were not impleaded as accused and were made witnesses. This shows that witnesses were got up witnesses. The allegations that the applicant had destroyed the evidence by removing all computers are devoid of any merits. It is also inferred that hard disk was removed by drilling which is not supported by any evidence except the statement of electrician who stated that he had handed over the drill. The role in respect of Angadia was not on record and there is no panchanama of recovery of receipts. It is further submitted that the statement of PW-121 states that he was interviewed in 2010 by one Stephen and training was given to the staff for developing American accent and calls were made to American citizens from the Call Centers. However, the statement of Stephen has not been recorded by investigating authority. PW-123 has referred to the fact that the Sandeep Sutar was called to meet the applicant at Prestige Center. However, the statement of Sandeep Sutar was not recorded as witness. No reference of the applicant is made by the said witnesses in the statement recorded under section 164 of Cr.P.C. The statement of the other witnesses were recorded under section 164 of Cr. P.C. as PW-70, PW-94, PW-104, PW-106, PW-109, PW-110, etc. However, there is no cogent evidence to establish the connection of the applicant. There is no evidence to show that involvement of the applicant in IRS scam prior to the arrest of the applicant. It is therefore submitted that the applicant may be granted bail

15. The bail application No.819 of 2017 is strongly opposed by the learned APP Smt. Shinde. It is submitted that there is voluminous evidence against the applicant showing his involvement in the crime. She pointed out arrest panchanama of the applicant. The panchanama indicates that at the time of the arrest i.e. on 16th October, 2016, two mobile phones of Apple company were recovered. In the panchanama of mobile phones recovered on 25th October, 2016, there is a reference of Western Union Money Receipt of 2060 US dollars was found in i-phone-6 recovered from the applicant. The panchanama also refers to bank receipt, cheque deposited for clearance, etc. The mobile contains several other documents which were referred to in the said panchanama. Learned APP also pointed out the Angadia receipts which corroborates involvement of the applicant in the crime. Reliance is also placed on the panchanama dated 24th December, 2016 and recovery of CD recording, CCTV camera footage which was viewed by them. The panchanama was recorded. In the said CCTV footage, it appears that some persons were removing CPU from Gala no.308 and they carried out the same alongwith them while leaving the premises. There are two such

incidents which had occurred on 7th October, 2016. It is submitted that the computers were removed from the premises at the instance of the applicant with a view to destroy the evidence. She relied on the statement of Sonakshi Morya which was recorded under section 164 of Cr. P.C. In the said statement, it is stated that she was working at Hari Om IT Park Call Center. The information about the said Call Center was given to her by Tapesh Gupta who was conducting the said Call Center at the instance of Sagar Thakkar. She also explained the modus adopted by the staff at the Call Center and explained the manner in which calls were made to the victims, impersonating that the staff of the Call Center were the officers of IRS. Learned APP further pointed out the statement of Jony Fonseca recorded under section 164 of Cr.P.C. In the said statement, it is stated that the said witness was employed with Spectrun Services as Customer Service Executive which was the Call Centre. The witness used to call the American citizens and collected information from them. The said information was collected under the pretext that the witness is concerned with on line business directory. The same was provided to owner of the Call Center Shri Jagdish Kanani (applicant). It is also stated that the lead required for the process was provided to the applicant by Shri Sagar Thakkar. The lead data received by them was being uploaded in the computers by the applicant. Internal Revenue Service (IRS) was started at Prestige Industrial Estate wherein the other person were working. It is further stated that the Data received from the applicant was being used for making calls to the American Citizens and they were threatening them saying that they have evaded taxes and the callers are persons attached to IRS. The witness has given all the details as to how the American citizens were being deceived and were forced to part with the amount. It is further stated that the applicant and Sagar Thakkar were close friends. It is, therefore, submitted that the applicant was actively involved in the crime and cannot take a stand that he has no connection with crime and had no knowledge of the crime committed by the co-accused. She further stated that the applicant was involved in destroying the evidence. The computer was recovered without hard disk from the premises at Prestige Industrial Estate. The statement of electrician shows that he was asked to handover the drill machine. The said drill was apparently used for destroying hard disk. It is submitted that there is ample evidence collected against the applicant. They have no license to conduct the Call Center. The investigating machinery has received email from the American victim stating as to how they were cheated by the accused. The money was remitted by the Hawala transactions. Several documents were recovered from the mobile phones of the applicant which shows his complicity. The CDR records shows that he had conversation with Brijesh Patel who is absconding. The CCTV footage shows the visit of the applicant alongwith the co-accused at the Call Centre. It is, therefore, submitted that he had acted in connivance with the other accused and therefore bail should not be granted.

16. The Internal Revenue Service (IRS) is the revenue service of the United States federal government. This government agency is a bureau of the Department of the Treasury. The IRS is responsible for collecting taxes and administrating the Internal Revenue Code. The said department is similar to the Income Tax Department of our country. The citizens of USA are apprehensive of the said department and get psyched with anything coming from IRS. The modus adopted by the accused in the present case is that the information about the USA citizens was being collected by Data broker which was being shared with scamsters in India. The agent working in Bogus Call Center in India used to call US citizens impersonating as IRS officials. The agent used to read out readymade script created by the call center management. Posing as

IRS officials, the agents were issuing threats of arrest by sending police if the tax amount due is not paid immediately. The victim used to get scared thinking that its a genuine call from IRS office and used to loose his ability to think logically due to fear of arrest and financial loss. The victim was being directed to go to the market and buy iTune / Vanilla gift cards of the amount suggested by this scamsters and to share the sixteen digit code with the scamsters. Thereafter, the 16 digit code was shared with the associates in scam through whatsapp group and the 16 digit code redeemed by creating fake Apple ID to purchase Apple product outside US in other parts of the world. On 4th October, 2016, Thane Police had received information regarding IRS scam being run at a Bogus Call Center in Mira Road Thane. The names of the Call Center's were Call Tech Solution, I-serve BPO, Tech Solutions and Universal Outsourcing. The Call Centers were being conducted at Hari Om IT Park Mira Road (E), Ostwal Building, Mira Road (E), M. Bale House, Mira Road (E) about 700 employees were involved in these Call Centers which includes Dialler, Closure, Manager, Technicians etc. Several articles were seized such as hard disk, magic jack, share drive, and call centre electronic items. During the course of investigation, several persons were arrested. It was found that eyebeam softphone (software) was installed on the computers of the agent. The accused used Magic Jack Express which is normally used to make unlimited calling to USA and Canada. The idea of using the said software is that even if the call is made from India, the trace will lead to USA. The Magic Jack hides I.P. address of calling party. It was difficult to trace VoIP call made using Magic jack. The list of proxy server used by the magic jack indicates US server I.P. address. The nature of call made by the agents to the US citizens is that the IRS officers had conducted audit of their taxes and it was noticed that there were miscalculation and errors for the taxes that they had filed which does not match the tax records that with the officers have. It was also indicated that the amount is outstanding against their names and therefore the local authorities will come to their place with an arrest warrant and the property and bank accounts will be seized and they will have to face federal imprisonment upto five years. The investigating agency arrested people working in call centre including operators, managers and employees who are personating as officials of IRS Authority of USA. Several victims who are US citizens were duped by adopting aforesaid modus operandi by the accused.

17. The applicants hereinabove had played a vital role in the

present crime. The investigating machinery has collected voluminous evidence about their involvement. I have perused the documents annexed to the application as well as investigating papers which attributes overt act to the applicants. perused the statement of Sheetal Raut, Senior Police Inspector attached to crime branch which was recorded on 20th October, 2016. In the said statement, she has narrated the details as to how the Call Center namely the Call Tech Solution was involved in notorious activities which are subject matter of the present crime at Hari Om Building. The said witness refers to the modus operandi of the accused conducting the said Call Center. Reference is made to the involvement of Akhilesh Singh as well as Sagar Thakkar @ Shaggy, they were disclosed to be the owners of the said Call Center. The witness also refers to information provided by the employees with regards to the whatsapp group of the persons who were indulging in the said crime by forwarding the vital information with reference to the code provided by Closure. The witness also refers to the role of Hyderali Mansubi in the operation of the Call Center. Similarly statement of police Inspector Sayali Chawhan recorded 21st October, 2016 also refers to the role of Akhilesh Singh and gives details about the operation of the Call Center. The statement of Santosh Kakade dated 26th October, 2016 refers to the incident of removal of computers from Gala Nos.305, 308 and 608 situated in Prestige Industrial Estate where the Call Center was and being conducted as well as the office of the accused Jagdish Kanani was situated. The witness stated that the several persons were engaged at the instance of the said accused to remove the computers from Gala which were removed and taken to the basement and kept in the car belonging to Jagdish Kanani.

18. I have perused several other statements and documents which show the involvement of the applicants / accused in committing the crime. The investigating machinery has collected evidence showing involvement of the applicants. The applicants in Bail Application No.476 of 2017 and Bail No.418 of 2017 had actively participated in the crime. They had knowledge about the acts committed by them and cannot feign ignorance about intention of the principal accused. The investigating machinery has established a link between accused. The applicants Nasser Ghori, Wasim Qureshi, Darmesh Soni had played active role in the crime. The learned APP has pointed out the evidence collected against the aforesaid accused persons. It is not necessary to repeat and reiterate the nature of the evidence collected against the aforesaid accused persons which is referred hereinabove.

There is sufficient evidence to show involvement of the said accused. The counsel representing the applicant in Bail Application No.476 of 2017 had relied upon several decisions of the Apex Court and had submitted that the offence are triable by the Magistrate and the maximum punishment which could be imposed is upto seven year. It is submitted that assuming the allegations to be true the applicants are in custody since the date of arrest and trial will not commence immediately. Considering the voluminous documents and number of witnesses involved in crime. I have perused the observations made by the Apex Court in the said decisions. As stated hereinabove the applicants are involved in serious crime. The modus operandi adopted by the accused in commission of crime is required to be considered. The accused had impersonated themselves as IRS officials attached to USA had duped the US citizens to crores of rupees. The investigation is also been conducted by US agency. There is sufficient evidence attributing knowledge to all the accused for commission of crime and their role is clearly established during the course of investigation. In the circumstances, on the ground that the offence is triable by Magistrate, the applicant cannot be granted bail. In the decision relied upon the counsel for the applicant in case of ***Sanjay Chandra v. CBI*** **2012 (1) SCC 40** reported hereinabove it has been observed by the Supreme Court that grant or refusal of bail lies within the discretion of the Court and the grant or denial is regulated to a large extent by the facts and circumstances of each particular case. The Supreme Court in the case of ***Rajesh Rajan Yadav v. CBI AIR 2007 SC 451*** has observed that while it is true that Article 21 is of great importance because it enshrines the fundamental right to the individual liberty, but at the same time a balance has to be struck between right to individual liberty and the interest of society. No right can be absolute, and reasonable restrictions can be placed on them. While it is true and one of considerations in deciding whether to grant bail to the accused or not is whether he has been in jail for a long time, the Court has also to take into consideration the other facts and circumstances, such as interest of society.

18. In the light of the fact that there is voluminous evidence against the applicants in Bail Application Nos.476 of 2017 and 418 of 2017 which is pointed out by the learned APP and referred to by him hereinabove no case for grant of bail is made out by the said applicants. Similarly, the investigating authority has collected ample evidence against the applicant in Criminal Bail Application No.745 of

2017 and he applicant / accused in Bail Application No.819 of 2017, the statement of witnesses and the documents on records clearly established involvement of the said applicants. The statements of witnesses Ms. Sheetal Raut, Smt. Sayali Chauhan, Satish Kumar Mishra, Santosh Kakade, Umesh Kothari as well as various other witnesses refers to involvement of applicants in the aforesaid applications in the crime. The nature of evidence against the applicants in the aforesaid applications has been pointed out by the learned prosecutor which has been reproduced hereinabove and I do not wish to repeat the same. Considering the submissions advanced by the learned prosecutor on the basis of evidence pointed out, I am of the opinion that the applicants have not made out case for grant of bail.

19. The applicant in Bail Application No.745 of 2017 was not acting simpliciter as Manager as he has played a vital role in the crime. He was part of the whatsapp group between accused who used to pass information for operating the transactions. He had executed agreement with the owner of the premises in the bogus name. There are several statements of the witnesses which show the involvement of the applicants in Bail Application Nos.476 of 2017,

418 of 2017 and 745 of 2017 were acting in connivance with each other. There is voluminous evidence against the applicant in Bail Application No.819 of 2017. There is recovery of mobile phone of Apple Company at the instance of the said accused. From the mobile phone it was revealed that there was reference of Western Union Money receipt of 2060 US dollar. There is also reference to bank receipt, cheque deposited for clearance and several documents which were found in the mobile phone. The recovery of Angadia receipt also shows involvement of the said accused. The CCTV footage recovered by the police showing the removal of CPU from Gala No.308 also corroborates the prosecution case against the accused / applicants. The computers were apparently removed from the premises at the instance of the said applicant with a view to destroy the evidence. The statements of Smt. Sonankshi Morya and various other witnesses show involvement of applicants. He has played major role in the said crime. One of the witness has stated that lead data was being uploaded on the computer by the applicant and that the said Call Center relating to IRS was started at Prestige Industrial Estate wherein several persons were working. The data received from the applicant was used for making calls to the American citizens. The drill machine was apparently used for destroying the

hard disk. The CCTV footage shows the visit of the applicant alongwith co-accused at the call centre. Therefore, there is ample evidence against the applicant in Bail Application No.819 of 2017.

20. In view of the evidence collected by the investigating machinery against the aforesaid applicants, it is apparent that the applicants are involved in the serious crime. The modus operandi adopted in committing crime has been narrated hereinabove from which it is clear that the applicants are involved in crime whereby there was well planned conspiracy to dupe the US citizens. The accused had impersonated themselves as IRS officials to threaten the US citizens and under coercion they were duped. In the circumstances, the applicants are not entitled to be released on bail. Hence I pass following order;

:: ORDER ::

(i) Criminal Bail Application Nos.476 of 2017, 418 of 2017, 745 of 2017 and 819 of 2017 stand rejected.

(ii) It is clarified that the observations made in this order are only for considering these applications for bail and the trial Court shall not be influenced by the same.

[PRAKASH D. NAIK, J.]